

Draft Submission to Liquor & Gaming NSW on the Evaluation of Interim Restaurant Authorisations – Discussion Paper

November 2017

Table of contents

Opening _____	3
Purpose _____	3
Comments _____	4
Response to selected discussion paper questions _____	5
Conclusion _____	9

Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general-purpose councils and associate members including special-purpose county councils. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW thanks Liquor & Gaming NSW for the opportunity to respond to the Evaluation of Interim Restaurant Authorisations Discussion Paper and for the opportunity to meet to discuss the evaluation.

This submission is in draft form until endorsed by the LGNSW Board. Any revisions made by the Board at that time will be forwarded to Liquor & Gaming NSW in the form of an updated submission.

Purpose

Interim restaurant authorisations have been available since 31 January 2017. They allow restaurant and cafe operators to immediately sell liquor upon lodgement of their online liquor licence application, provided certain conditions are met.

An interim restaurant authorisation is issued for a liquor licence application that:

- is lodged online;
- is for an on-premises licence for a restaurant or cafe;
- only seeks approval to sell liquor with meals during standard trading hours (i.e. 10am to midnight Monday to Saturday and 10am to 10pm on Sunday);
- does not seek a primary service authorisation (which allows liquor sales without a meal); and
- is made where planning approval, if required, exists for the premises to be used as a restaurant or cafe with the proposed service of alcohol included in the public exhibition process for that approval.¹

The interim restaurant authorisation process aims to ensure that:

- stakeholders, including members of the public, retain the opportunity to have their say about the proposed sale of liquor at these restaurants and cafes; and
- controls exist so that venues that do not comply with the liquor laws are prevented from continuing to supply liquor until a full determination of their licence application is made.

In October 2017 Liquor & Gaming NSW released a discussion paper for the evaluation of the interim restaurant authorisation scheme, inviting feedback and written submissions from interested parties.

The purpose of this evaluation of interim restaurant authorisations is to assess:

¹ As summarised by the discussion paper, and provided for in full by subclause 16A(1) of the Liquor Regulation 2008.

- the extent to which interim restaurant authorisations have achieved their purpose;
- the extent of stakeholder awareness and understanding of interim restaurant authorisations;
- the uptake of interim restaurant authorisations since their introduction, including any factors that may be encouraging or inhibiting uptake;
- the efficiency of the process for issuing interim restaurant authorisations;
- the prevalence of revocations following issuing of an interim restaurant authorisation, the reasons for these revocations, and any improvements that can be made to the revocation process;
- whether the eligibility requirements for an interim restaurant authorisation continue to be the most appropriate;
- whether there are any operational risks associated with the automatic authorisation of restaurants and cafes to sell liquor once an interim restaurant authorisation is issued;
- whether there have been any other impacts of interim restaurant authorisations being issued.

This submission is in response to Liquor & Gaming NSW's discussion paper, and will focus on key areas for local government. As some of these matters spread across several of the discussion paper's targeted questions, these will be grouped thematically in this submission.

Comments

LGNSW values the contribution small businesses, such as restaurants and cafes, make to the social and economic vibrancy of communities, and recognises that ease of doing business is important in attracting and supporting these businesses. LGNSW also acknowledges that restaurants and cafes can often be considered lower risk establishments in terms of liquor licensing (particularly where the business has not also applied for primary service authorisation or extended trading authorisation).

One of the goals incorporated in Liquor & Gaming NSW's Strategic Plan for 2017-2019 is to 'ensure intelligence-led and risk-based industry oversight that minimises burden without compromising regulatory objectives'.² LGNSW appreciates this natural tension between appropriate oversight and minimising regulation burden, and supports Liquor & Gaming NSW's approach in this regard.

However, in the case of interim restaurant authorisations LGNSW strongly encourages Liquor & Gaming NSW to ensure that the safety and amenity of the community is not prejudiced by invalidly or inappropriately issued authorisations. As outlined below, a primary concern of LGNSW relates to the verification of eligibility criteria put forward by business owners as part of their application for a liquor licence. Given the complexity of liquor licensing and planning approval processes, there is real potential for confusion among business owners and adverse community impact should a large number of interim restaurant authorisations be issued in close proximity.

LGNSW urges Liquor & Gaming NSW take further steps to ensure that liquor licence applicants understand interim restaurant authorisation eligibility requirements, and ensure that they meet these requirements before interim restaurant authorisations are issued. For local

² 'Strategic Plan 2017 – 2019', Liquor & Gaming NSW, www.liquorandgaming.nsw.gov.au/Documents/about-us/lgnsw-strategic-plan-2017-2019.pdf.

councils, this is particularly important with respect to the need for Liquor & Gaming NSW to verify the details of council planning approvals.

Finally, Local Government NSW notes that there are opportunities to link the interim restaurant authorisation process to the Easy to do Business program, a joint initiative of the Department of Premier and Cabinet, Customer Service Commissioner, Office of the NSW Small Business Commissioner and Service NSW. The Easy to do Business program aims to simplify the multiple licensing and approvals for business owners through providing a single online portal and application process. LGNSW recommends that Liquor & Gaming NSW explore the inclusion of interim restaurant authorisations within the scope of the Easy to do Business program.

Response to selected discussion paper questions

1: Has the introduction of interim restaurant authorisations effectively streamlined the application process for lower risk restaurants and cafes whilst retaining appropriate controls and community consultation?

Do members of the public have a sufficient opportunity to have their say about the proposed sale of liquor at restaurants and cafes issued with an interim restaurant authorisation?

Following the issue of an interim restaurant authorisation, Liquor & Gaming NSW will post the interim restaurant authorisation to its online liquor application noticeboard for 30 days to allow public comment.

It is LGNSW's view that the user friendliness of the Liquor & Gaming Application Noticeboard could be improved to increase accessibility and opportunities for all stakeholders to comment on applications. At present, interested stakeholders are not able to subscribe to the noticeboard but must instead manually visit the website on a regular basis to check for new applications.

LGNSW recommends that the Liquor & Gaming Application Noticeboard be updated to allow all interested stakeholders to subscribe through the website, permitting them to automatically receive email notifications for applications of interest lodged in selected local government areas. This would not only benefit councils, but also community groups, local businesses and interested residents.

Are appropriate controls in place to ensure eligibility criteria are met and those that do not comply are prevented from supplying liquor until a full determination on their licence application is made?

LGNSW understands that as part of an application for a liquor licence, there is no requirement for businesses to provide a copy of their planning approval, even if a business declares that it does indeed have planning approval for a restaurant or cafe that will serve alcohol. LGNSW recommends that applicants be required to upload a copy of their planning approval, so that the business's eligibility for an interim restaurant authorisation can be verified by Liquor & Gaming NSW. If this is not possible, at the very least applicants should be required to provide their planning approval number so that Liquor & Gaming NSW can use this number to locate the planning approval and verify the business's eligibility for an interim restaurant authorisation. Either of these amendments (requiring businesses to attach their planning

approval or requiring businesses to provide their planning approval number) will have the dual benefits of:

- a) encouraging restaurants and cafes to review their planning approval documentation to confirm whether it did or did not involve public consultation, improving accuracy of information submitted to Liquor & Gaming NSW; and
- b) ensuring ease of verification of each planning approval's provisions by Liquor & Gaming NSW.

The Liquor Regulation 2008 provides that the Secretary of the Department of Industry may revoke an interim restaurant authorisation where:

- an applicant is asked in writing to provide further information in relation to eligibility for an interim restaurant authorisation, and does not provide it within 30 days³; or
- the sale of liquor on the premises, or operation of the premises, does not meet interim restaurant authorisation requirements, including conditions applying to licensed restaurants under the Liquor Act and Regulation⁴.

LGNSW understands that if an applicant is asked in writing to provide further information in relation to eligibility for an interim restaurant authorisation, that applicant has 30 days to respond. In practice, this may mean that a restaurant or cafe may continue to serve liquor for up to 30 days before its interim restaurant authorisation is revoked, even in circumstances where the interim restaurant authorisation was not validly issued. LGNSW recommends that where Liquor & Gaming NSW suspects that a business may not have met the eligibility requirements for issue of an interim restaurant authorisation, Liquor & Gaming NSW should take immediate steps to confirm the business's eligibility, through verifying the planning approval and contacting the relevant council, rather than waiting up to 30 days for a business to respond to a written notice.

4: How efficient is the process for issuing interim restaurant authorisations?

While interim restaurant authorisations are issued quickly (instantaneously, in fact, where it is determined that eligibility criteria are met) this process is only efficient if it is also accurate. Where interim restaurant authorisations are invalidly issued, time and resources are required for liaison among Liquor & Gaming NSW, councils and businesses to seek a resolution. LGNSW's recommendation to require applicants to upload a copy of their planning approval would result in a better balance between efficiency and appropriate regulatory oversight, and reduced time spent resolving invalidly issued interim restaurant authorisations.

Without verification by Liquor & Gaming NSW that eligibility requirements are actually met, the current process may unnecessarily transfer to councils the regulatory burden of verifying and following up eligibility for an interim restaurant authorisation.

5: Are the eligibility requirements for an interim restaurant authorisation the most appropriate?

One of the eligibility requirements for the issue of an interim restaurant authorisation is that:

³ Subclause 16A(2) of the Liquor Regulation 2008.

⁴ Subclause 16A(7) of the Liquor Regulation 2008.

- (e) *the application for the planning approval was subject to a public consultation process under the Environmental Planning and Assessment Act 1979 and indicated that the premises are intended to operate as a licensed restaurant.*

Following discussions with Liquor & Gaming NSW, LGNSW understands that there is no time limit on the planning approvals used to satisfy this requirement. For instance, planning approval may have been granted 10 or 15 years prior to the application for a liquor licence that results in the issue of an interim restaurant authorisation.

It is LGNSW's view that planning approval granted by a council many years prior for a venue that notified council that it intended to serve liquor should not be considered an appropriate or adequate measure of contemporary community consultation. The community surrounding the business may have changed in the intervening years, and a full liquor licence assessment by Liquor & Gaming NSW would be appropriate in these circumstances. For councils, planning approvals usually lapse after five years if development has not commenced.

LGNSW recommends the planning approval and public consultation eligibility requirement be amended to introduce a maximum period of validity, whereby planning approvals that were issued prior to the maximum period do not meet the eligibility requirements for issue of an interim restaurant authorisation.

In addition, there may be ambiguity over whether the 'public consultation' undertaken through the council approval process achieves the same outcomes as consultation expected by Liquor & Gaming NSW to determine eligibility for an interim restaurant authorisation. This ambiguity, and the variation in public consultation practices across councils support LGNSW's position that Liquor & Gaming NSW should review each applicant's planning approval (and the date it was issued) to determine whether it is appropriate to issue an interim restaurant authorisation in each circumstance. Planning approval processes at some councils operate with the expectation that the appropriateness of liquor service will be fully considered by Liquor & Gaming NSW.

Finally, council feedback indicates that there may be community confusion over where concerns surrounding liquor licensing should be addressed (for example, to the police, to the council or to Liquor & Gaming NSW).

LGNSW recommends that Liquor & Gaming NSW consider providing councils with a set of standard words for councils to use during public consultation around planning approval where a restaurant or cafe proposes to supply liquor. Use of these standard words would help to standardise the public consultation process, make clear who the relevant agency for liquor regulation is, and also ensure that council public consultation processes achieve the outcomes anticipated by the interim restaurant authorisation process administered by Liquor & Gaming NSW. This would include ensuring that notification and consultation for a proposed development is appropriately broad for those venues that propose to serve liquor, and not limited to just neighbouring properties.

Are eligibility requirements affecting uptake?

Not all councils require public consultation for cafes and restaurants, especially those that are not in residential areas. Where there has not been public consultation as part of obtaining planning approval, then these cafes and restaurants would not be eligible for an interim

restaurant authorisation. Some councils do offer public consultation on request (which involves the applicant paying additional fees to cover advertising, and additional work for council staff during the exhibition period and in the assessment of the application). Councils should be able to recover the full cost of managing this process.

What changes, if any, should be made to the eligibility requirements?

As noted above, restaurants and cafes should be required to provide information that allows Liquor & Gaming NSW to verify that the restaurant or cafe's planning approval meets the requirements for issue of an interim restaurant authorisation, and the approval should have been within a certain maximum period of time.

6: Are there any operational risks associated with the automatic authorisation of restaurants and cafes?

The operational risks associated with an authorisation being issued where the business does not meet eligibility criteria are discussed above. In addition, there may also be confusion surrounding hours of operation where the council's conditions of planning approval contain more restrictive hours than the interim restaurant authorisation's standard hours. By way of example, the Liquor & Gaming NSW website states:

Restaurants and cafes who are granted an interim restaurant authorisation will only be able to supply and serve liquor between 10am to midnight Monday to Saturday and 10am to 10pm on Sunday.⁵

The Liquor & Gaming NSW interim restaurant authorisation factsheet also states:

What hours can I serve liquor if I've been granted an interim restaurant authorisation?

If you have been granted an interim restaurant authorisation you can serve liquor at your restaurant between 10am to midnight Monday to Saturday and 10am to 10pm on Sunday⁶

There are no caveats on these documents such that these standard hours are subject to any further restrictions imposed by the planning approval. LGNSW has received feedback that some restaurants or cafes may mistakenly believe that the standard hours of their interim restaurant authorisation replace or supersede the permitted operating hours in the council planning approval for that restaurant or cafe. Follow up and rectification of this confusion would impose an unnecessary administrative burden on councils.

LGNSW recommends that Liquor & Gaming NSW make clear throughout its publications (including the initial notice of issue of the interim restaurant authorisation) that, despite the standard hours of an interim restaurant authorisation, restaurants and cafes remain bound by

⁵ 'Interim restaurant authorisations available', Liquor & Gaming NSW, www.liquorandgaming.nsw.gov.au/Pages/about-us/news-and-media/recent-news/interim-restaurant-authorisations.aspx.

⁶ 'Fact sheet FS3074 – Industry information: Interim restaurant authorisation', Liquor & Gaming NSW, www.liquorandgaming.nsw.gov.au/Documents/liquor/liquor-licences/fs3074-industry-information-interim-restaurant-authorisation.pdf.

the operating hours of their council planning approval. Ideally, if Liquor & Gaming NSW had access to the planning approval it could issue the interim restaurant authorisation with hours that match those of the planning approval.

Conclusion

LGNSW is pleased to have had the opportunity to provide input in response to the Evaluation of Interim Restaurant Authorisations Discussion Paper and welcomes Liquor & Gaming NSW's engagement on this matter.

In summary, LGNSW recommends that:

1. The Liquor & Gaming Application Noticeboard be updated to allow interested stakeholders to subscribe, permitting them to automatically receive email notifications each time an application of interest is lodged in selected local government areas.
2. Applicants should be required to upload a copy of their planning approval, so that the business's eligibility for an interim restaurant authorisation can be verified by Liquor & Gaming NSW. If this is not possible, applicants should be required to provide their planning approval number so that Liquor & Gaming NSW can use this number to locate the planning approval and verify the business's eligibility for an interim restaurant authorisation.
3. Where Liquor & Gaming NSW suspects that a business may not have met the eligibility requirements for issue of an interim restaurant authorisation, Liquor & Gaming NSW should take immediate steps to confirm the business's eligibility, through verifying the planning approval and contacting the relevant council, rather than waiting up to 30 days for a business to respond to a written notice.
4. Consideration be given to introducing a maximum period of validity for planning approvals, whereby planning approvals older than the specified date do not meet the eligibility requirements for issue of an interim restaurant authorisation.
5. Liquor & Gaming NSW consider providing councils with a set of standard words for councils to use during planning approval public consultation where a restaurant or cafe proposes to supply liquor.
6. Liquor & Gaming NSW should make clear throughout its publications (including the initial notice of issue of the interim restaurant authorisation) that, despite the standard hours of an interim restaurant authorisation, restaurants and cafes remain bound by the operating hours of their council planning approval. Ideally, if Liquor & Gaming NSW had access to the planning approval it could issue the interim restaurant authorisation with hours that match those of the planning approval.
7. Liquor & Gaming NSW should explore the inclusion of interim restaurant authorisations within the scope of the Easy to do Business program.

For further information on this submission please contact Damian Thomas on 02 9242 4063 or at damian.thomas@lgnsw.org.au.