

Mr Brett Tobin
Hatzis Cusack Lawyers
By email to: bt@hatziscusack.com.au

14 February 2024

Dear Mr Tobin

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| Application No. | 1-8455255782 |
| Applicant | PENPLAY PTY LTD |
| Application for | Removal – hotel (full) licence and minor’s area authorisation |
| Decision Date | 19 April 2023 |
| Licence name | The Imperial Hotel Murwillumbah |
| Proposed trading hours | Consumption on premises Monday to Saturday 10:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM Takeaway Monday to Saturday 10:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM |
| Current trading hours | Consumption on premises (Bistro, Beer Garden, Amenities, Function Room, Foyer, Public Bar, Kitchen, Gaming Room, Pool Room, & TAB) Monday to Saturday 05:00 AM – 02:00 AM Sunday 10:00 AM – 12:00 midnight Consumption on premises (other areas within licensed premises) Monday to Saturday 05:00 AM – 12:00 midnight Sunday 10:00 AM – 12:00 midnight Takeaway Monday to Saturday 05:00 AM – 12:00 midnight Sunday 10:00 AM – 12:00 midnight |
| Proposed premises | 115 Murwillumbah Street Murwillumbah NSW 2484 |
| Current premises | 13 Wharf Street Murwillumbah NSW 2484 |
| Legislation | Sections 3, 11A, 12, 14, 15, 40, 44, 45, 48 and 121 of the <i>Liquor Act 2007</i> |

Decision of the Independent Liquor & Gaming Authority
Application for a removal – hotel (full) licence and minor’s area authorisation – The Imperial Hotel Murwillumbah

We **approve** the application under section 45 of the *Liquor Act 2007* with the conditions set out in Schedule 1.

Preliminary advice of this decision was provided on 4 May 2023.

Statement of reasons

Overall, we are satisfied that 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 is valid and meets the Act's requirements for procedural fairness and 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.
- the Community Impact Statement (CIS) meets the relevant requirements.

'Fit and proper person'

The applicant is a 'fit and proper person' to operate the business to which the proposed licence relates. Law enforcement agencies raised no concerns about their integrity.

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

The necessary development consent (K99/0561) is in force. Tweed Shire Council approved the development application DA17/0128 for the premises on 7 August 2017, and S68/FT000143 on 24 July 2020 for the use of the footpath by The Murwillumbah Hotel for the purpose of dining.

Community impact

Local and broader communities

The relevant 'local community' is the suburb of Murwillumbah, and the relevant 'broader community' comprises the Local Government Area of Tweed Heads Shire.

Diversity and density of licensed outlets

L&GNSW Liquor & Gaming LiveData Report for Murwillumbah shows:

- there are 20 authorised liquor licenses. This includes 3 registered club licences, 4 hotel (full) licences, 1 hotel (general bar), 2 packaged liquor licences, 1 producer/wholesaler licence, and 9 on-premises licences.
- saturation of the relevant authorised liquor licences (registered club licences, hotel (full/general bar) licences) in Murwillumbah is higher compared to the Tweed Heads Shire and all of NSW.

Crime data (annual rate per 100,000 residents)

BOCSAR data in the year to September 2022 shows:

- the premises were located in a low hotspot for alcohol related non-domestic assault, alcohol-related assault, and a medium hotspot for malicious damage to property.
- the incidents of all crime related categories usually considered by the Authority was higher in Murwillumbah compared to the Tweed Heads Shire and all of NSW.

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

HealthStats NSW data showed that:

- alcohol-related deaths in the Tweed Heads Shire were higher compared to all of NSW
- alcohol-related hospitalisations in the Tweed Heads Shire were lower compared to all of NSW.

ABS Socio-Economic Index for Areas (SEIFA)

Murwillumbah has a below average level and Tweed Heads Shire has an average level of relative socio-economic advantage in terms of household income and residents in skilled occupations compared to other suburbs and LGAs in NSW.

Business model

We note that the proposed business model involves removing a hotel (full) licence approximately 300 metres from its existing location in the same LGA. The current hotel (full) licence is approved to trade until 02:00 AM (Monday to Saturday). Once in the new location the hours would be reduced to 12:00 midnight (Monday to Saturday). The hotel will only operate on the ground floor of the two-storey building and will sell takeaway liquor from a bottle shop located within the area designated.

Benefits proposed by applicant

The applicant proposes the following benefits:

- the hotel relocation will contribute to the amenity of the local and wider community by allowing the continued provision of a welcoming hotel with a focus on food and dining and entertainment offerings, along with the addition of takeaway liquor
- the grant of the application will allow for the continued contribution to the responsible development of related industries, such as entertainment, and will assist in supporting employment opportunities in the live music industry
- the net result of this removal application (and the intended surrender of the general bar licence) will be an overall reduction in the number of hotel licences in Murwillumbah and the Tweed Heads Shire.

Stakeholder submissions

We considered the submissions from:

- Tweed Shire Council, dated 18 November 2022 and 6 March 2023, objecting and noting that a previous consent which had not been surrendered could only be relied on in accordance with the stamped plan accompanying that development application consent. Council suggested that a bottle shop was operating without consent from the industrial shed labelled 'garage' at the rear of the premises.
- L&GNSW Compliance, 7 December 2022, had no objection to the application. They reported nil adverse holdings or noise complaints had been received for the hotel. Two demerit points had been received for the sale of liquor to a minor on the licensed premises. Compliance suggested, the Plan of Management (POM) be amended to provide adequate strategies for preventing the sale/supply of liquor to minors on the premises.
- NSW Health, 19 September 2022, had no objection to the application, but sought clarification on the status of the general bar licence on the site.
- Transport for NSW (TfNSW), 25 November 2022, had no objection to the application. They requested the licensee participate in the local accord, provide access to patrons to information on public transport options, offer low alcoholic drinks as an alternative, make food available, staff be aware of educational drink driving material on the TfNSW website and the safe part kit on the NSW Police website and, to discourage peer pressure on patrons to drink alcohol.
- General public, undated, two submissions lodged during the CIS process were concerned about noise and disturbance from patrons leaving the premises. Both submissions were lodged by residents of the same household. No submissions were received in support of the application.

We also considered the Applicant's submission in response, to these submissions, which notes:

The garage areas, referred to by the Tweed Shire Council in their submission, have enjoyed the benefit of the hotel use that relates to the whole of the hotel land since 1999 (being Lot 2 in DP596914), that *'where there are two development approvals relating to the one property an applicant is entitled to exercise either consent, unless there has been an express abandonment or surrender of the former consent'*. There is nothing in the 2017 consent to state that the applicant surrendered its previous consent to use the whole of Lot 2 as a hotel.

The applicant contends that development consent for a takeaway bottle shop was not required, because they can continue to rely on the existing 1999 development consent as the use has not been surrendered.

The POM has been amended to include necessary strategies for preventing the sale/supply of liquor to minors on the licensed premises.

In response to the NSW Health enquiry, the applicant advised that the conditions and trading hours for the general bar would also apply to the full hotel licence.

The initiative suggested by the TfNSW would be adopted where possible.

Findings of concern

Murwillumbah has higher crime rates across all crime categories usually considered by the Authority compared with all of NSW. Tweed Heads Shire has a higher rate of alcohol-attributable deaths compared with all of NSW. SEIFA indicates a below-average level of relative socio-economic advantage and disadvantage in Murwillumbah and streets surrounding the premises are alcohol-free zones with a public park (Knox Park) located within 150 metres which could potentially increase the likelihood of takeaway liquor being consumed in the park.

We are satisfied the risks are adequately mitigated by the following:

- the premises not being located in a crime hotspot for domestic assault
- saturation of hotel licences in Murwillumbah will decrease as the general bar licence will be surrendered upon grant of the removal
- the proposed premises is 300m from the existing premises
- the rate of packaged liquor licences is lower in the suburb compared to all of NSW
- Tweed Heads Shire has a lower rate of alcohol-attributable hospitalisations compared with all of NSW
- SEIFA indicates an average level of relative socio-economic advantage in the Tweed Heads Shire
- the harm minimisation measures outlined in the plan of management, and licence conditions set out in Schedule 1.

The material we considered

We considered the material received about the application, including:

Application Material

- application dated 2 November 2022
- Category B Community Impact Statement (CIS) dated 20 December 2022
- certifications of advertising dated 3 November 2022
- plan of management documents for the premises, titled Plan of Management and dated November 2022

- ASIC business records for the Applicant and associated companies
- floor plan for the premises dated 15 March 2018 indicating the proposed licensed area.

Under [Guideline 6](#), we also considered: 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.

Other relevant material

- submissions received
- correspondence between L&GNSW staff and the applicant between 2 November 2022 and 14 March 2023 in relation to the assessment of the Application
- Google map images extracted from the Google website showing the location and photos of the Premises in map view.

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 28 days after being notified that the decision is published on the [Liquor & Gaming NSW website](#). There is a fee to lodge the application.

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, at leonie.jennings@liquorandgaming.nsw.gov.au if you have any questions.

Yours sincerely



Caroline Lamb

Chairperson

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

Schedule 1 – Licence conditions to be imposed

The Imperial Hotel Murwillumbah

| No. | Condition 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 04:00 AM and 10:00 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. | Consumption on premises | <p>Good Friday 12:00 noon – 10:00 PM Christmas Day 12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)</p> <p>December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later</p> <p>Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.</p> |
| 3. | Take-away sales | <p>Good Friday Not permitted Christmas Day: Not permitted December 31st Normal trading</p> |
| 4. | 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 removing this licence to the premises at 115 Murwillumbah Street, Murwillumbah NSW 2484. |
| 5. | Minors area | Minors Area Authorisation: whole of the licensed premises. |
| 6. | Plan of management | The premises is to be operated at all times in accordance with the Plan of Management dated November 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. |
| 7. | Liquor Accord | The licensee or its representative must join and be an active participant in the local liquor accord. |
| 8. | 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 <i>Liquor Act 2007</i>, d. any incident that results in a patron of the premises requiring medical assistance. |

| No. | Condition to be imposed | Description |
|-----|---------------------------------|--|
| | | <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> |
| 9. | 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> |
| 10. | CCTV | <ol style="list-style-type: none"> 1. The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements: <ol style="list-style-type: none"> i. the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times) ii. recordings must be in digital format and at a minimum of ten (10) frames per second iii. any recorded image must specify the time and date of the recorded image iv. the system's cameras must cover the following areas: <ol style="list-style-type: none"> (i) all entry and exit points on the premises, (ii) the footpath immediately adjacent to the premises, and (iii) all publicly accessible areas (other than toilets) within the (iv) premises. 2. The licensee must also: <ol style="list-style-type: none"> (i) keep all recordings made by the CCTV system for at least 30 (ii) days, (iii) ensure that the CCTV system is accessible at all times the (iv) system is required to operate pursuant to clause 1(a), by at least |

| No. | Condition to be imposed | Description |
|-----|----------------------------|--|
| | | <ul style="list-style-type: none"> (v) one person able to access and fully operate the system, including (vi) downloading and producing recordings of CCTV footage, and (vii) provide any recordings made by the system to a police officer or (viii) Liquor and Gaming NSW inspector within 24 hours of any request (ix) by the police officer or Liquor. |
| 11. | Complaints Register | <ol style="list-style-type: none"> 1. A complaints register is to be maintained at the premises at all times which records the following: <ul style="list-style-type: none"> a) name and number of the complainant b) the time and date on which the complaint was received c) the nature of the complaint, and d) the measures taken to resolve the complaint 2. Details of complaints received, either in person or over the phone, must be: <ul style="list-style-type: none"> a) recorded in the complaints register; and b) reported to the duty manager. 3. A mobile or dedicated contact number for the duty manager is to be published on the hotel's website, and on a sign to be posted at the premises entrance. If requested, the duty manager's contact details must be provided to complainants. A messaging service must be in place if the dedicated contact number is unattended. 4. The licensee must make the complaints register available to NSW Police or a Liquor & Gaming NSW Inspector on request |