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Submission by Northern Sydney Local Health District (NSLHD) Health Promotion regarding the Evaluation of the Community Impact Statement requirement for liquor licence applications

Thank you for the opportunity to comment on the above evaluation being undertaken by Liquor & Gaming NSW (L&GNSW).

Background and context

NSLHD has an active interest in measures to prevent or reduce alcohol-related harm such as interpersonal violence, accidental injury, long-term chronic disease and malicious damage. As the local health authority for the Northern Sydney area, NSLHD is currently notified of all Category B licence applications.

According to the L&GNSW website, the purpose of the Community Impact Statement (CIS) is to assist the Independent Liquor and Gaming Authority (ILGA) to understand the potential harm a liquor licence might have on the neighbourhood and concerns the local community have¹. The 'local community' includes residents, councils, Police Local Area Commands, Local Health Authorities, Family and Community Services and interest groups.

Our observation is that liquor licence applications are invariably approved by the authority, sometimes despite significant community opposition and strong objective evidence indicating a likely increase to alcohol-related harm caused by an additional liquor outlet.

As at 27 June 2017, there were 133 liquor licence decisions published on the L&GNSW website in 2017, with ILGA granting the licence in every case². This 100% approval rate in favour of the liquor industry indicates that community concerns are not being appropriately considered. We believe the current licensing system (including the CIS requirement) is seriously flawed and requires fundamental reform.

NSLHD Health Promotion has reviewed approximately 96 liquor licence applications in the Northern Sydney region since 2011. The majority of these were applications for packaged liquor licences (while seven applications have also involved the development application process). Of the 96 applications, we determined that 73 (approximately 76%) did not warrant a submission, and 23 applications were objectively 'problematic' in that they were likely to generate an unacceptable level of alcohol related harm. As such, NSLHD has submitted 23 evidence-based 'objections' in relation to these problematic liquor licence applications since 2011.

From our 23 evidence-based objections, five applications were withdrawn (three development applications and two liquor licence applications), three were initially refused through the development application process (however two of these were successfully appealed by the applicant) and one was appropriately modified after direct consultation with NSLHD Health Promotion by the applicant.

Most importantly in relation to the CIS process, of the 23 objections NSLHD Health Promotion has submitted over the last six years, the Authority has not refused a single liquor licence application.

¹ Liquor & Gaming NSW website, located at <http://www.liquorandgaming.nsw.gov.au/Pages/liquor/community-involvement/community-impact-statements.aspx> (Accessed 27/06/2017)

² Liquor & Gaming NSW website, located at <http://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/liquor-decisions/liquor-decisions.aspx> (Accessed 27/06/2017)

NSLHD raises the following issues with the current CIS process and recommendations to ensure a more balanced and transparent system that improves community confidence in the authority:

'Onus of Proof' of social impact

The current CIS process requires the community to provide sufficient evidence that a liquor licence will cause harm. It is both unfair and unrealistic to expect the community to have the capacity to present this kind of empirical evidence. The applicant is the party who stands to financially benefit from the increased supply of a product known to cause significant negative social, health and economic impacts. Therefore it is the Applicant who should be required to empirically demonstrate that there will be *no harm* caused by the granting of a licence.

In order for the community to make an informed assessment of the likely harm posed by an additional alcohol outlet in their neighbourhood, the CIS must transparently detail current alcohol outlet density and alcohol-related harms in the local community. This would provide the community with a better understanding of the potential impact an additional licence will generate. Harms to be reported include:

- Alcohol-related assault counts and rates
- Alcohol-attributable hospitalisation counts and rates
- Domestic assaults counts and rates
- Malicious damage counts and rates

If L&GNSW consider the above requirement to be an unacceptable regulatory burden for applicants, an alternative process [enabling both the applicant and the community to make an informed assessment of the likely harm posed by an additional outlet] which *reduces* the current regulatory burden is proposed in Recommendation 11 (see page 4).

Recommendations regarding onus of proof:

1. Reverse the onus of proof so that liquor licences will only be granted if the Applicant can objectively demonstrate that no harm will be caused by the granting of a licence.
2. Make it a requirement of the CIS to list the current alcohol outlet density of the relevant suburb, as well as alcohol-related assaults, alcohol-attributable hospitalisations, domestic assaults and malicious damage counts and rates, and outline how they will mitigate any potential increases to these figures*.

Community Notification Requirements

The notification requirements of the current CIS process are inadequate and do not sufficiently inform the community about proposals that are likely to impact on them. In decision reports published on the L&GNSW website, when identifying the community impacted by a licence the Authority deems the local community as the suburb and the broader community as the Local Government Area. However, the Applicant is only required to consult with local residents and businesses within a 100m radius of the proposed premises, leaving the majority of impacted residents uninformed.

The NSW Ombudsman defines natural justice as decision-makers informing people of the case against their interests and giving them a right to be heard³. In this situation, the potential for natural justice is only provided to the minority of residents that happen to live within 100m of the proposed licence (if they read their mail) or those that happen to see the small application notice on the premises, or routinely visit the ILGA Noticeboard. The Authority must improve the notification process for liquor licence applications to at least provide the potential for natural justice.

³ Ombudsman NSW Website, Natural justice/procedural fairness – Public Sector Agencies Fact Sheet. Available at https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0017/3707/FS_PSA_14_Natural_justice_Procedural_fairness.pdf (Accessed 10/07/2017).

* See Recommendation 11 (page 4) for an alternative recommendation that would largely meet the same objectives and also reduce regulatory burden for the applicant.

There are currently two categories of CIS (Category A and B), with separate notification requirements for each. To remove this complexity, it is recommended that a single CIS be adopted and that L&GNSW take a coordination role in the notification process. Notification requirements for all current Category B CIS applications should be adopted for this proposed single CIS process.

Community notification requirements also impact on the community's ability to appeal licensing decisions (eg. request a NSW Civil & Administrative Tribunal review). The current system and legislation are exclusionary and minimise any recourse for appeal against ILGA/delegated decisions, as only the community required to be notified and who initially made a submission are eligible to request a review. Expanding the notification requirements beyond the 100m radius of the proposed licence and notifying all agencies required through a Category B CIS for every liquor licence application will ensure a fairer and more transparent review process.

Recommendations regarding community notification:

3. L&GNSW to adopt a coordination role of the liquor licensing notification process.
4. Increase the current 100m notification boundary to a minimum 1km radius of the proposed premises.
5. Implement a single CIS process that incorporates the current notification requirements of the Category B CIS.
6. Develop an 'opt-in' online notification tool for community members and stakeholders (similar to <https://www.planningalerts.org.au/>) that will generate an automated email once a liquor licence application is received by the Authority within a specified suburb or postcode.
7. Remove the current restrictions on appeals, allowing any objector the opportunity to request a review through the NSW Civil and Administrative Tribunal.

Transparency of Community Objections and Applicant Responses

There is currently little accountability for Applicants to disclose community objections received at the *Notice of Intention* stage. The onus is (again) on the community to ensure the Applicant has responded appropriately to their concerns through the CIS. This appears to be a clear conflict of interest for the Applicant to withhold issues raised that may be against their financial interests.

The liquor licensing system is complex and difficult for the community to navigate. Often when a community member provides an objection to a Notice of Intention, they assume that their issues will be considered by the Authority and are unaware that they can also provide a submission directly to the Authority at the CIS stage. With no formalised system for ensuring applicants have been transparent with community concerns in their CIS, it is impossible for the Authority to be confident of their understanding of community concerns when assessing the merits of the licence.

The current liquor licensing system does not enable procedural fairness, with the applicant afforded the final right of reply to objections received from the community's response to the CIS. In our experience the applicant's final reply, often based on misleading interpretation of selected data (to downplay or refute the community's concerns) is invariably accepted without scrutiny by the Authority when making their final determination. Procedural fairness dictates that the community (as the stakeholder vulnerable to harm) be given the final right of reply to ensure "that a decision is based upon findings of fact that are in turn based upon sound reasoning and relevant evidence"³.

Recommendations regarding transparency of applicant:

8. L&GNSW to publish all correspondence relating to liquor licence applications on the ILGA Noticeboard as it is received including CIS forms, application forms, community objections, applicant responses etc.
9. L&GNSW to adopt the proposed liquor licensing process outlined in Appendix 1, providing the community the final right of reply before the matter goes to the Authority for a decision.

Transparency of ILGA Decisions

The current decision-making process lacks transparency and gives the impression that liquor licences are simply being “rubber-stamped” by the Authority. The 100% approval rate of liquor licences in 2017 (as at 27 June 2017) undermines the credibility of the Authority and any perception that the community have a legitimate voice in liquor licensing decisions.

Decisions made by the Authority need to be more transparent and based on an objective list of decision-making criteria, which clearly outlines local conditions/circumstances where it is inappropriate for a licence to be approved (such as outlet density beyond 3 per square km, within 100m of schools and social housing estates, youth spaces, within areas with higher alcohol-related assaults and domestic assaults etc). These minimum criteria should be published so that applicants can identify more appropriate locations for alcohol outlets and to assist the community to determine whether it is worthwhile investing time and resources objecting to a liquor licence application in their neighbourhood.

NSW Health (including NSLHD Health Promotion) is currently developing a systematic set of evidence-based criteria to estimate potential for alcohol related harm in a given local area. We invite L&GNSW to participate in this process and commit to agreed criteria whereby a geographical mapping tool can be developed, published and utilised (by applicants and the community alike) to objectively indicate locations that are (or are not) appropriate for liquor outlets. Such a tool would minimise the need for both the applicant and the community to invest time and resources either defending or objecting-to liquor licence applications. We believe this action would increase the health and wellbeing of our community and also achieve L&GNSW’s stated objective of “reducing costs and regulatory burden for applicants”⁴.

The L&GNSW website and ILGA Board Position Description stipulates that Board members must hold qualifications and expertise in law, finance or planning⁴. However, ‘health’ qualifications are a significant omission from the criteria and it is our opinion that the health impacts related to the sale and consumption of alcohol products are not being given adequate consideration in licensing decisions. We recommend that a minimum of two positions on the ILGA Board be allocated to qualified candidates with health qualifications and significant experience in the health sector. However, in the absence of any health expertise on the current ILGA Board, significant weighting must be given to submissions provided by the Local Health Authority who have the skills, experience and local knowledge to assess the potential health impacts (of additional liquor licences) on the community.

The requirement for certain ILGA decisions to be published on the L&GNSW website has improved the Authority’s accountability and transparency of the decision-making process. However not all decisions are required to be published. Decision reports should be mandatory for all liquor licensing decisions that receive objections to improve community confidence and to identify whether there are legitimate grounds for appeal.

Recommendations regarding transparency of ILGA:

10. The Authority to develop and publish a set list of objective decision-making criteria, stipulating when it would be inappropriate to grant a liquor licence.
11. The Authority to partner with NSW Health to develop a geographical mapping tool to objectively indicate locations that are (or are not) appropriate for liquor outlets.
12. Appoint a minimum of two positions on the ILGA Board to eligible candidates with health qualifications and significant health experience.
13. Allocate significant weighting to submissions provided by the Local Health Authority regarding liquor licensing decisions.
14. Decision reports to be made mandatory and published online for all liquor licensing decisions where objections were received from the community.

⁴ Liquor & Gaming NSW website, located at <http://www.liquorandgaming.nsw.gov.au/Pages/ilga/news-and-media/news/applications-for-ilga-board.aspx> (Accessed 10/07/2017)

Thank you again for the opportunity to comment on the review of the Community Impact Statement requirement. If you have any questions, please do not hesitate to contact Jonathon Noyes, NSLHD Health Promotion on 02 9462 9568 or at jonathon.noyes@health.nsw.gov.au.

Kind regards,

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APPENDIX 1 – Proposed CIS/Liquor Licensing Approval Process

