

Mr Brett Tobin
Hatzis Cusack Lawyers

By email to: bt@hatziscusack.com.au

28 November 2023

Dear Mr Tobin

Application No.	1-8339618521
Applicant	James Eugenio OLIVERO
Application for	Amendment – hotel (full) licence – extended trading authorisation
Licence name	Grafton Hotel
Trading hours	Consumption on premises Monday - Thursday 08:00 – 12:00 Midnight Friday - Saturday 08:00 AM – 02:00 AM Sunday 10:00 AM – 10:00 PM Take away Monday to Saturday 08:00 AM – 12:00 Midnight Sunday 10:00 AM – 10:00 PM
Premises	97 Fitzroy Street, Grafton NSW 2460
Legislation	Sections 3, 11A 12, 14, 15, 40, 44, 45, 48, 49 and 121 of the <i>Liquor Act 2007</i> (Act)

**Decision of the Independent Liquor & Gaming Authority
Application for amendment - hotel (full) licence – extended trading authorisation (ETA) –
Grafton Hotel**

The Independent Liquor & Gaming Authority (Authority) considered the above application and decided on 16 December 2022 to **partially approve** the application under section 45 of the *Liquor Act 2007* (Act) with the conditions set out in Schedule 1.

Preliminary advice of this decision was provided on 13 April 2023.

Extended trading authorisation (ETA)

The application was to extend the trading hours on the ground floor of the Grafton Hotel to operate until 02:00 AM (Monday to Saturday).

We **partially approved** the application on the condition that:

- the sale and supply of liquor for consumption on the licensed premises in the consumption on premises areas occurs during the following shorter extended trading period
- 08:00 AM to 12:00 midnight on Monday to Thursday, and 08:00 AM to 02:00 AM Friday to Saturday only, with the trading hours for Sunday to remain unchanged
- the sale and supply of liquor for take away occurs to 10:00 PM only on Sundays, and to 12:00 midnight Monday to Saturday

- the hotel's opening hours are amended so that the sale and supply of liquor at the premises cannot start before 08:00 AM
- you comply with the conditions in Schedule 1 – Licence conditions to be imposed.

Statement of reasons

Overall, we are satisfied the social impact of approving the application will not be detrimental to the well-being of the local or broader community.

Our findings

Procedural and trading hour requirements

We are satisfied that:

- the application meets the Liquor Act's requirements for procedural fairness, the proposed trading hours for the Premises meet the requirements under sections 11A, 12 and 14 of the Act in respect of trading and 6-hour closure periods. meet the requirements under sections 11A, 12 and 14 of the Liquor Act
- the Community Impact Statement (CIS) meets the relevant requirements.

'Fit and proper person'

The Authority considered concerns raised by Police in their submission, but noted there were not sufficient grounds to question the fit and proper status of the licensee.

Responsible service of alcohol

Procedures for the responsible service of alcohol will be in place at the premises from the start of licensed trading, under the plan of management and the conditions on the licence.

Development consent requirements

A Development Application (DA) was not required for this ETA.

Community impact

Local and broader communities

The relevant local community is the town of Grafton, and the relevant broader community comprises the Local Government Area of Clarence Valley.

Diversity and density of licensed outlets

L&GNSW Liquor & Gaming Live Data Report for Grafton shows:

- there are 28 authorised liquor licenses, of which 11 are authorised to sell packaged liquor (comprised of: 4 packaged liquor licences, 1 registered club licences and 6 hotel licences)
- saturation of hotel licences in Grafton is higher compared to both the Clarence Valley LGA and all of NSW and lower for packaged liquor licences.

Crime data (annual rate per 100,000 residents)

BOCSAR data shows:

- the premises are located in a hotspot for alcohol-related non-domestic assault and malicious damage to property
- the incidence of alcohol related non-domestic assault and alcohol-related disorderly conduct is higher compared to the Clarence Valley LGA and all of NSW.

Alcohol-related health data (per 100,000 residents)

Health Stats NSW data for the Clarence Valley LGA shows:

- alcohol-related deaths were higher compared to all of NSW
- alcohol-related hospitalisations were lower compared to all of NSW

ABS Socio-Economic Index for Areas (SEIFA)

Grafton and Clarence Valley LGA were ranked as relatively disadvantaged in terms of household income and residents in skilled occupations compared with other towns and LGAs in NSW.

Business model

The proposed business model includes an amendment to the extended trading authorisation for the ground floor of the Grafton Hotel until 02:00 AM Monday to Saturday.

Benefits proposed by the applicant

The applicant proposed that the hotel being open to 2:00 AM provided a 'sanctuary for victims of crime'.

Stakeholder submissions

We considered the following submissions:

NSW Police – objected to the application on the grounds of the licensee's behaviour and ability to manage the hotel due to concerns about alleged incidents and non-compliance issues

Clarence Valley Council – raised no concerns

L&GNSW Compliance – recommended the liquor plan of management include measures for managing patrons as they leave the premises and imposition of CCTV conditions on the licence

L&GNSW Gaming – recommended a gaming plan of management condition, an incident register and an all-hours Responsible Gaming Officer (RGO) condition be imposed

General public – three submissions and a petition in support with 160 signatures in support of the application. One submission objecting to the application was received.

We also considered the applicant's response in reply, noting they had consented to the L&GNSW recommendations and, since acquiring the premises in May 2021, they had worked to improve the hotel operations and standards through improved signage, lighting and installation of new CCTV cameras.

Findings of concern and mitigation

The higher saturation of hotels in Grafton and the Clarence Valley LGA compared to all of NSW alongside the premises being located in a high-density hotspot for incidents of some categories of crime raises concerns.

We are satisfied the risk is adequately mitigated by the:

- lower rate of alcohol-attributable hospitalisation in the LGA compared to NSW
- hotel liquor density in Grafton and the LGA remaining unchanged as a result of approving this application
- restriction to 12:00 midnight trading from Monday to Thursday
- harm minimisation measures outlined in the plan of management and licence conditions set out in Schedule 1.

Material considered

We considered all the material we received about the application, including:

Application material

- completed application dated 6 July 2022
- completed Category B Community Impact Statement (CIS) dated 30 June 2022
- completed certifications of advertising dated 2 August 2022
- plan of management documents for the premises, dated July 2022
- ASIC business records for the applicant and associated companies
- floor plan for the premises, dated 23 July 2021, indicating the proposed licensed area / liquor sales area / area to which the ETA will apply
- data published by Bureau of Crime Statistics and Research (BOCSAR), NSW Department of Health and Australian Bureau of Statistics (ABS), and relevant L&GNSW liquor licensing records.

Submissions

- NSW Police – 8 submissions between 3 August 2022 and 15 November 2022
- Clarence Valley Council – 14 September 2022
- L&GNSW Compliance – 11 August 2022
- L&GNSW Gaming – 27 October 2022
- Public submissions (and a petition) – 2 public submissions and a petition signed by 166 people in support and one submission objecting to the proposal.

Other relevant material

- Google map images extracted from the Google website showing the location and photos of the Premises in map view.
- correspondence between L&GNSW staff and the applicant between 21 September 2022 and 14 November 2022 in relation to the assessment of the application.

The law that applies

These sections of the *Liquor Act 2007* that apply to this application:

- Section 3: Statutory objects of the Act and other relevant considerations.
- Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.
- Sections 14, 15, 15A and 17: Specific provisions about a hotel licence.
- Section 40: Minimum requirements to apply for a liquor licence.
- Section 44: Submissions about licence applications.
- Section 45: Criteria for granting a liquor licence.
- Section 48: Requirements to apply for a Community Impact Statement (CIS), including making sure that it will not harm the local or wider community's well-being.

- Section 121: Minors in hotels in company of responsible adult.

We also considered [Guideline 6](#) to assess the likely social impact to the local and broader community.

This decision will be published on the [Liquor & Gaming NSW website](#) in accordance with section 36C of the *Gaming and Liquor Administration Act 2007*.

If you are not happy with this decision

If the applicant, or a person who was notified of the application and made a submission, is unhappy with this decision, they may apply to [NCAT](#) for a review of the decision.

An application for review must be made no later than 28 days after being notified that the decision is published on the [Liquor & Gaming NSW website](#). There is a fee to apply.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney or visit the [NCAT website](#).

If you have any questions

Please contact the case manager, Leonie Jennings, leonie.jennings@liquorandgaming.nsw.gov.au if you have any questions.

Yours sincerely



Sarah Dinning
Deputy Chairperson

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

Schedule 1 – Licence conditions to be imposed

Grafton Hotel

No.	Conditions to be imposed	Description
1.	6-hour closure	Section 11A of the <i>Liquor Act 2007</i> applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of six (6) hours between 02:00 AM and 08:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2.	Social impact	The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this extended authorisation.
3.	CCTV	<ol style="list-style-type: none"> 1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises (“the premises”) in accordance with the following requirements: <ol style="list-style-type: none"> (a) the system must record continuously from opening time until one hour after the premises is required to close, (b) recordings must be in digital format and at a minimum of ten (10) frames per second, (c) any recorded image must specify the time and date of the recorded image, (d) the system’s cameras must cover the following areas: <ol style="list-style-type: none"> (ii) all entry and exit points on the premises, and (iii) all publicly accessible areas (other than toilets) within the premises. 2) The licensee must also: <ol style="list-style-type: none"> (a) keep all recordings made by the CCTV system for at least 30 days, (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.
4.	Plan of management	The premises is to be operated at all times in accordance with the Plan of Management dated July 2022 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
5.	Liquor Accord	The licensee or its representative must join and be an active participant in the local liquor accord.

No.	Conditions to be imposed	Description
6.	Incident register	<p>1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:</p> <ol style="list-style-type: none"> a. any incident involving violence or anti-social behaviour occurring on the premises, b. any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises, c. any incident that results in a person being turned out of the premises under section 77 of the Liquor Act 2007, d. any incident that results in a patron of the premises requiring medical assistance. <p>2) The licensee must, if requested to do so by a police officer or Liquor & Gaming NSW inspector:</p> <ol style="list-style-type: none"> a. make any such incident register immediately available for inspection by a police officer or Liquor & Gaming NSW inspector, and b. allow a police officer or Liquor & Gaming NSW inspector to take copies of the register or to remove the register from the premises. <p>3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.</p>
7.	Crime scene preservation	<p>Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:</p> <ol style="list-style-type: none"> 1) take all practical steps to preserve and keep intact the area where the act of violence occurred, 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website, 3) make direct and personal contact with NSW Police to advise it of the incident, and 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred. <p>In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (e.g. crowd controller or bouncer) on or about the premises.</p>
8.	Minors' area	Minors Area Authorisation: whole of licensed premises excluding the gaming room.
9.	Extended trading	Extended trading authorisation: Entire ground floor only.

No.	Conditions to be imposed	Description
10.	Gambling Incident Register	<p>The licensee must keep and maintain a gambling incident register.</p> <p>The gambling incident register must record: any incident in which a patron of the venue displays or engages in problematic gambling behaviour of the kind specified in the 'Signs of risky and problem gambling behaviour: Know the signs and how to act' factsheet published on the L&GNSW website as amended from time to time.</p>
11.	Responsible Gambling Officer (Gambling Contact Officer)	<ol style="list-style-type: none"> 1) The Licensee shall ensure that one Responsible Gambling Officer (Gambling Contact Officer), being a dedicated staff member who holds a current RCG certificate, is on duty and monitoring the gaming machines of the venue whenever gaming machines are operating. 2) The Responsible Gambling Officer (Gambling Contact Officer)'s primary duties are to: <ol style="list-style-type: none"> (a) maintain the gambling incident register (b) make reasonable efforts to identify gaming machine players who display or engage in problematic gambling behaviour (c) if any gaming machine player displays or engages in multiple problematic gambling behaviour as outlined in the Authority's Guideline, during a single trading day, then the Responsible Gambling Officer/Gambling Contact Officer must (at least once during that trading day): <ol style="list-style-type: none"> i) request that the player take a break from gaming machine play until the close of trade on that day or night (noting that a player who complies with a request to take a break may remain on the premises and consume other goods and services) ii) provide information about the self-exclusion scheme offered at the premises (being the scheme available pursuant to s. 49 of the Gaming Machines Act 2001) and ask whether the player wishes to participate in that scheme iii) provide information about and access to problem gambling counselling. 3) This condition is not breached by: <ol style="list-style-type: none"> (a) a Responsible Gambling Officer (Gambling Contact Officer) undertaking minor additional gaming duties, so long as such duties do not detract from the Responsible Gambling Officer (Gambling Contact Officer)'s primary duties, or (b) the temporary absence of a Responsible Gambling Officer (Gambling Contact Officer) from the gaming machine areas, where such absence occurs in the ordinary course of their primary duties (for example, to engage with a gaming machine player in a private space) or is by way of a routine break from work (such as a meal break or a bathroom break). 4) At all times, the Duty Manager or other senior manager responsible for gaming machine operations will assist the

No.	Conditions to be imposed	Description
		Responsible Gambling Officer (Gambling Contact Officer) in carrying out the duties described in this condition.