

**Mr Phillip Crawford**  
Chairperson,  
Independent Liquor and Gaming Authority  
Level 6, 323 Castlereagh St,  
SYDNEY NSW 2000

Dear Mr Crawford,

**RE: Proposed decision by Independent Liquor and Gaming Authority regarding the review of  
licence condition for 14 Newcastle CBD venues**

Having received the proposed decision from your committee on 9 May 2018, we wish to respond through the submissions that we have attached below. For the sake of brevity, the Licensee's of The Cambridge Hotel, King Street Hotel and The Argyle House have co-authored these submissions and the opinions therein.

To summarise:

We accept the proposed amendments to:

- 1) Revoke the condition that venues maintain a shared radio network; and
- 2) Require venues to provide a copy of the Revised Plan of Management to existing staff and all new staff henceforth.

We dispute, however, the proposals to:




- 1) Require that Plans of Management be done in consultation with NSW Police and the need for ongoing reviews; and
- 2) Make no substantial changes to the restrictions on the sale of alcohol after 10:00pm.

We would instead propose that:

- 1) Plan of Management need only be reviewed annually, but that the auditing requirements remain as they are.
- 2) That conditions restricting the sale of alcohol after 10:00pm be relaxed. Primarily, we argue that restrictions on the sale of alcohol be adjusted to 12am, in line with the recommendations of the Horton Report.

We are happy to cooperate with the Independent Liquor and Gaming Authority on this matter. If you have any issues or further questions on the submissions below, please don't hesitate to contact us.

Kind regards,

  
**Russell Richardson**  
Licensee,  
King Street Hotel  
**Greg Mathew**  
Licensee,  
The Argyle House  
**Dru Russell**  
Licensee,  
The Cambridge Hotel

# **RESPONSED TO PROPOSED CHANGES TO LICENCE CONDITIONS**

## **OVERVIEW**

The following is our response to the proposed changes to the licencing conditions for the 14 Newcastle CBD Hotels following the Independent Liquor and Gaming Authority's ('the Authority') consideration of the report by Dr Jonathan Horton QC ('The Horton Report'). Within the broad ambit of addressing the Authority's proposed changes, this submission will respectfully provide the Authority with alternatives to the changes they have proposed.

Ultimately, it is our position that the proposed changes do not reflect the findings nor the tenor of the Horton Report. Further, the proposed changes fail to consider the substantial efforts made by Licensees since the 2008 reforms, the changing nature of Newcastle's nightlife, nor the community expectations regarding licensing regimes.

### **The Hotels**

**King Street Hotel** is Newcastle's largest nightclub, and regularly hosts national and international acts. The lighting and sound technology in it's second floor 'nightclub' level is considered to among the best in regional Australia. It has been owned by the current owners since 2003. Since it appeared at 13<sup>th</sup> on the *Violent Venues List* in 2012, it has not appeared since.

**The Cambridge Hotel** is the home of Newcastle's live music scene, and has played host to [insert]. In 2017, it was awarded the Australian Hotel Association's 'Best Live Music Venue (NSW)' and has not appeared on the *Violent Venues List* since 2012 despite years of hosting major national and international acts.

**The Argyle House**, formerly known as Fanny's, the venue was substantially renovated in 2013 and was renamed, in order to disassociate the venue from it's infamous past. Whilst there were licensing issues when the company first purchased the venue, it has had no breaches since the renovations, and hasn't appeared on the *Violent Venues List* since 2013.

### **The Licensees**

**Russell Richardson** has been the co-owner of King Street Hotel since he purchased it as 'The Castle' in 2003. He has been involved with pubs since 2000. In addition, he has been the head of the Newcastle Liquor Accord for the past 7 years.

**Dru Russell** has been the manager and Licensee of The Cambridge Hotel for the past four years and has been managing venues for the past decade. He was at The Cambridge when the initial restrictions were introduced and has played a pivotal role in supporting live music in Newcastle at a time where it has been under threat in inner city areas nation-wide.

**Greg Mathew** has been the Licensee of The Argyle House since 2013, and was the Licensee of Fannys since it was purchased by the company in 2011. Whilst there were issues early on, as part of the carryover from the 'old Fannys', he oversaw the reform of a venue that has not had any further breaches since 2012. He has been heavily involved in organising music festivals for more than a decade.

### **The effect of the 2008 restrictions and venue initiatives**

The effect of the 2008 changes to licensing conditions have been well documented. We do not take issue with the broad characterisation of the effects of these changes in Part Two of the Horton Report.

We do believe, however, that the Horton Report has failed to adequately take into account the role of venues themselves in driving improvement inner-city Newcastle following the 2008 changes. As Dr Horton acknowledges at Paragraph 154 of his Report, venues subjected to the 2008 restrictions still featured prominently on the state's *Violent Venues List* until 2012. On 30 May 2012, there were three subject venues listed in the Top 20 on the *Violent Venues List* – Finnegans (#2), Fanny's (#3) and King Street Hotel (#13) whilst The Cambridge and The Queens Wharf Brewery Hotel also made the list.

It was during this time that these venues funded the establishment of an ID scanning and shared banning network. We, along with our participant licensees, continue to operate and fund this initiative wholly independent of the public. Indeed, Mr Horton agreed at Paragraph 211 with the suggestion that the restricted participation in the system is a fundamental part of its efficacy.

The results from implementing the scanning and banning network were significant and immediate. When the *Violence Venues List* was released 1 June 2013, none of these venues were on the list – a pretty substantial improvement over a 12-month period. Further, none of the NEP-member venues have been on the list since.

We do not suggest that this stands to evidence that the 2008 restrictions were ineffective, but rather that the venues have been willing to play a significant and complimentary role beyond these restrictions. Ultimately, it is our position that the recommendations of the Horton Report should be read with this understanding, and that any changes should reward the subject venues for their ongoing compliance and efforts as stakeholders in Newcastle's nightlife. As it stands, the changes create more onerous compliance obligations whilst making no meaningful changes to the restrictions which affect how alcohol is served.

### **RESPONSE TO PROPOSED CHANGES**

As stated above, we do not oppose all of the proposed changes. In this section, we will address each of the proposals individually; giving feedback and, where necessary, providing alternatives for the Authority to consider.

#### **Proposed Change #1: Changes to the Plan of Management**

The Authority has proposed that the Plan of Management Condition be altered, replacing the current system of quarterly compliance auditing with a more comprehensive regime. The proposed change requires a Revised Plan of Management reviewed in consultation with NSW Police, and conducting an annual review of the effectiveness of this plan in conjunction with NSW Police.

Our opposition to this proposed change can be summarised as being primarily a concern about the manifest increase in resources Licensees will have to expend to ensure ongoing compliance. Three main points support this position:

- The first is that the proposed change is ultimately unnecessary given the existing regulatory framework. It stands to create more onerous compliance burdens on Licensees.

- The second is that the proposed change doesn't address or reflect the reduction in violence since the 2008 restrictions.
- Third, it also represents an increased burden on local Police, and we feel that this has the potential to decrease resources available for proactive and visible policing.

We will address each of these points in turn.

***The proposed change is unnecessary.***

We want to make it clear that we don't believe it was the Authority's intention to make the Plan of Management Condition more onerous on Licensees with these changes. Rather, we believe it is an unintended consequence of some of the observations made in the Horton Report.

We agree with the Horton Report's observation that Licensee's view these Plans of Management as a useful tool to assist with overall compliance (Paragraphs 243-245). Ultimately, they form a clear set of parameters and standards to be communicated with staff, and they do assist with ensuring compliance is being maintained.

As the Horton Report observed at Paragraph 246, the current arrangement of quarterly auditing has questionable utility relative to its cost. We would agree with that characterisation and add that the process should ultimately be dictated by practicality. Alcohol-related violence is a social concern because it has real world impacts on the community. Any reforms intended to address this should be predicated on delivering real world change. As it stands, we don't believe that the proposed change to Condition 3 achieves this.

Indeed, the proposed change to Condition 3 goes beyond the scope recommended by the Horton Report. On Page 80, Dr Horton recommends that the existing auditing regime be made less frequent, and observes that there is already a pre-existing dialogue between Licensees, NSW Police and the Office of Liquor and Gaming regarding Plans of Management. We don't believe that creating a more formalised and rigidly structured regulatory framework in this regard is of any particular benefit in the continued reduction of alcohol-related violence.

In essence, this is our issue with the proposed changes to Condition 3. It only creates additional layers of compliance cost with no real benefit in ensuring compliance. Licensees already work closely with the relevant authorities in developing and implementing Plans of Management, and authorities already have power to inspect these plans at any time pursuant to s21 of the *Gaming and Liquor Administration Act 2007* (NSW). Given this, and the fact that the proposed changes fall beyond the comprehensive scope of the Horton Report, we would respectfully submit that the changes to Condition are unnecessary.

***Failure to account for the reduction in violence***

One of the reasons for the community support for this review was the question as to whether or not the reduction in violence in Newcastle since the 2008 restrictions warranted a relaxation of some of the more onerous and burdensome licensing conditions it imposed. Ultimately, s3(1) of the *Liquor Act 2007* (NSW) summarises a legislative and regulatory framework that is intended to be balanced, flexible and practical, and consistent with both community needs and expectations.

We would argue that the changes to Newcastle's late-night economy and the continued success in reducing alcohol-related violence over the past decade should, if anything, result in a reprieve for



Licensees. In line with the reduction in violence and anti-social behaviour, community expectations of how the sale of alcohol is regulated and controlled has shifted away from the need for intensive intervention that existed prior to the 2008 restrictions. This review, conversely, has resulted in a proposed change to Condition 3 that would be more onerous on Licensees and venues.

### ***Overburdening local Police***

We are proud to enjoy a longstanding and positive relationship with local NSW Police. We view compliance as being a continuous dialogue with Police, and our managers are encouraged to assist officers whenever they are in our venues. Whilst it appears counterintuitive for Licensees to argue against imposing more onerous restrictions on the basis that they would form an unnecessary additional burden on Police, we make this submission on the grounds that our ongoing success is entirely dependent on maintaining the best possible relationship with the Police who are regularly in and around our venues.

Any changes to Conditions should take into account the need for Police to be able to perform their duties. Ultimately, what we want is for Police to be able to use their resources to fight and prevent alcohol-related crime as efficaciously as possible. It is our position the burden imposed by the proposed changes to Condition 3 impedes this by requiring Police to engage in a comprehensive regime of annual reviews of venues' Plans of Management.

Ultimately, there are 14 venues subjected to Conditions relevant to this Review. As the Horton Report observed at Page 32, however, there are a number of these venues which no longer trade in a manner that is remotely similar to how they traded prior to the 2008 restrictions. Some venues have shut, others have shifted to more of a food focus, and quite a number of them no longer trade after midnight.

Under the current system, Police are able to focus their resources to the venues that are actually trading late (including ours), and this allows them to be more proactive in their approach to reducing alcohol-related violence. At Paragraph 246 of the Horton Report, it is acknowledged that there is a pre-existing practice of venues consulting with relevant authorities in developing and maintaining their Plans of Management. What is overlooked in this acknowledgement, however, is that this practice is necessarily determined on a need-by-need, venue-by-venue basis.

If the proposed changes are passed in their current form, the result would be not only be the imposition of a more onerous system of compliance on Licensees despite the reduction in alcohol-related crime, but also a new system of Police supervision that doesn't distinguish between the different needs of different venues. Ultimately, it creates a regulatory burden on Police when they already have the powers to ensure the effectiveness of the Plan of Management requirement.

Currently, a failure to keep a satisfactory Plan of Management constitutes a breach of the venue's Licence, and this condition requires regular compliance auditing. Police can access the Plan of Management and these audits at any time in accordance with s21 of the *Liquor and Gaming Administration Act 2007* (NSW). The effect of this framework in practice is that Police can focus on venues that they perceive to be more problematic than others. If Police suspect that a venue is being poorly run, they can focus on ensuring that this is dealt with.

As it stands, the proposed changes instead force them to focus on all subject venues rather than needs-based policing.

### ***Alternatives to proposed change to Condition 3***

Plans of Management are useful tools for venues in ensuring compliance, and the regulatory framework permits Police to be flexible in how they allocate their resources. Considering the absence of any concern on the part of the NSW Police in regard to Plans of Management in their submission to the Horton Report, and the lack of evidence to suggest that there is any need for additional compliance requirements, the change in its current form is onerous and unnecessary.

We are of the position that a better alternative to the one that has been put forward is to follow the recommendations of the Horton Report at Page 2 and explored in more depth at Page 80. Plans of Management should be audited less frequently, and the current system of cooperation and dialogue between Licensees and local NSW Police should continue.

### **Proposed Change #2: Restrictions on the sale of alcohol after 10:00pm**

We would characterise the proposed change to Condition 6 as merely codifying the Licensee's interpretation of the existing Condition, in the sense that these drinks have not been for sale in our venues after 10:00pm since the implementation of the 2008 restrictions. We do want to take this opportunity, however, to express our disappointment that the recommendation of the Horton Report in this regard was ignored. Ultimately, we implore the Authority to reconsider this decision.

There are three primary reasons that we believe the Authority should take into consideration in revisiting the decision to not implement the recommendation of the Horton Report.

- First, there is no logical reason that patrons in Newcastle should be denied the freedom of choice enjoyed by patrons in Sydney.
- Second, the present Licensing regime creates a paradox between bars in Newcastle whereby these drinks can be enjoyed in smaller venues with less security and oversight.
- Third, the decision to ignore the recommendation of the Horton Report is contrary to community expectations in Newcastle with regard to how the sale of alcohol should be controlled and regulated.

We will give justification for each of these positions in turn, before concluding that the Authority should implement the same rules as which apply in Sydney, in accordance with the recommendations of the Horton Report.

### ***Discrepancies between Sydney and Newcastle***

Condition 6 imposes the broad requirement that venues not serve shots, mixed drinks with more than 30mL of alcohol, RTDs with an alcohol by volume content greater than 5% or more than four drinks at a time per patron, after 10pm. This is a different regime to that experienced in Sydney, where restrictions don't begin until midnight.

We can appreciate the Horton Report's observation at Paragraph 251 that he can see "no clear reason why the rules that operate in Newcastle with respect to drink restrictions ought to align with those in the metropolitan areas of Sydney". We would note, however, that this would be a specious basis upon which to not have uniformity between the two cities. Ultimately, the absence of a reason for is hardly a cogently sufficient argument against. The people of Newcastle deserve to know why they are not entitled to same freedom of choice as patrons in Sydney.

The same reasons which supported the 12am restriction in Sydney equally apply to Newcastle. 10pm is an excessively early time to begin drink restrictions, and results in anomalies such as the inability to buy a single malt whiskey, cocktails, or an expensive bottle of wine at a time in which a lot of people are still enjoying dinner. As Licensees, we often witness a great deal of confusion, particularly from older patrons, about the fact that they can't enjoy drinks that are seldomly associated with the sort of problems to which the 2008 restrictions were directed.

Similarly, academic experience suggests that the risk of alcohol-related violence increases significantly after 12am. This would, like Sydney, present a far more logical time from which to begin restricting the sale of alcohol, and avoids the sort of confusion that the current time regularly creates.

Indeed, the Horton Report at Paragraph 256 acknowledges that it is widely believed that a mix of age groups in a venue is an effective means by which alcohol-related violence may be reduced. The present restrictions in Condition 6 continue to prevent this by preventing the subject venue from offering the range of products that generally appeal to more mature demographics. Creating uniformity between Newcastle and Sydney would create an environment which incentivised this demographic mix.

### ***The Paradox between Bars and Subject Venues***

The other issue with the current regime of 10pm drink restrictions is that it has created an unintended paradoxical situation in Newcastle's nightlife. Essentially, smaller venues are not subject to the Conditions imposed by the 2008 restrictions. This creates a circumstance whereby venues with less security and less regulatory oversight are exempted from the sort of restrictions that larger venues are subjected to.

In practice, this means that a small bar can serve shots, doubles, more than four drinks etc at 11pm on a Saturday night, with minimal to no security. Meanwhile, our venues may have up to 10 security and dedicated RSA staff on by that time and bar staff who are significantly more experienced in identifying the signs of intoxication. Additionally, larger venues get more frequent Police and OLGR walk throughs than their smaller compatriots. These smaller venues generally close by 12am, and a substantial number of their patrons head to our venues.

The imposition of drink restrictions from 10pm on the 14 venues has had the unintended consequence that smaller venues with less supervision, security staff or resources are permitted to serve drinks that the larger venues aren't. Additionally, this amplifies the confusion that patrons often express when they can get certain drinks in one venue, but not another.

The current proposed change to Condition 6 does not address this issue. Rather, it perpetuates a false two-tiered system of alcohol service in which less scrutinised venues with less resources are better placed to meet patron's demands.

### ***Community expectations***

The final reason for our opposition to the proposed change is that we believe that the continuation of the status quo that it symbolises is contrary to the expectations of the community regarding the sale and consumption of alcoholic beverages.

The Authority's consideration of the AHA NSW's application to vary, revoke or impose conditions on the Licences of the 14 subject venues is one which requires the Authority to exercise its power in accordance with the objectives under s3 of the *Liquor Act 2007* (NSW). Indeed, this is reflected in Clause 5a of the Terms of Reference provided to Dr Jonathan Horton QC in conducting his review.

It is our contention that, given the recommendations of the Horton Report, the decrease in alcohol-related violence in Newcastle over the past decade and the effectiveness of the Sydney restrictions, the proposed change to Condition 6 fails to meet the expectations, needs and aspirations of the community pursuant to s3(1)(a) of the Act.

Our first point in this regard is that community expectations should not be simply measured by the number of submissions made in favour, or against, the continuation of the current Conditions. The submission's process informing the Horton Report was not intended to be a plebiscite on the 2008 restrictions, but rather give him a broad cross-section of analysis from which to inform the Authority.

Despite the majority of submissions being against any relaxation of current restrictions, the Horton Report still recommended that drink restrictions be moved in line with Sydney. Importantly, he continually noted community expectation that certain products (such as single malt whiskies) be available for purchase following 10pm (see Paragraphs 252-258).

Whilst a majority of parties who made submissions expressed opinions in favour of retaining current restrictions, this should not be held to be reflective of community sentiment about how the sale and supply of alcohol should be regulated. There is a groundswell of opposition currently developing in Newcastle as to the way in which inner-city residents use the complaints process to stymie the late-night economy – from alcohol, to events, to live music. Notably, this was not mentioned in the Horton Report.

Significantly, in a matter of hours on consecutive Saturday nights (19 May and 26 May 2018), over 1600 signatures were received on a petition stating *"I believe Newcastle is a global safe city and should be treated the same as Sydney. We should have the freedom to purchase drinks of our choice until 12am, so long as its contents are listed"*. We want to reiterate – this was a matter of hours, out the front of two separate hotels, 19<sup>th</sup> of May at King Street Hotel and 26<sup>th</sup> of May at The Cambridge. This isn't to say that there aren't contrary opinions in the community, nor that their opinions aren't relevant. It certainly goes, however, to establishing that there is a rich vein of community expectation here that is not reflected in the Horton Report.

We have attached this petition as **Annexure A** and **Annexure B**. If this is something the Authority would like to see explored further, we would be happy to run a longer petition to demonstrate the strength of community expectation in this regard.

Ultimately, we are of the position that the wider Newcastle community has an expectation that they be permitted to purchase and consume alcohol in a way that the current 10:00pm restrictions do not permit. Considering the findings of the Horton Report and the absence of evidence to suggest that a shift to 12am and uniformity with Sydney's restrictions would posit any substantial risk, we do not agree with the proposed change to Condition 6.

### ***Proposed Alternative***

As stated above, we believe that the recommendations of the Horton Report should form the basis of Condition 6. The restrictions should be shifted to 12am in line with Sydney.

We do recognise that there are a number of parties who have expressed concerns about this. In particular, one party expressed opposition to any uniformity between Newcastle and Sydney on the basis that there is “no independent evidence to support such an approach” (Paragraph 228). We would respond that we are concerned that the absence of evidence is grounds for restricting people’s behaviour. Ultimately, as the objectives in s3 of the *Liquor Act* set out, the purpose here is to balance competing interests.

In recognition of this, what we would suggest is a trial period of 24 months whereby the Sydney restrictions are implemented. At the conclusion of this period, the Authority could conduct another review to examine the effects of this shift. Such a trial period would provide an opportunity to observe whether pre-12am drink restrictions have any effect whilst meeting community expectations regarding uniformity.

**Proposed Change #3: Abolishing the shared radio network**

We support this proposal. The radio network is obsolete technology.

**Proposed Change #4: Provide staff with Plan of Management**

This is a sensible and erudite change. As noted in the Horton Report, Licensees often use Plans of Management as an effective tool by which to communicate expectations and better ensure compliance. Making this system mandatory encourages all staff to be more aware of how the Responsible Service of Alcohol is conducted within the unique circumstances of each venue.

**CONCLUDING REMARKS**

We would like to extend our deepest gratitude to Dr Jonathan Horton QC for his remarkable work in putting together his report, as well as his professional and holistic engagement with the various parties. We agree wholeheartedly with his sensible recommendation that Newcastle and Sydney be uniform in their restrictions.

Whilst we differ in conclusion with the Authority, we would also like to thank them for their efforts on this matter, and we hope that this feedback can go towards shaping an outcome that better meets community expectations and rewards the people of Newcastle for the decrease in alcohol-related violence since the 2008 restrictions.

We would also like to thank the other parties who put forwards submissions for Dr Horton’s Inquiry, even those who strongly oppose any changes to the 2008 restrictions. We are all stakeholders in this, and we are united by a common desire to see the best outcome for Newcastle. The fact that so many people were willing to take the time to make submissions demonstrates the level of passion people have for this community.



# **SUBMISSION TO THE REVIEW OF LIQUOR LICENSE CONDITIONS IN THE NEWCASTLE CBD**

MARC CAPPELLACCI, LICENSEE

THE CLARENDON HOTEL, NEWCASTLE

LIQH400117256

To whom it may concern,

Thank you for the opportunity to make a submission in response to the course of action proposed by the Independent Liquor and Gaming Authority (ILGA) following the publication of the Horton Report.

### **About the Clarendon Hotel**

Established in the 1930s, The Clarendon Hotel is a popular food and beverage destination and four star boutique accommodation hotel. Our beautiful front bar features Art Deco charm with a modern twist. Live music is featured in the beer garden or front bar on Friday nights, with talented soloists entertaining our guests.

### **Section 104 Conference in 2008 and Liquor Administration Board decision**

In 2008, The Clarendon Hotel was conjoined with 14 other hotels in a disturbance complaint lodged by NSW Police and others.

At the Section 104 Conference subsequently convened, the Liquor Administration Board (LAB) opined that "there is major social disruption and crime taking place in Newcastle on Friday and Saturday nights when premises trade after midnight and that drastic steps are required to solve it".

The LAB imposed conditions on the licences of 14 of the conjoined hotels, namely:

1. That licensees provide to the LAB a Plan of Management within six weeks.
2. Licensees must ensure that at least every three months a compliance audit of the premises is carried out by a person who is not employed or in an ongoing financial arrangement with the hotel so as to ensure continuous compliance with the Plan of Management.
3. From 11pm until closure, licensees must retain an employee whose sole function shall be that of a supervisor of responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the premises.
4. The following restrictions and conditions were applied upon the sale of alcohol after 10pm:
  - a. No shots
  - b. No mixed drinks with more than 30mls of alcohol
  - c. No RTD drinks with an alcohol by volume greater than 5%
  - d. Not more than four drinks may be served to any patron at the one time
5. Free water stations be placed on every bar
6. Sale and supply of alcohol must cease 30 minutes prior to closing time.
7. Licensees must ensure, by adequate supervision methods throughout the premises, that no patron is stockpiling drinks. Stockpiling refers to any one patron having more than two unconsumed drinks at a time (a patron may buy up to four drinks at a time).
8. Within three months the licensee must have entered into an agreement with each of the other licensees subject to these conditions an arrangement for the sharing of a radio network to be used by management and security for communicating with the other premises.



The LAB noted in its decision that “in settling the conditions for the Clarendon Hotel which closes at 12 midnight the curfew and reduced trading hours provisions will not apply but that the remaining conditions shall”.

### **The Horton Review and Proposed ILGA Action**

Mr Johnathon Horton QC conducted an independent review of the conditions imposed by the LAB. In his report, Mr Horton recommends four courses of action available to ILGA:

1. Removing the requirement there be a shared radio network between licensed venues (rendered obsolete by new technology);
2. Reducing the frequency of audits of Plans of Management (as a regulatory condition which, as presently formulated, is more burdensome than it is beneficial);
3. Adjusting the restrictions on the drinks that can be sold after 10pm to allow more flexibility for venues to serve ones less likely to be rapidly consumed and lead to intoxication resulting in alcohol-related violence. The lived experience of the drink restrictions exposed unintended consequences. Measures were implemented in Sydney aimed at differentiating drinks more likely to lead to problem intoxication from others. They would be suitable to adopt for Newcastle with such adjustments ILGA considers appropriate for local circumstances.
4. Making some other possible adjustments which are described in Part Four: ‘Identification of Options and Advice’.

ILGA have now announced that it is considering taking action in relation to the 14 licences, namely by;

1. Revoke the condition requiring use of a common radio network among the 14 venues, on the basis that the technology is out of date.
2. Replace conditions requiring quarterly auditing of Plans of Management with a new requirement for each licensee to update those Plans and perform an annual review in consultation with NSW Police.
3. Vary the condition requiring the notification of the licence conditions to staff, with a requirement to update staff on the revised Plans of Management and the conditions, as amended, while additionally informing all new staff members upon employment.
4. Vary the condition restricting the service of certain drinks so that the prohibition against the sale or supply of “shots” after 10:00 pm shall now prohibit “drinks commonly known as shots, shooters, slammers or bombs or any other drinks that are designed to be consumed rapidly” after 10:00pm. The condition shall no longer require free water stations on every bar, on the basis that clause 51 of the Liquor Regulation 2008 now requires free drinking water to be made available wherever liquor is served. The condition shall otherwise remain unchanged.

The Clarendon Hotel disagrees with the course of action proposed by ILGA.

## **Clarendon Hotel is Low Risk**

The hotel trades between 10am and 10pm Monday to Thursday, until 11pm Friday, and midnight on Saturdays. These hours are largely unchanged since the time of the Section 104 Conference in 2008. The Hotel does not trade beyond midnight, and did not do so in 2008.

The infrequency of violent incidents at the Clarendon Hotel is evidenced by the fact that the premises has never appeared on the 'Violent Venues List'. In the decision paper of the S104 Conference, it was noted that in the five years between 2003 and 2007, a cumulative total of six assaults occurred on the hotel premises, with the maximum occurrence being three in 2007.

## **Drink restrictions between 10pm and midnight**

The Horton Report very clearly recommends that the restrictions on the sale of certain drinks between 10pm and midnight be lifted.

Mr Horton notes in the report that "10pm is an early time from which to preclude the sale of these drinks. It is well short of midnight from which time the studies say the risk of alcohol-related violence markedly increases".

Mr Horton further notes that "There is an expectation in the community that cocktails and spirits be available for sale after 10pm". This is supported by a poll of over 2,000 people conducted by Newcastle Live, in which 88% of people agreed with the proposal that patrons in both Newcastle and Sydney should be permitted to order drinks of their choice until 12am.

With respect, ILGA have failed to provide any reasoning for not adopting the recommendation of Mr Horton. The Horton Report unambiguously recommends that ILGA permit the sale and supply of spirits and cocktails between 10pm and midnight. The Clarendon Hotel submit that ILGA adopt this recommendation.

The Clarendon Hotel aims to attract an older, more sophisticated clientele. The ability to offer sophisticated drinks is an integral part of attracting these patrons to our premises. Due to the current restrictions, we are not able to offer them a cocktail, or even an expensive single malt whisky, after 10pm.

However, if those same patrons walk down Hunter Street to a venue such as the Happy Wombat, they *can* order these drinks. This is not intended to impugn the ability of the Happy Wombat to serve cocktails, or single malt whisky. Rather, it illustrates that there are precedents for well-run venues in Newcastle offering these products to patrons without any attendant violence or anti-social behaviour.

As such, and as a well-run venue, we submit that the proposed condition should be varied to allow for such sale and supply.

## **Compliance Audits / Plan of Management**

The proposed Plan of Management condition is substantially more onerous than the existing condition.

The requirement that annual consultation between the Hotel and Police determine the contents of that Plan means that there will be greater uncertainty around the way in which the Hotel is permitted to operate from year to year. This reduces business confidence, and may potentially impact upon the valuation of the hotel.

Our current Plan is sufficient, as evidenced by the lack of violence and anti-social behaviour in and around our premises. As a low-risk venue, the Clarendon Hotel should not be required to submit to an annual revision of our Plan of Management. The Clarendon Hotel submits that the proposed condition is overly onerous, and should instead be revoked.

### **Conclusion**

In closing, the Clarendon Hotel is a safe, well-run venue with a proven history of compliant trading. Based on that history, and Mr Horton's assertion that "Venues that demonstrate good practices and that pose a lower risk ought to enjoy less restrictive conditions than those which do not", we respectfully request that our submissions are considered by the Authority.

Please do not hesitate to contact me in relation to any of the above.

Kind regards,

Marc Cappellacci

Licensee, The Clarendon Hotel



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Our Ref:

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29 May 2018

The Chairman  
Independent Liquor and Gaming Authority  
Level 6, 323 Castlereagh Street,  
Sydney NSW 2000

## FACSIMILE TRANSMISSION: 9211 0062

Dear Sir,

### RE: REVIEW OF NEWCASTLE CBD LICENCE CONDITIONS

We act for the Licensee of the Crown and Anchor Hotel, LIQH400117418 (the Hotel).

We are instructed to make a final submission to the Authority.

The Hotel formerly operated as a night club on it's first floor.

The night club has been replaced by an a la carte restaurant.

Our submission specifically deals with condition 540 which imposes restrictions and conditions on the sale of liquor after 10:00pm.

The condition operates to prohibit the sale of cocktails after 10:00pm which in our respectful submission is unreasonable and inequitable having regard to the nature of a cocktail and it's availability in other licensed venues.

The Hotel has experienced a demand for cocktails both in it's ground floor bar and it's a la carte restaurant. The demand is primarily from female patrons in a middle aged demographic and not from younger patrons.

In our respectful submission, the availability of a limited range of cocktails is unlikely to give rise to liquor related violence and anti-social behaviour.

We thank you in anticipation of your kind consideration of our submissions.

Yours faithfully,

**BALE BOSHEV LAWYERS**

per

**Paul O'Sullivan**  
Solicitor

End

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# **SUBMISSION TO THE REVIEW OF NEWCASTLE CBD LIQUOR LICENCE CONDITIONS**

## **Contact**

Gabrielle McCabe

Owner/Licensee- Customs House Hotel, Newcastle

[info@customshouse.net.au](mailto:info@customshouse.net.au)

## PURPOSE

The purpose of this submission is to contribute and respond to the Review of the Newcastle CBD Liquor Licence conditions conducted by Jonathan Horton QC, on behalf of the Independent Liquor and Gaming Authority of New South Wales.

## CUSTOMS HOUSE OVERVIEW

Located on Newcastle's Harbour Foreshore, Customs House Hotel is one of Newcastle's most stunning venues incorporating a ground-floor restaurant, veranda, bar and beer garden and four function rooms upstairs.

Once housing the Australian Customs and Federal Police offices, Customs House Hotel is a heritage-listed building designed in the Italianate Renaissance Revival Style by New South Wales Colonial Architect James Barnet in 1877.

As one of Newcastle's most iconic buildings, its adaptive reuse by the McCabe family won the 1996 Heritage Award.

Customs House is a diverse business appealing to 18 to 80-year-old customers.

Customs House utilises its space well by incorporating weddings, functions, restaurant & bar with a strong focus on food & beverages. The menu features Mediterranean inspired food with an extensive wine, cocktail & beverage lists (including 14 beers on tap – in 1996 there were four beers on tap available).

Customs House provides exclusive packages in relation to high-profile events such the Newcastle 500. It offers live music on Wednesday, Friday and Saturday nights, as well as Sunday afternoons.

Overall, Customs House has an impeccable track-record of good behavior with minimal incidents since it began operating in 1996.

Since 2008 with the restrictive Liquor Licensing, our turnover reduced dramatically, especially in the bar, which lead to significant stress both financially and personally on us. Only with assistance from financial institutions has the venue able to continue operating.

## CONTEXT OF THE REVIEW

In 2008, a reform package was imposed upon Newcastle to address an increase in non-domestic alcohol-related assaults occurring in association with licensed premises.

As part of these conditions, venues were subjected to lockout times of 1.00am or 1:30am and closing times of 3.00am or 3:30am.

In addition, the LAB imposed the following conditions on the 14 venues (including Customs House):

1. That licensees provide to the LAB a Plan of Management within six weeks.
2. Licensees must ensure that at least every three months a compliance audit of the premises is carried out by a person who is not employed - or in an ongoing financial arrangement with the hotel - so as to ensure continuous compliance with the Plan of Management.
3. From 11.00pm until closure, licensees must retain an employee whose sole function shall be as a supervisor of responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the premises.
4. The following restrictions and conditions were applied upon the sale of alcohol after 10.00pm:
  - No shots
  - No mixed drinks with more than 30mls of alcohol
  - No RTD drinks with an alcohol by volume greater than 5%
  - Not more than four drinks may be served to any patron at the one time
5. Free water stations be placed on every bar.
6. Sale and supply of alcohol must cease 30 minutes prior to closing time.

These conditions were applied to:

- Cambridge Hotel
- Civic Hotel
- Clarendon Hotel
- Crown & Anchor Hotel
- **Customs House Hotel**
- Ducks Nuts Hotel
- Fanny's of Newcastle
- Finnegans Hotel
- Grand Hotel
- Great Northern Hotel
- Hotel CBD
- King Street Hotel
- Lucky Country Hotel
- Queens Wharf Brewery

These imposed conditions severely impacted the ability of Customs House to attract and maintain a sophisticated, diverse and contemporary clientele as small bars in a very close proximity have few restrictions (able to sell beverages after 10pm with more than 30mls of alcohol). Overall, the conditions were contributing factors which reduced our turnover significantly and potential growth and diversity.



## THE HORTON REPORT

As part of the Independent Liquor and Gaming Authority (ILGA) review process, Dr Jonathan Horton QC was appointed to carry out an enquiry to determine whether these conditions, commonly referred to as the 'Newcastle Solution', or a different kind of solution was called for, or whether there remained a problem which required any solution at all.

After meeting extensively with industry and community stakeholders, reviewing 93 independent submissions, including an online petition signed by 1,283 people who supported recommendations made by the Australian Hotels Association, Dr Horton found in favour of a number of amendments to licensing conditions currently imposed upon the previously stated late-trading venues.

These recommended amendments related to:

- The service of cocktails after 10.00pm
- The retention of an employee whose sole function shall be to supervise responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the premises after 11.00pm (with conditions)
- The ability to apply for exemptions on a venue-by-venue basis in the instance of high-profile events, and other reasonable circumstances

As stated in his report, Dr Horton based these recommendations on a number of factors including:

**Current restrictions on the service of cocktails is something which is not consistent with the expectations of the community**

His report stated:

*10pm is an early time from which to preclude the sale of these drinks. It is well short of midnight from which time the studies say the risk of alcohol-related violence markedly increases. Young people who, demographically speaking, tend to be the main patrons of venues late at night consider 10pm to be too early a time to preclude the sale of shots. It is early too for those who have their evening meal later in the day, or those who wish to drink after dinner.*

*For this section of the community, drink restrictions coming into effect at 10pm is something which is not consistent with their expectations.*

*It is open in my view for ILGA to apply these arrangements with adoptions to Newcastle. To do so better singles out than presently the kinds of alcoholic drinks which are less closely associated with rapid consumption and intoxication than others and which moderate drinkers commonly enjoy. There are many reasons why such an adjustment might be considered desirable: the consumption of such drinks is an ordinary expectation of moderate drinkers in this country and overseas; allowing their sale after 10pm facilitates the objectives for the night time economy stated by the Newcastle City Council; and there is a prospect that if licensed venues are permitted to sell drinks of this kind after 10pm that the mix of patrons in those venues will be more varied than would otherwise be the case (it seems to be accepted by many that a mix of age groups in licensed venues is one way in which anti-social behaviour might be reduced). (QC 2018)*

**The current relevance of a dedicated employee whose sole function shall be to supervise responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the premises after 11.00pm**

His report stated:

*The benefit of an RSA supervisor will only increase if ILGA were to revoke or vary any of the 2008 Conditions. (QC 2018)*

### **Newcastle's greatly improved circumstances**

His report stated:

*Some styled the 2008 Conditions as the 'Newcastle solution'. That description might have historical relevance, but it is unfairly stigmatising given Newcastle's greatly improved circumstances. Newcastle is no longer in need of a 'solution': what is required is a licensing regime which prevents a return to past problems and allows for the City to develop in a balanced way and in accordance with community expectations, needs and aspirations. (QC 2018)*

### **The significance of live music events**

His report stated:

*Live music is important in Newcastle. It has historical significance as well as modern relevance.*

*There is a concerted effort there to support the industry. A live music roundtable took place in Newcastle on 2 February 2018.*

*Several the comments on the Change.org petition submitted to me supported the industry and sought that more be done to encourage it.*

*There are two ways of doing so in my view: granting an extension in trading hours of the kind Mr Callinan considered open in his September 2016 review of licensing arrangements in Sydney, or perhaps more appropriately for Newcastle, granting an exemption from licensed venues genuinely offering live music, from Condition 7 which requires the cessation of the service of alcohol 30 minutes before closing time. The reason why alcohol sales might be allowed to continue in that circumstance is because live music often requires such sales to subsidise the cost of it. (QC 2018)*

## CONTEXT FOR PROPOSED AMENDMENTS

As part of its submission, Customs House is appealing for amendments to its current licensing conditions based on the findings of the Horton Report, and the following circumstances:

### ○ **ACCURACY OF 2008 CONDITIONS SUCCESS**

Those advocating against amendments to current licencing conditions in Newcastle continue to quote figures relating to a significant decrease in alcohol-related assaults, from 209 cases in 2007-08 (Oct to Sept) to 44 in 2016 -2017 (Oct to Sept), due to restrictions put in place as part of the 2008 reforms package (Research 2017)

However, after the introduction of the 2008 measures, including lockouts, the instance of alcohol-related assaults in the Newcastle LGA increased in 2011 by 21% to higher levels than when it was first introduced. ((BOSCAR) n.d.)

This rise has been documented by BOSCAR as the largest single increase of any Local Government Area across NSW.

It was only after hoteliers then worked together with police, and each other, to introduce the Newcastle Entertainment Precinct (NEP) with its barred-from-one/barred-from-all initiative, and the presence of ID scanners, that alcohol-related assault rates truly began to decline.

Since the introduction of the NEP and ID scanners, the rate of alcohol-related assault has continued to decline, according to BOSCAR figures.

Therefore, it was not the introduction of licensing conditions which impacted the rate of assault – but the introduction of personal accountability that created real and ongoing change.

In fact, a recent evaluation made by Professor Kyp Kypri and his colleagues at the University of Newcastle and published as part of a five-year review of the lockouts initiative, also found there was no evidence that lockout measures had any impact on the rate of assault. (Kypri 2014)

This insight has continually been overlooked in regard to evaluating the possibility of reform, however, its inclusion is paramount as any argument in favour of the 2008 Newcastle Solution and its role in the decline of alcohol-related assault is monumentally flawed.

It is worth noting however, that while the NEP ad ID scanners have proven successful and been included for the purpose of background information, Customs House – as a predominantly functions venue and restaurant, would not seek to introduce ID scanning as it is not in line with the patronage or entertainment demographic of the venue.

### ○ **TOURISM AND EVENTS**

As stated in Dr Horton's report *Newcastle is an important city*.

It is the second-largest non-capital urban centre and the second oldest city in the country.

It is home to more than 152,000 people and has some 4.1 million visitors per year.

It is the centre of the Lower Hunter Region which is home to some 600,000 people.

Newcastle is also a city experiencing exponential growth in the areas of infrastructure, development and tourism – we are becoming a ‘Smart City.’

The city’s calendar of major events continues to grow each year. These events not only showcase the beauty and potential of our city, but also highlight the changes we have undertaken as a community.

For example, in November 2017 the inaugural Newcastle 500 Supercars event was held adjacent to Customs House. In fact, the track was directly outside the venue.

Overall, more than 100,000 people visited our city and enjoyed the hospitality of our venues, including Customs House, and yet there were no instances of major disruptions at our hotels.

Additionally, the recent football Grand Final held at McDonald Jones Stadium between the Newcastle Jets and Melbourne Victory attracted 30,000 people.

As a city, our team was defeated by a bad call - an incorrect ruling, and yet as fans commiserated after the match, there were no instances of drunken violence within our venues. As history would show, this has not been the case in all cities which are home to passionate football fans.

In support of changes to the culture of Newcastle, Dr Horton’s report states:

*It has been nearly a decade since those conditions (2008 reform measures) were imposed. There have been demographic changes in Newcastle, and development and improvement in its CBD in particular. The City, with considerable success, styles itself as an Event City and regularly hosts large public gatherings. (QC 2018)*

This statement is correct.

In fact, according to statistics gathered by the Newcastle Tourism Industry Group, Newcastle’s tourism industry contributes \$949.5 million in expenditure to the local economy and by 2027, more than six million domestic visits are expected, totaling more than \$1.8 billion in expenditure.



Additionally, the imminent opening of Newcastle’s Cruise Ship Terminal and the exponential growth of Newcastle Airport, which alone expects a future annual visitation of about 10 million passengers, will ensure the future growth of Newcastle’s tourism and events industry.

In this regard, we need to ensure our city is ready not just to cope with, but to exceed, the expectations of a thriving tourism industry.

By disallowing exemptions to current licensing conditions, we are severely impacting and limiting the visitor experience.

Draconian licensing conditions, such as no cocktails after 10.00pm, mean that we, as an industry and a city, are restricted from meeting the goals of our city leaders in ensuring Newcastle finds its place on the world map in terms of tourism and events.

This is not in-line with the key objectives of the existing Liquor Act which include:

-  *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*
-  *contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries*

## ○ CULTURE

There was a time when Newcastle was defined by the BHP as a steel-making city and home to a drinking culture underpinned by blue-collar workers who enjoyed a few beers in the Public Bar.

This is no longer the case. Newcastle Harbour is the largest port on the east coast of Australia and the world's leading coal port.

Major employers are Hunter Area Health, Royal Australia Air Force and the University of Newcastle.

Newcastle is fast becoming a cultural city, a progressive and dynamic space which is home to arts, culture and innovative technologies.

Customs House, itself a heritage-listed building which pays homage to the maritime history of the city, whereas its interior celebrates the progressive and forward-thinking community it serves.

If we, as both a city and an industry, are to continue on our path forward, it is imperative we embrace a new culture and service the needs of our emerging community – those who appreciate heritage, the arts, Hunter wines, live music and cocktails. The very nature of Customs House, from its external heritage to internal décor, encourages a level of diversity & patronage.

As stated in numerous submissions made by those advocating for no change to current conditions, the large majority of newly licensed premises operating in Newcastle are small bars - which have the ability to serve cocktails after 10.00pm.

In fact, according to data on [www.OneGov.com.au](http://www.OneGov.com.au) there are currently 254 venues located within the Newcastle LGA that are able to sell cocktails and similar drinks containing more than 30ml of alcohol after 10.00pm, in keeping with their licensing conditions.

By their own admission, those advocating against proposed changes to licensing conditions, state Newcastle's current conditions are such that alcohol-related assaults continue to decline.

*One submission states, "despite an increase in the number of licensed restaurants and bars opening within the Central Business District... local residents like ourselves are now more willing to patronise these businesses in the CBD in the evenings as the city feels safer and more family-friendly".*

Therefore, the service of cocktails after 10.00pm is clearly not a contributing factor to the instance of alcohol-related assault, or sense of foreboding within the Newcastle CBD.

By enabling a hospitality culture underpinned by the service of cocktails which are designed to be sipped over conversation (generally females) and are priced within the higher range, encourages a drinking culture of sophistication, diversity and moderation which is the very premise of Newcastle's next chapter, and of Customs House.

- **HOSPITALITY INDUSTRY (GENERAL) AWARD**

Licensing conditions which require an additional staff member to monitor the responsible service of alcohol after 11.00pm, can cause financial impacts for small business owners in reference to the current Hospitality Industry (General) Award (HIG).

While many of the impacted late-trading venues, including Customs House, have the option to remain open until 3.00am, they often choose to close earlier.

In this instance, the requirement to provide an additional staff member to monitor the responsible service of alcohol after 11.00pm, is not feasible due to conditions of the HIG Award requiring a staff member be paid for a minimum work period of no less than two hours.

Additionally, conditions within current licensing restrictions require a venue to cease service of alcohol no less than 30 minutes prior to closing. Therefore, this condition means a hotel operator must employ a staff member and remunerate them for a two-hour period, when their service is carried out over only a 30-minute period.

- **INCIDENTS AND STATISTICS**

When discussing the instance of ‘alcohol-related’ incidents, we must first consider consumption of even one alcoholic beverage is sufficient for police to mark an incident as being alcohol-related.

While those opposing any amendment to current licensing conditions cite drastic reductions in alcohol-related assault as a result of the 2008 reforms, there is also evidence to suggest there was a coinciding state-wide downward trend in the occurrence of these types of assaults within the same time period.

As per the table below, there was a documented downward trend in the instance of non-domestic alcohol-related assaults across NSW and comparable LGAs, which had none of the same restrictions imposed upon them as Newcastle.

Location	October 2007 to September 2017	
	Alcohol-related assault – downward trend per year	Alcohol-related assault on licenced premises – downward trend per year
New South Wales	10.4%	11.5%
Newcastle LGA	6.7%	6.9%
Lake Macquarie LGA	6.1%	8.4%
Maitland LGA	7.7%	13.3%
Wollongong LGA	8.1%	10.9%

Source: [www.crimemapping.com](http://www.crimemapping.com)

In fact, Wollongong, which has been academically noted as being a comparable LGA to Newcastle, experienced a greater reduction in the instance of non-domestic alcohol-related assaults than Newcastle within the same time period, as did Maitland.

Further, findings published within the National Drug Strategy Household Survey 2016 showed a change in the pattern of alcohol consumption in Australia, in particular that of young people. (Welfare 2016)

These findings included:

- The proportion of people drinking on a daily basis declined from 8.3% in 2001 to 5.9% in 2016
- Young adults were less likely to drink 5+ standard drinks on a single occasion at least monthly, falling from 57% in 2001 to 42% in 2016 (18 to 24 year-olds) and from 44% in 2001 to 36% in 2016 (25 to 29 year-olds)
- More teenagers are abstaining from drinking, having risen from 72% in 2013 to 82% in 2016

These findings highlight a shift in culture away from irresponsible drinking and toward a more modest and conservative attitude in relation to the consumption of alcohol.

With responsible management and a culture geared toward service of drinks such as cocktails (which are designed to be consumed slowly), venues such as Customs House should no longer be forced to conform to restrictions handed down a decade ago, and within a vastly different society.



## RECOMMENDATIONS

Taking into account the recommendations of the Horton Review, academic findings and independent industry knowledge, Customs House advocates for the following amendments to the draft response made by the Independent Liquor and Gaming Authority in regard to the Newcastle CBD Liquor Licensing Review and as they affect licensing conditions pertaining to Customs House:

### **Amendment One**

That Customs House receive an amendment to its current Liquor Licensing conditions to allow the service of cocktails listed on a drinks menu for the entire time the business is operating.

### **Amendment Two:**

That Customs House receive an amendment to its current Liquor Licensing conditions which require an additional staff member dedicated to monitoring the responsible service of alcohol only when the venue remains open after 12.00am.

### **Amendment Three:**

That Customs House receive an amendment to its current Liquor Licensing conditions allowing the venue to apply for exemptions to its regular licensing conditions in the instance of high-profile sporting, music or other events in or around the venue and/or other reasonable instances.

## References

(BOSCAR), NSW Bureau of Crime Statistics and Research. n.d.

Kypri, K., McElduff, P., & Miller, P. 2014. "Restrictions in pub closing times and lockouts in Newcastle Australia 5 years on", *Drug and Alcohol Review*. Vol. 33, no.3 pp. 323-326."

QC, Dr Jonathan Horton. 2018. "Review of Liquor Licence Conditions in the Newcastle CBD and Surrounding Areas."

Research, NSW Bureau of Crime Statistics and. 2017. *NSW Recorded Crime Statistics Oct 2000 to Sep 2017: Number of non-domestic violence*. NSW Bureau of Crime Statistics and Research.

Welfare, Australian Government - Australian Institute of Health and. 2016. "National Drug Strategy Household Survey 2016."

Dear Mr Crawford,

I would like to make a submission that the following rule adapted in the Sydney CBD also be applied to the 14 Newcastle venues.

My venue no longer has a late-trading license but this rule affects my trade significantly.

In the Sydney CBD, the rules that have operated in this regard since September 2017 are as follows.

**93 - The following drinks must not be sold or supplied on the licensed premises on any night of the week after midnight until closing or, in the case of premises that trade 24 hours, between midnight and 7am (except in small bars):**

- a. any drink (commonly referred to as a 'shot' or a 'shooter') that is designed to be consumed rapidly\***
- b. any drink containing more than 50% spirits or liqueur**
- c. any "ready to drink beverage" containing more than 5% alcohol**
- d. any drink prepared on the premises that contains more than 30mls of spirits or liqueur (e.g. 'doubles')\*.**

Thank you,

Steven Forbes  
The Family Hotel, Newcastle



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The Grand hotel Newcastle  
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AUSTRALIA  
Tel: (02) 49 293 489

Mr Phillip Crawford,  
Chairperson  
Independent Liquor and Gaming Authority  
Level 6, 323 Castlereagh Street,  
Sydney

By Email to: [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au)

Dear Mr Crawford,

**Re: Proposed decision by the Independent Liquor and Gaming Authority regarding the review of licence conditions for 14 Newcastle CBD venues**

I have been the licensee and owner of the Grand Hotel, Hotel Licence Number LIQH400117574 since October 1988, a period of almost 30 years. The hotel is situated at 32 Church Street, Newcastle and is directly across the road from Newcastle Court House and Newcastle Police Station, hardly a high risk location.

In 2008 I was one of the 14 Newcastle hotel licensees the then Liquor Administration Board imposed conditions upon, following an initial complaint about four of the hotels – mine not one of those four. At that time, I traded until 3am on Friday and Saturday nights. I had no levels of assaults, no allegations of intoxication in my hotel nor breaches of the *Liquor Act 1982* detected during the operation of my premises. Yet despite that, I was included in the same conditions as all other hotels in the CBD – with the reason at the time given that for the conditions to be effective upon the four main hotels, the conditions were required for the 15 late trading hotels in the CBD.

Ten years later in 2018, those licensing conditions remain imposed upon my venue. Except now I no longer trade after midnight – the business is simply not there. I trade until 11pm on a Friday and Saturday night, employ far less people and I no longer provide the same live music I used to, yet I still have conditions imposed because I traded late.

I have read the review into the “Newcastle Conditions” undertaken by Dr. Jonathan Horton QC that ILGA commissioned. I do not understand the decision to dismiss the views of the person that you asked to conduct the review, without explanation. I ask that you re-consider the views expressed by Dr. Horton as they apply to my hotel, and my licence.

I am aware that Dr. Horton was instrumental in assisting The Hon. Ian Callinan AC QC in his review of Sydney’s drink restrictions in 2016. However, in Sydney, cocktails and similar drinks were able to be served if their contents and price are clearly listed on a menu – BEFORE the Callinan review as a result of legislation introduced in 2014. In Sydney, restrictions commence at midnight, to prevent an increase in the risk of alcohol harms that we are told occurs later into the trading period. Not at 10pm, and not when I close at midnight, or earlier.

I have also read the Newcastle City Council’s submission to the review of these Newcastle decisions. Newcastle Council makes recommendations similar to Mr Horton. They state that well run venues should be rewarded, yet their suggestions were also rejected.

In relation to one condition not listed in your proposed changes, I ask you to consider varying condition in the following manner;

1. From 11pm until closure, the licensee will retain an employee whose sole function shall be that of a supervisor of responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the premises;

Change to;

*On any night the premises trades after midnight; from 11pm until closure, the licensee will retain an employee whose sole function shall be that of a supervisor of responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the premises*

In relation to the first condition on the schedule relating to the requirement to file with the Authority a Plan of Management, I ask that condition be revoked for the following reasons;

- I do not trade after midnight. Whilst ever I operate my licence without trading after midnight and without compliance issues, I should be able to trade without that imposition.
- The proposed condition is significantly more onerous than the original condition imposed in 2008. That condition required me to produce a plan of management in conjunction with police and the Office of Liquor, Gaming and Racing, and once

prepared, have that audited one every three months by an independent person. That plan is an operational document that covers all aspects of managing a hotel. The proposed condition requires that the police have input into that plan every year, and any non-compliance with that plan constitutes a breach of my licence conditions – whether or not that breach has anything to do with alcohol related harms, assaults or any other aspect of the hotels operation that police would normally have nothing to do with.

In relation to the second condition on the schedule that has been attached to your invitation to respond, I ask that you consider varying the condition as follows;

2. The following restrictions and conditions will apply upon the sale of alcohol after 10pm:
  - a) no shots
  - b) No mixed drinks with more than 30 mls of alcohol
  - c) No RTD drinks with an alcohol by volume greater than 5%
  - d) No more than four (4) drinks may be served to any patron at one time
  - e) Free water stations to be placed on every bar

Change to

*The following restrictions and conditions will apply upon the sale of alcohol after 10pm:*

- a) No drinks commonly known as shots, shooters, slammers or bombs or any other drinks that are designed to be consumed rapidly*
- b) No RTD drinks with an alcohol by volume greater than 5%*
- c) Not more than four (4) drinks, or the contents of one bottle of wine may be served to any patron at one time*
- d) No mixed drinks with more than 30 mls of alcohol\**

*\*unless the drink is a cocktail, or drink containing more than 30 mls of alcohol and is contained on a menu or display clearly showing the contents, and price of that drink and that price is not discounted*

All other conditions including those as proposed in your Attachment 1 are as per your proposal, whilst other conditions not listed are not changed.

All I ask is that you consider my venue, based upon its own merits and trading history and not allow data from other venues or suburbs to influence your proposed decision in this matter.

Should you wish to contact me in relation to any aspect of my submission in response to your proposed decision, please do not hesitate in contacting me

Yours sincerely

Mike Angus  
Licensee,





# M J Finnegan's Hotel

21 – 23 Darby Street, Newcastle NSW 2300

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ABN: 23 592 381 581

## PROPOSED DECISION BY THE INDEPENDENT LIQUOR AND GAMING AUTHORITY (THE AUTHORITY) REGARDING THE REVIEW OF LICENCE CONDITIONS FOR 14 NEWCASTLE CBD VENUES

SUBMISSION BY M J FINNEGANS - 21-23 DARBY STREET, NEWCASTLE  
LIQUOR LICENCE NUMBER: LIQH400118163

We refer to the Authority's letter dated 9 May 2018 setting out the proposed changes to the licence conditions which apply to M J Finnegan's (**the Hotel**), as well as 13 other Newcastle CBD venues (collectively, **the CBD venues**).

This document comprises the Hotel's submissions to the Authority's proposed changes to the existing licence conditions.

For ease of reference a copy of the Hotel's original submission to the Horton Report is included at **Attachment 1**.

### Background

First, as set out in the Horton Report, Newcastle is a growing and developing community with characteristics that have changed since the conditions were originally imposed in 2008 and continue to do so.

The population of the City of Newcastle LGA is forecast to grow from 164,657 in 2018 to 202,049 in 2041, an increase of 22.71%.<sup>1</sup>

We note there are various strategies and policies in place to ensure the sustainable growth and development of greater Newcastle and the CBD as a city and economy in the future. In particular, the *Newcastle 2030 Strategic Plan* outlines the Council's planning strategy for development in Newcastle, and the *Newcastle After Dark: Night Time Economy Strategy* 2018-2022 has been implemented to guide the development of Newcastle's night time economy.

On this basis, it is clear that there is a growing demand and expectation in Newcastle for the provision of safe, sophisticated and diverse night time socialisation and entertainment venues. The Hotel is an established venue in the Newcastle CBD with a commitment to working with local authorities to meet these needs.

The Hotel was one of the 14 CBD venues that had several conditions imposed on their liquor licences in 2007. The Hotel currently has a 1 am lockout and 2:30 am end of trade (which was 3 am prior to

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<sup>1</sup> <https://forecast.id.com.au/newcastle>

the Section 104 complaint). It is also one of the three venues that did not receive the benefit of a 30-minute relaxation to the lockout or trading hours in 2008.

In June 2011, the Hotel was listed for the first time as a declared premises in Round 4 of the Schedule 4 scheme (based on reported assaults from 1 January 2010 to 31 December 2010). The venue remained a declared premises up until and including Round 8 (based on reported assaults from 01 July 2011 to 30 July 2012). During this period the Hotel worked proactively with local licensing Police to implement initiatives to reduce the number of assaults occurring within the vicinity of the Hotel.

In July 2011, the Hotel upgraded its CCTV system to the best available technology incorporating IP Cameras. The regular upgrading of the Hotel's CCTV system since has allowed management to ensure bans are placed fairly and to identify potential operational improvements whilst reviewing incidents. The Hotel presently has 48 cameras covering the majority of the Hotel's public areas, including the principal entries and adjoining footpath areas.

In August 2011, the Hotel was the first Newcastle CBD venue to introduce Scannet ID scanners. The ID scanners allow the venue to identify troublesome patrons and place them on a barred patron list. The next time the patron attempts to visit the venue, the ID scanner alerts the door staff that the patron is barred and the patron is refused entry to the venue.

In June 2012, the Hotel owner, along with representatives of several other CBD venues met with the then NSW Police Commander of Drug & Alcohol, Superintendent Patrick Paroz. In Mr Paroz's submission to the Horton Report, a copy of which is included at **Attachment 2**, he made a number of comments regarding the commitment of the licensee of the Hotel and those of the CBD hotels to work with Police to reduce the amount of alcohol-related crime and harm in Newcastle and the results of those initiatives.

In July 2012, the Hotel, along with four other CBD venues, formed the Newcastle Entertainment Precinct Pty Ltd (NEP). Licensees of the NEP venues are able to share information relating to problem patrons through a linked ID scanning system and prevent those patrons from entering any of the NEP venues if they are subject to a multi-venue barring. This system has prevented 72 problem-patrons from entering the Hotel during the 6 month period from October 2017 to March 2018, compared to Kings Cross where 172 entry refusals have taken place across the entire precinct since its introduction in 2014 (which was praised by Liquor & Gaming NSW as a highly successful outcome).<sup>2</sup>

In June 2013, the Hotel was removed from the declared premises list during Round 9 (based on reported assaults from 01 January 2012 to 31 December 2012) of the scheme. To date, some five and a half years later, the Hotel has not appeared on the declared premises list in subsequent rounds of the scheme.

In March 2017, the Hotel was the first Newcastle CBD venue to move away from the traditional paper-based incident reporting to a newly approved Electronic Incident Register (EIR), created by AusComply. The EIR allows for round-the-clock reporting and gives management the ability to

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<sup>2</sup> <https://www.liquorandgaming.nsw.gov.au/Pages/about-us/news-and-media/recent-news/upgrade-for-kings-cross-id-scanners-system.aspx>

analyse the incident data. This ability to analyse incident data has allowed the Hotel to fine tune security arrangements and further improve patron safety and RSA practices.

Under the present ownership, since 2010, the Hotel has consistently strived to operate in a responsible manner by implementing harm minimisation principles and procedures over and above those required by law and licence conditions.

Some examples include:

- Provisioning of Security and RSA staff in excess of industry standards.
- Serving all drinks in polycarbonate vessels after 11pm on weekend nights.
- Scheduled security patrols for the vicinity and collecting any rubbish within 50 metres of the venue every 45 minutes from 10:30pm until 30 minutes after closing time. This practice exceeds licence condition requirements.
- Security stationed at neighbouring pathway [nearby park] for the period 1:30am-3am where the licence condition only requires 2am-3am. This is to discourage anti-social behaviour or any disturbance to the quiet and good order of the neighbourhood.

### Proposed conditions

The variations to the licence conditions proposed by the Authority are set out in the grey shaded boxes in **Table 1** below, with the Hotel's response set out directly below each. These comments are to be considered in light of the context and circumstances set out above.

**Table 1 – Proposed conditions & the Hotel's response**

<p><i>The licensee must file with the Authority, not later than two (2) months after [date of final decision] a revised version of the Plan of Management for the premises that has been reviewed in consultation with NSW Police (Revised Plan). The business conducted pursuant to the licence must thereafter be operated at all times in accordance with the Revised Plan. On or before each anniversary of the date upon which the Revised Plan is filed, the licensee must conduct a review of the effectiveness of this Plan, in consultation with NSW Police.</i></p>
<p>We do not agree with the proposed wording of this amended condition.</p> <p>The Hotel's current Plan of Management (see copy included at <b>Attachment 3</b>) is a robust document and a useful resource actively utilised by the Hotel's management as a tool to communicate procedures to staff and ensure they are enforced.</p> <p>The requirement contained in the proposed condition that the Revised Plan must be complied with "at all times" is onerous and encourages the CBD venues, in revising their plans of management as required, to adopt less detailed and more minimal plans to minimise the compliance risk this raises.</p> <p>This is particularly so where a minor deviation in the procedures set out in the Plan on one occasion can give rise to a breach of licence condition as the condition is currently worded.</p>



In any event, it is clear that where a Plan of Management is required to be prepared, maintained and reviewed annually, then it is required to be complied with. Accordingly, the second sentence in the proposed condition is unnecessary and imposes an overly onerous compliance risk.

Further, as outlined above, the Hotel has been working proactively with Police and as an active member of the local liquor accord and the amount of alcohol related crime and harm attributable to the Hotel (and the other CBD venues) has markedly decreased since 2012. The Hotel has never had any complaints raised regarding non-compliance with its current Plan, and has a good compliance history, with no compliance notices issued in the last 5 and a half years.

In addition:

- New employees (including core/regular contracted security staff) are required to read the Hotel's Plan of Management and are questioned on its contents during their induction before commencing employment.
- Employees and security contractors are notified of amendments to the Plan and required to sign a summarised version of the Plan at beginning of their first shift each week. A copy of those summarised documents are included at **Attachment 4**.
- The Hotel's Plan has been updated 8 times and independently audited 25 times since March 2013.
- The Hotel's management completes Liquor & Gaming NSW's Hotel Licence Self-Audit Checklist (CL1003) weekly.
- As required by the Hotel's Development Consent, management check the Hotel's CCTV each day and log it as operational.
- As outlined above, the Hotel is an active member of the Newcastle Liquor Accord, and the Hotel's Director is currently the Treasurer of the Accord. The Accord's business plan is adopted at the Hotel. A copy of that business plan is included at **Attachment 5**.
- Round the clock electronic incident reporting is implemented with an approved electronic incident register (AusComply) and a rostering app (Deputy) is used to ensure all staff maintain valid and current RSA and/or RCG qualifications.
- The Hotel does not have any records of Police or Liquor & Gaming NSW requesting access to its Plan of Management for an audit or any other purpose.
- The Plan of Management is available and easily accessible at the Hotel at all times so that it can be made immediately available to Police and Liquor & Gaming NSW inspectors.

Accordingly, on the basis that it is unnecessary and imposes an overly onerous compliance risk, the Hotel submits that the wording of the proposed condition should be amended to omit the second sentence so that it reads as follows:

*The licensee must file with the Authority, not later than two (2) months after [date of final decision] a revised version of the Plan of Management for the premises that has been reviewed in consultation with NSW Police (Revised Plan). On or before each anniversary of the date upon*

*which the Revised Plan is filed, the licensee must conduct a review of the effectiveness of this Plan, in consultation with NSW Police.*

If the Authority is not minded to agree, then as a minimum the words "at all times" should be omitted from the proposed condition, so that it reads as follows:

*The licensee must file with the Authority, not later than two (2) months after [date of final decision] a revised version of the Plan of Management for the premises that has been reviewed in consultation with NSW Police (Revised Plan). The business conducted pursuant to the licence must thereafter be operated in accordance with the Revised Plan. On or before each anniversary of the date upon which the Revised Plan is filed, the licensee must conduct a review of the effectiveness of this Plan, in consultation with NSW Police.*

In the event that the proposed condition is imposed on the Licence as currently worded, this will require the Hotel to significantly revise their Plan of Management and include a clause in their Plan of Management protecting the Hotel from disciplinary action for any minor or technical oversights or breaches of that Plan, subject to being agreed to by the NSW Police.

*The following restrictions and conditions will apply upon the sale of alcohol after 10:00 pm:*

- a) No drinks commonly known as shots, shooters, slammers or bombs or any other drinks that are designed to be consumed rapidly;*
- b) No mixed drinks with more than thirty (30) mls of alcohol;*
- c) No RTD drinks with an alcohol by volume greater than 5%;*
- d) Not more than four (4) drinks may be served to any patron at one time.*

We do not agree with this proposed condition. It is the Hotel's position that the proposed amendments to this condition are unreasonable and unnecessarily restrictive.

As outlined above, the Hotel is responsibly managed with a strong culture of compliance. In relation to ensuring the responsible service alcohol, the Hotel implements the following measures on top of those required by statutory and licence conditions:

- Cocktails are priced at a premium, typically due to the products and preparation time (during and prior to service) required to serve such a product. This increased sales price for the drink discourages irresponsible and/or rapid consumption.
- Premium products (e.g. whiskeys that are best served neat) incur a higher sales price, which discourages irresponsible and/or rapid consumption.
- Liquor promotions (e.g. discounts) are not conducted on any night after 11pm.
- On busy nights (i.e. both levels open) the Hotel employs 3 RSA Marshals (one more than required by its licence).

Further, the proposed condition remains significantly more restrictive than the equivalent condition which applies to licensed premises located in the Sydney CBD and Kings Cross precincts.

However, in the Horton Report, Dr Jonathan Horton QC found that it is open to the Authority to apply the arrangements that currently apply to the Sydney CBD and Kings Cross precincts with adaptations to Newcastle.<sup>3</sup>

Accordingly, in circumstances where:

- There has been a significant and sustained decrease in alcohol related violence in the Newcastle CBD since the existing condition was imposed in 2008;
- The Hotel, and other CBD venues, have been proactive in liaising with Police and the local accord to implement harm minimisation policies and procedures that ensure that liquor is sold responsibly and does not result in any unacceptable interference with the amenity of the community;
- The Horton Report found that there is no scholarly or other work which directly links drinks restrictions (or the absence of them) to alcohol-related violence;<sup>4</sup> and
- It is widely accepted and acknowledged that the condition imposed on licensed premises located in the Sydney CBD and Kings Cross precincts appears to be effective there, among other measures, in contributing to a decrease in alcohol related crime and harm in those communities;

the Hotel submits that the proposed condition should be amended to comprise the same wording as that set out in clause 53F of the Liquor Regulation 2008 (adapted as required to apply to the CBD venues rather than the Sydney precincts).

If the Authority is not minded to agree, then as a minimum, and as recommended by the Horton Report,<sup>5</sup> the proposed condition should be amended to allow the sale and supply of spirits and cocktails between 10 pm and midnight, as well as allow the contents of no more than one bottle of wine to be served after 10 pm to the same person at any one time, at least at this Hotel.

In the Horton Report, Dr Jonathan Horton QC found that there is an expectation in the community that cocktails and spirits be available for sale between 10 pm and midnight,<sup>6</sup> and this view was put forward by a number of submitters to the Report, including Newcastle City Council.

Amending the proposed condition in this way is low risk and would enable the Hotel to sell appropriately priced cocktails offering a superior socialising experience to what is possible now. It would provide increased choice to customers and contribute to the balanced development of a sophisticated night time economy and related industries in Newcastle. Further, as demonstrated by the growth in Newcastle's community and economy and the submissions to the Horton Report, there is a clear demand for spirits and cocktails to be available at the CBD venues between 10 pm and midnight.

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<sup>3</sup> At paragraph 256.

<sup>4</sup> At paragraph 250.

<sup>5</sup> At paragraph 258.

<sup>6</sup> At paragraph 261.



Included in the following link is a map showing the 151 licensed premises in postcodes 2300 and 2302 authorised to sell liquor for on-premises consumption:

[https://drive.google.com/open?id=1jQGW\\_mkA7RSNPCbmy\\_8WkmLxMGJTzHaE&usp=sharing](https://drive.google.com/open?id=1jQGW_mkA7RSNPCbmy_8WkmLxMGJTzHaE&usp=sharing)

Source: [www.onegov.nsw.gov.au](http://www.onegov.nsw.gov.au) Accessed: 16/05/2018

You will note that 101 of those licensed premises do not have a condition that precludes the sale of cocktails by restricting the sale of drinks containing either more than 30mLs of alcohol or 30mLs of spirits or liqueur, including one of the Hotel's closest neighbours.

Accordingly, in circumstances where:

- spirits and cocktails are already available after 10 pm (and later) in other licensed premises in the Newcastle CBD (i.e. amending the proposed condition will not make this service available for the community for the first time during this period of time);
- the sale of cocktails until midnight (and beyond) at those premises does not present a cause for concern;
- the level of alcohol-related violence in the Newcastle CBD has significantly decreased despite the availability of cocktails and spirits past 10 pm; and
- the Hotel has proven to be consistently responsibly managed over a lengthy period of time and has procedures in place to ensure the responsible sale and supply of spirits and cocktails

there is no reason why the sale and supply of spirits and cocktails at the Hotel between 10 pm and midnight could give rise to any adverse impact on community amenity or alcohol-related crime and harm.

In particular, from a competition perspective, there should be a level playing field. In circumstances where the Hotel has a demonstrated history of compliance and good management, there is no reason why it should be restricted from providing a service that other licensed premises in the vicinity are able to provide.

Further, there is a particular demand for the availability of spirits and cocktails at this Hotel specifically. In this regard, we note that:

- Staff are regularly asked after 10pm by patrons, particularly those that are visiting the Hotel for the first time, whether we have a cocktail list (included as **Attachment 6**) or if we can serve particular cocktails (e.g. espresso martinis, margaritas, mojitos, etc). The restrictions preventing the Hotel from doing so result in a loss of customers to other businesses (see earlier note) who provide such a service after 10pm.
- The Hotel tried introducing a *one-shot Cocktail list* to meet this demand, however reducing the alcoholic product in the drink and increasing other non-alcohol products in the recipe changes the flavour profile that customers expect and often results in a cocktail that is of poor flavour to the customer. A substantial portion of the flavour and balance of a cocktail comes from the liquor and liqueurs. Recipes for cocktails are informal standards for beverages trialled and tested over decades that achieve a flavour

profile that people enjoy. The template and ratios of many of these recipes require more than 30mL of liquor to produce a cocktail of substantial volume for sale. The Hotel has also looked at the option of reducing the volume of the total cocktail to achieve the accurate flavour profile and reduce the alcoholic product, however this results in a beverage similar in size to a 'shot'.

- The Hotel presently has 24 whiskeys which we believe to be a fairly balanced range. Of this range only 10 are typically advertised by the suppliers to be best served as a tumbler (i.e. single 30mL measure with a simple mixer). The remainder of the range is advertised by suppliers as best served neat. These have been attained in an attempt to offer a more premium product and provide an extensive range that improves the experience and meets the expectations of current and potential customers. Given our previous history as an Irish pub, whiskey products have been in demand. However, the requirement to sell these products with a mixer after 10 pm results in customers switching to a cheaper product with a mixer. Similar to the restriction on cocktails, such restrictions on the provision of neat premium spirits result in a loss of customers to other businesses who provide such a service after 10pm.
- Baileys on the rocks is another common request, predominately by international tourists who attend the Hotel due to its previous history as an Irish Pub.
- The Hotel is located 200m from Newcastle's Civic Theatre. It is common for the Hotel to receive patrons after the shows (many finishing around 10 pm) seeking an after-show drink, particularly whiskey but also cocktails. Due to the inability to provide such services, the Hotel loses those customers when they realise we are unable to meet their needs and expectations. These customers often do not intend to further their night beyond some casual socialising with friends they may have seen the show with and are often confused about why they cannot purchase such products.
- There is also a demand by the Hotel's patrons for the service of wine by the bottle after 10 pm. The current restriction on the quantity of drinks that may be sold to any one person after 10 pm prevent the Hotel from doing so. However, the Hotel seeks to offer premium sparkling wine by the bottle after 10 pm, as commonly available at other venues in the area. To our knowledge there is no research whatsoever nor has it been suggested by any of the local stakeholders that consumers of premium sparkling wine products (usually being an older, responsible and well-behaved demographic) are of concern nor are they the market targeted by the Newcastle Licence Conditions.

#### Revoke condition regarding sharing of a radio network

We agree that the radio network has been superseded and that the condition should therefore be revoked.



*Within 14 days of filing the Revised Plan the licensee shall cause every current member of staff (including employees and contractors) to be notified in writing of that Plan along with a current licence record maintained by Liquor and Gaming NSW. In the case of new staff, notification of the most recently updated version of the Revised Plan and the licence record shall be provided within 14 days of the commencement of employment or engagement, as the case may be.*

We object to this proposed condition being imposed on the Hotel's licence on the basis that it is unnecessary. An earlier version of this condition was previously revoked over 5 years ago as it was deemed unnecessary at that time, and there is no reason why it is required now.

This is particularly so given that where there is another condition imposed on the Licence which requires compliance with a Plan of Management, it is clear as part of that requirement that staff must be aware and informed of the terms of that document. Further, as outlined above, the Hotel has procedures in place to ensure staff are properly inducted and that they receive ongoing training as to the statutory and licence conditions that apply to the Hotel, with which they must ensure compliance to the best of their ability at all times.

Further, the requirement for contractors to be notified of the Plan (and any amendments) within 14 days is unreasonable, and will be difficult for the Hotel to comply with.

The Hotel's security staff are contracted from an external security company. While the security staff who are part of the core group for the Hotel and work at the Hotel on a regular basis are notified, inducted and trained as required (as outlined above), fill-in or new security from other venues are frequently scheduled at the Hotel for shifts starting as late as midnight or 1 am.

Generally, those 'fill-in' security staff are required to read and sign a summarised version of the Hotel's Plan of Management (included at **Attachment 4**) and stationed in static positions requiring minimum knowledge of the Hotel's procedures. This is because, when they are allocated the shift at late notice and start at midnight or 1 am (particularly on a busy night, where management is required to be supervising the Hotel) there is no opportunity for them to be comprehensively trained as to the Hotel's policies and procedures.

Further, while fill-in security normally do one-off shifts, they occasionally fill in at the Hotel for multiple shifts some weeks apart. The Hotel estimates that in excess of 100 security staff have been rostered at the Hotel at least once in the past six months.

In these circumstances, the Hotel may be found to be in breach of the condition as currently worded.

Accordingly, the proposed condition as currently worded is clearly too onerous for the Hotel to reasonably comply with. In these circumstances, any condition of this nature imposed on the Hotel's licence must take into account the position with contracted security, or otherwise make it clear that providing a copy of the current version of the Plan of Management and the licence document to the security company itself is enough to comply.

We submit that the variations to the proposed conditions set out above will appropriately provide for the needs and expectations of the community in Newcastle in a manner the CBD venues can reasonably and sustainably comply with, and without compromising the safety and amenity of the local community.

Should you have any queries or require any further information, please do not hesitate to contact me.

Christopher Brown

30 May 2018

**Attachments:**

**Attachment 1:** The Hotel's submission to the Horton Report.

**Attachment 2:** Pat Paroz's submission to the Horton Report.

**Attachment 3:** The Hotel's current Plan of Management.

**Attachment 4:** The Hotel's summarised Plan of Management documents for staff and security.

**Attachment 5:** The Newcastle Liquor Accord business plan.

**Attachment 6:** The Hotel's current cocktail list.

# QUEENS WHARF HOTEL

EST. 1988

Date: 29/05/2018

To: **Independent Liquor and Gaming Authority**

Re: **Proposed decision regarding review of Newcastle CBD License Conditions**

Email: [ilga.secretariat@liquorandgamin.nsw.gov.au](mailto:ilga.secretariat@liquorandgamin.nsw.gov.au)

We are grateful to make a submission regarding the proposed decision by the Independent Liquor and Gaming Authority of license conditions for 14 Newcastle CBD venues.

Queens Wharf Brewery Hotel has been in the past an iconic venue in the Newcastle Landscape, being opened in 1988 by Queen Elizabeth and has been host to countless significant events and announcements for the Newcastle community and economy.

Current owners purchased the Hotel in April 2014 from receivership citing a contributing catalyst in the Hotel's previous demise being the introduction of the Newcastle Conditions in March 2008, specifically key contributors changing the landscape and viability of the venue was restricted service of alcohol from 10pm and Lockouts imposed at 1:30am.

Prior to the Newcastle conditions the Hotel operated as both a Hotel and Nightclub opening hours as a guide below.

Trading Hours	Monday		Tuesday		Wednesday		Thursday		Friday		Saturday		Sunday	
2008	Open	Close	Open	Close	Open	Close	Open	Close	Open	Close	Open	Close	Open	Close
Queens Wharf	10am	12am	10am	12am	10am	3:30am	10am	3:30am	10am	3:30am	10am	3:30am	10am	12am

The Hotel's on premise license is from; 5:00am – 3:30am Mon - Sat  
10:00am – Midnight Sunday

Current owners operating hours are; 10:30am – 10pm Mon – Thursday  
10:30am – Midnight Fri – Sat  
10:30am – 10pm Sunday

We feel strongly that the landscape of Newcastle has changed significantly in the past 10 years and is currently experiencing an era of rapid improvement across the entire city, being in building and infrastructure, light rail into the CBD, International Airport, Cruise ship passenger terminal, national and international sporting events all of which require a significant boost and demand for a thriving Hotel industry which I believe would be better supported with the relaxing of some of the conditions imposed on our key venues.

We have seen an increase in demand for quality entertainment, food and beverage options and in particular with the direction of the Hotels management and vision, the need to provide offerings such as cocktails later into the night in a reasonable and responsible manner. This is consistent with the vision for a safe, vibrant and “iconic” venue attracting working professionals, our local community and visitors to our city. We feel the conditions should be varied as outlined below to support the Hotels position and viability into the future;

#### **Condition 2 -3 monthly audit requirements**

Existing Condition:

*Licensees must ensure that at least every three months a compliance audit of the premises is carried out by a person who is not employed or in an ongoing financial arrangement with the hotel so as to ensure continuous compliance with the Plan of Management.*

We propose that this condition be revoked. Each licensee has a responsibility to ensure they're compliant with their licence conditions and maintaining compliance with their Plan of Management is no different.

#### **Condition 4 - Restricted service of alcohol from 10 pm**

Existing Condition:

*The following restrictions and conditions were applied upon the sale of alcohol after 10pm:*

- a. No shots*
- b. No mixed drinks with more than 30mls of alcohol*
- c. No RTD drinks with an alcohol by volume greater than 5%*
- d. Not more than four drinks may be served to any patron at the one time.*

We propose that this condition be amended to reflect the Step 3(d) of the Liquor & Gaming NSW's (L&GNSW) Guidelines , which would allow venues to serve patrons genuine cocktails and bottles of wine at all times.

Furthermore, we propose that this condition be amended to commence the restricted service period from midnight, as recommended in the L&GNSW's Guidelines and to bring Newcastle CBD to parity with the current restricted service period imposed in the Sydney CBD .

#### **Proposed condition:**

*1. The following drinks must not be sold or supplied on the premises after midnight:*

- a. any drink (commonly referred to as a shot, shooter, slammer or bomb) that is designed to be consumed rapidly.*
- b. any ready to drink (RTD) beverage with an alcohol by volume content of more than 5%, and*
- c. any drink prepared on the premises that contains more than 30ml of spirits or liqueur other than a cocktail that contains spirits or liqueur (or both) mixed with other ingredients and that is not designed to be consumed rapidly.*

2. After midnight, no more than:

a. four (4) alcoholic drinks, whether or not of the same kind, or

b. the contents of one (1) bottle of wine may be sold or supplied on the premises to the same person at any one time.

### **Condition 7 - Prohibition against stockpiling drinks**

Existing Condition:

*Licensees must ensure, by adequate supervision methods throughout the premises, that no patron is stockpiling drinks. Stockpiling refers to any one patron having more than two unconsumed drinks at a time (a patron may buy up to four drinks at a time).*

We propose this condition be revoked. In March 2015, changes to the Liquor Act 2007 (Act) amended the licensee's defences to the charge "permitting intoxication". The amendments removed the "all other reasonable steps" defence, replacing it with Section 73(4)(a1), which requires the licensee to follow each of the steps set out in the L&GNSW's Guidelines.

The condition prohibiting stockpiling, which generally serves to deter patrons from the irresponsible, rapid or excessive consumption of liquor, is now addressed by Steps 2(b) and 2(c) of the Guidelines. Licensees that allow stockpiling to occur and fail to comply with the Guidelines, risk permitting intoxication and prosecution under the Act.

As it is in the licensees' best interest to carry out the minimum steps set out in the Guidelines, we consider the condition prohibiting stockpiling to be redundant.

### **Condition 6 - Service of alcohol to cease 30 minutes before closing time**

*Existing Condition: Sale and supply of alcohol must cease 30 minutes prior to closing time.*

We propose that this condition be revoked. Section 104 of the Act provides for a 30-minute period at the cessation of trade to allow patrons to vacate the venue.

Furthermore, this condition is imposed on any venue listed as a declared premises under Schedule 4 of the Act. Revoking this condition provides further incentive to licensees to prevent anti-social behaviour or risk being listed as a declared premises and effectively losing half an hour of trade.

### **Condition 8 - Shared radio network**

Existing Condition:

*Within three months the licensee must have entered into an agreement with each of the other licensees subject to these conditions an arrangement for the sharing of a radio network to be used by management and security for communicating with the other premises.*



We propose that this condition be revoked. The venues in Newcastle CBD work well together and use several methods to communicate in real time. These methods include mobile phones, Facebook groups and linked ID Scanners. With this progress in technology, we consider the radio network redundant.

### **Lockout from 1am or 1:30am**

Existing Condition:

*No persons are to be admitted to the premises after 01:00 am (or 01:30 am).*

We believe the lockout laws to be confusing and an unnecessary provision for the successful management of patrons.

We also note that research completed by Kypri, McElduff and Miller (2015)iii showed lockouts were not an effective measure in reducing harm. Based on this research it may be appropriate to revoke this condition altogether.

### **Conclusion**

Newcastle CBD has matured considerably since the introduction of these conditions. The use of ID scanning and a zero-tolerance approach to anti-social behaviour adopted by venues and local Police has helped facilitate change in patron behaviour. We believe the proposed changes would allow the CBD venues to offer a better experience to locals and visitors, without resulting in an increase in alcohol-related violence.

Regards,



Stephen Smyth

*Licensee,  
Queens Wharf Brewery Hotel*



THE GREAT NORTHERN HOTEL

## RESPONSE TO ILGA'S REVIEW ON THE NEWCASTLE CBD VENUES

Date: 25.05.18

To Whom it may concern,

I am taking the opportunity to respond to The Independent Liquor and Gaming Authorities report on the Horton review.

Newcastle as a city, was, and still is, very well aware that it requires certain rules and regulations to ensure the safety and well-being of its community. I believe Newcastle has proven to the authorities and its own community over the past 10 years that it has matured as a city. In return, Newcastle should now be able to flourish without stringent laws to hold it back from its true potential.

Although Newcastle saw a huge change when the laws were introduced over 10 years ago, not all the decisions made were in the best interest of the city as a whole, especially the hospitality/ entertainment industry. As previously mentioned if ILGA was to relax just a few of these less consequential restrictions it would allow not just the community but also tourists and businesses to enjoy the same experiences they would obtain in some of the much larger cities. This would bring Newcastle back into the lime light for the right reasons.

I am very well aware that we live in a world of rules and regulations and ILGA will not just abolish all conditions. I would like to think ILGA would work with the entertainment industry in creating a better environment for all to be enjoyed. Not to mention the recommendations of the Hon. Johnathan Horton.

The dedicated RSA marshal post 11pm is one of two conditions that should be amended inside the liquor act. Each and every one of the staff members working with alcohol inside a licensed establishment have the skills required to be an RSA marshal and should be expected to carry out this role whilst completing other tasks and duties. This is an additional cost to businesses that is not sustainable. This condition should be allocated to Friday and Saturday nights when venues are busy enough to warrant the additional surveillance.

The second restriction I believe requires relaxation is the post 10pm, 30ml maximum serve per vessel and or neat drinks to be serve without mixer. This inhibits the ability to serve alcoholic beverages as they are supposed to be consumed. The Great Northern Hotel will have guests from all over the world checking in at any time of the night. The viability to serve items, that are on par with the rest of Australia is only reasonable and responsible. It will be imperative to the hotel's operation and viability that we are able to offer the complete experience for working professionals, domestic and international guests.

I thank you for taking the time to read my response and hopefully understand my position. Please feel free to contact me if any additional information or clarity is required on my behalf. [http://mplenty@theearthhousehotel.com.au](mailto:mplenty@theearthhousehotel.com.au) or mob: [REDACTED]

Yours faithfully

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Myles Plenty  
General Manager/ Licensee  
The Great Northern Hotel





Ben McBeath

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Date: 28<sup>th</sup> May 2018

To Whom it May Concern,

I would like to take the opportunity to respond to ILGA's response and ongoing strategies put forward, in response to the Hon. Johnathan Horton QC report.

Whilst its accepted there are general concerns and ongoing issues with abuse of many substances throughout the world, it has come to pass that the Hon. Johnathan Horton QC has made a vast many sound and qualified recommendations. It would be lovely if the community and myself received everything we asked for on relaxing these draconian laws, but reality is another thing and compromise is welcomed.

It is however, very disappointing to see that ILGA has not accommodated several of his recommendations to allow people, businesses and social occasions to flourish. Rather, the temperament is to ensure the good people of Newcastle are to be cut short, navigate restrictive and a relatively unchanged environment from its current condition. This is certainly not reflective of the good behaviour and nature that was outlined throughout the report.

There was clearly a huge effect when these laws were initially adopted 10 years ago and the effects are not always positive, or intentional. It would be far more constructive of ILGA to accommodate the relaxation of cocktails after 10pm, neat drinks and anything that has more than 2 standard drinks after 10pm, or anytime for that matter. It was (and it would seem) remains an unintentional biproduct of the conditions, that cocktails and premium beverages are not allowed to be consumed as they were designed. All whilst remembering, responsibility is paramount to our success and joint goals. As a fifth-generation hotelier, rapid consumption and hosting heavily intoxicated patrons is not the aim of good operators. Its not good practice, business or ethical. All of which has been demonstrated over the years, that hoteliers of Newcastle are better, more considerate and effective at upholding the conditions set out.

This leads to the enforcement of using dedicated RSA marshals and security post 11pm is overbearing and unsubstantiated cost, with little recorded effect as a standalone measure. Especially earlier in the week. Whilst effective in some circumstances, with other vices working

concurrently the cost is unreasonable and should be limited to Friday and Saturday night, if trading past midnight only.

As hoteliers and venues continue to develop and adopt best practice, we require changes to our safety and management plans, but in the instance nothing changes, the need to review established reports seems irrational. If there is a need to constantly review, even when changes aren't enacted, why is there a need to spend resources to justify an already working system? There isn't and this should be reviewed at the time of a D.A. or significant modifications are applied for. It is certainly a more appropriate time and then has meaningful application to a business, its community and management plan.

I have faith and trust in the integrity of ILGA and I hope that further consideration and development within the recommendations put forward by Hon. Johnathan Horton QC occur. There is room to improve the entertainment and Newcastle community. I believe the report and community have put forward a valid argument and demonstrated we are worth relaxing or removing some of the more draconian measures listed above.

I thank you for the opportunity to make this submission and your time for reading it. If you have any further questions, please do not hesitate to contact me directly on 9284 1252 or email at [bmcbeath@theearthhousehotel.com.au](mailto:bmcbeath@theearthhousehotel.com.au).

Kind regards,



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Ben McBeath  
Managing Director

Attention: Independent Liquor and Gaming Authority (ILGA)

We are the proud owner-operators of The Lucky Hotel located in Newcastle's CBD. We have successfully been operating our family run hotel since 2014 following a major \$10 million renovation with a brand new internal fit out and the complete restoration of the heritage building's external façade. This world class project has breathed life back into the neglected, historic building and helped to reactivate and revitalise the formerly perilous area surrounding the building.

Level 1 & 2 of the hotel features 30 boutique ensuites, while the ground floor is home to a kitchen/restaurant, internal courtyard area, gaming room, central bar and alfresco dining along Crown Street. Since opening our doors almost 4 years ago, we have successfully won a number of awards, including:

- Best New/Redeveloped Hotel – Country 2015
- Best Burger 2015
- Best Pub-Style Accommodation Deluxe 2015
- Best Individual Hotel Operator 2015
- Overall Hotel of the Year – Country 2015
- Best Hotel Accommodation – General Division 2016
- TripExpert – Expert's Choice Award 2018
- Highly Commended Brides Choice Award 2018 – Wedding Venue Boutique Hotel

We have attached a video for you to view our venue's offering...

<https://vimeo.com/194615657>

In addition to employing 35+ immediate staff members and numerous sub-contractors, the hotel's success has undoubtedly contributed to the diversity and advancement of the Newcastle CBD, as well as its economic growth with ongoing support of the local community.

The Lucky Hotel proudly boasts a proven track record of no breaches and/or alcohol related incidents or assaults since opening in 2014, nor has it appeared in any round of the declared premises/violent venues list. With a zero tolerance for anti-social behaviour, the venue has successfully built a solid reputation as being a family friendly destination. This reputation is upheld with regular weekly live entertainment (acoustic soloists and duos) and specials to entice our demographic including weekly 'kids eat free' promotions & free face painting. In addition, the venue offers a variety of tailored function packages including corporate functions, baby showers, engagement parties, weddings and birthday celebrations (70 exclusive private functions booked

between July 2017 – June 2018). Although there are little residential occupancies surrounding the venue, the hotel remains noise cautious in order to remain courteous to the in-house guests, whom of which greatly contribute to the businesses annual turnover.

Drawing on both Patrick Paroz' submission and the Horton Review, we would like to highlight the following;

- There is no concrete evidence to show that the 2008 s104 conditions were solely responsible for the decrease in alcohol related assaults i.e. Police and licensed venues willingness to work together and develop strategies to minimise incidents are likely to have attributed to the reduction of alcohol related crime.
- It has been nearly a decade since the 2008 s104 conditions were imposed with no revisions (unlike Sydney). However, there has been a significant shift in demographics in Newcastle, as well as commercial/residential development and improvement (particularly in the CBD).
- The National Drug Strategy Household Survey 2016 findings outline the positive changing patterns of alcohol consumption in Australia, particularly by young people.

Following the 2008 introduction of the s104 Liquor License Conditions placed on 14 Newcastle CBD venues (The Lucky Hotel Newcastle included), it has undeniably restricted the city and its stakeholders from reaching its full potential in offering a vibrant, interactive nightlife for the local community and visiting tourists.

As business owners, we are beyond disappointed by the recent announcement from ILGA that little to no change will take effect on the s104 conditions, namely the following;

- Mixed drinks with more than thirty (30)mls of alcohol

The demographic targeted with the introduction of the 2008 Liquor License restrictions were aimed at antisocial youths aged 18-25 years old, frequenting non-complying clubs and venues. The Lucky Hotel does not cater for this demographic and would not be considered a high-risk venue by authorities. We deliberately target and attract mature age Novocastrians and tourists alike (25 yrs. +) with a higher socio-economic status. Although we endeavour to provide a premium drink and dine experience, our full potential is limited when we are not permitted to sell carefully crafted cocktails after 10pm.

The submissions which claim the s104 conditions alone were responsible for the sole success in the decline in alcohol related assaults must be reconsidered and the focus

shifted towards the successful strategies and initiatives each venue has implemented to achieve safe, social and entertaining environments for the Newcastle. Furthermore, it is disheartening to see that ILGA have overlooked the extensive research within the Horton Report which was initially commissioned to assist with the decision making process. The Horton report specifically states in the first three pages “Newcastle is no longer in need of a ‘solution’...” and further states “Venues that demonstrate good practices and that pose a lower risk ought to enjoy less restrictive conditions than those which do not”.

Given this, we request the proposed s104 conditions to be reconsidered or ask that Newcastle at least be in line with the Sydney CBD special licence restrictions, that allows cocktails to be served after 10pm i.e. ‘Mixed drinks with more than thirty (30)mls of alcohol’.

We suggest all venues identify their own initiatives & operational procedures in order to comply with liquor licensing regulation, control RSA issues and maintain a reduction in alcohol related violence/anti-social behaviour. In turn, this will result in further safety and confidence for the community, or as Mr Horton has suggested “to allow for the City to develop in a balanced way and in accordance with community expectations, needs and aspirations.”

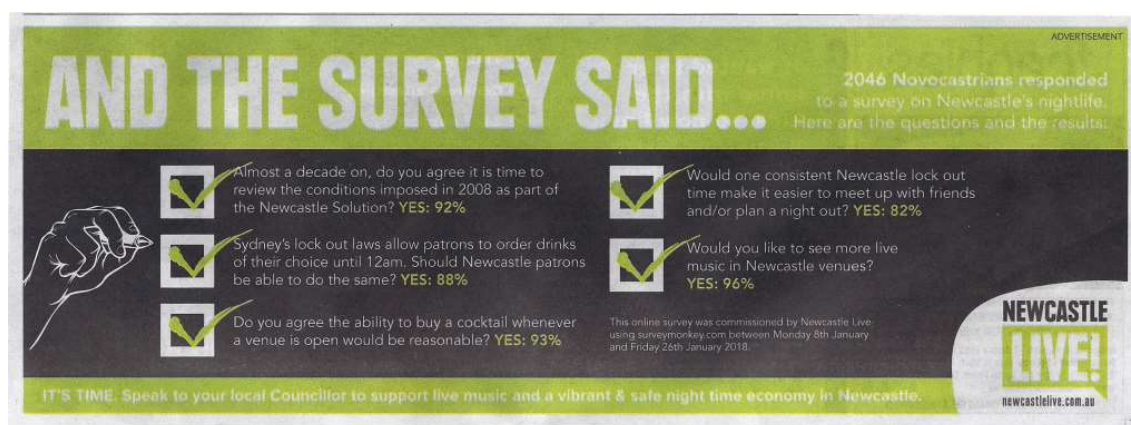
Unfortunately, it is obvious that members of the public and authors of submissions such as Alan Squire, have been misinformed or misguided to believe that the AHA and its venues “are calling for changes so that double shots can be served after 10pm”. This is not the case for The Lucky Hotel (as with many other venues) and we largely see the condition as placing a restriction on being able to sell cocktails after 10pm.

The Lucky Hotel hosts thousands of national and international guests each year who have certain expectations when ordering a drink at the bar after a late check-in. To refuse them (or Novocastrians for that matter) service of a cocktail after 10pm, which can only be characterised as a ‘sophisticated drink’ is insulting to say the least. Following daily complaints in regard to this issue, we often struggle to explain the reasoning behind this restriction placed upon us. Often our patrons will leave understandably offended.

The current construction works due to an abundance of high rise CBD apartment developments underway as well as the much-anticipated light rail make it difficult to convince patrons to venture into the CBD. Consequently, the CBD has seen many businesses go broke and forced to close down, particularly along Hunter Street. The ILGA restrictions certainly do not help our situation. If cocktails were permitted after

10pm, it may give patrons an incentive to visit the CBD and contribute to the local businesses bottom line during this incredibly financial straining period. In addition, alcohol sales attribute to only 22% of our total revenue which furthermore proves our venue to be mainly driven by food/accommodation sales.

Almost a decade after the s104 conditions were introduced, Newcastle Live conducted a survey which found that 93% of the 2,046 participants were in agreeance to cocktails being served whenever a venue is opened. The Lucky Hotel also ran a short petition for the purpose of this submission and received over 200 signatures (see attached supporting documentation). It is evident that there is a demand for cocktails and for cocktails to be served after 10pm, yet there is little to no evidence suggesting that cocktails, specifically, are a contributing factor to alcohol related violence and anti-social behaviour.



The same condition that restricts Newcastle venues is exempt from the Sydney CBD special licence conditions i.e. the restrictions do not apply to cocktails. In fact the exemption states; "A cocktail must be included on a publicly displayed cocktail list prepared by the licensee, which itemises the cocktail and the price. Small bars do not need to meet this requirement. Between midnight and 3am, cocktails must not be discounted below the amount payable on the cocktail list. Cocktails must not be designed to be consumed rapidly". This amount of detail suggests an encouragement on the sale/supply of cocktails in Sydney and thus puts Newcastle (its neighbouring city) at an unfair disadvantage. Our request for the reassessment of this condition is made with the intention that both city's restrictions operate in alignment with each other.

It is worthwhile to note that all submissions both for and against, have not made any reference to cocktails specifically, nor did they include any findings that cocktails contribute to alcohol related violence and anti-social behaviour.

Today, all 14 Newcastle venues operate much differently compared to post 2008, with only 3 of the 14 hotels operating with the same management. As all 14 venues greatly differ due to their target demographics and offerings, it would therefore only be reasonable for each venue to be assessed independently based on their operating procedures and compliance in order to determine a fair and customised set of conditions for each venue.

We appreciate you taking the time to consider our submission and we await in anticipation for a positive response.

Regards,

Blake Nash  
Co-Director





**PRE CONSTRUCTION IMAGES**







POST CONSTRUCTION IMAGES





