HATZIS CUSACK LAWYERS

Liquor & Gaming Specialists

Our Ref: TH:HCM:05673
Your Ref:

14 December 2023

Mr Paul Benbow
Treasurer
Warringah Golf Club Limited
292 Condamine Street
North Manly NSW 2100

By email: paulben1@optusnet.com.au

Dear Mr Benbow,

RE: DEVELOPMENT APPLICATION NUMBER DA2022/2081 FOR DEMOLITION WORKS AND CONSTRUCTION OF GOLF CLUBHOUSE AND ASSOCIATED FACILITIES: LIQUOR LICENCE FOR CLUBHOUSE FACILITY

We understand that this development application (DA) is presently being considered by Council. The application seeks consent to demolish certain structures and to construct a clubhouse for the Warringah Golf Club on part of the land at 433 Pittwater Road, North Manly. The development includes a pro shop, meeting rooms, dining/function room, amenities and landscaping works and a realigned drainage swale.

We understand that the works proposed are on a large parcel of land (approximately 173,926 square metres in size, being Lot 2742 in DP 252038) used as a golf course. The land is zoned RE1. We understand that the land zoning permits outdoor recreation facilities, with consent.

The DA is currently being considered by the Sydney North Planning Panel under reference PPSSNH-391 on the basis that the clubhouse, and associated facilities, are ancillary to the golfing activities conducted on the land.

You have asked us to advise specifically in relation to the liquor licensing aspects of the clubhouse development. Specifically, we are asked to advise as follows:

1. What form of liquor licence(s) might apply to the clubhouse?

2. Is it necessary to obtain prior development approval and, if so, what must be approved and when must such approval be obtained?

1. What licences might apply to the golf clubhouse?

Club licence

The Warringah Golf Club Limited presently holds a club licence issued under the Liquor Act 2007. The licence document records that the licence was first issued to the Club in the year 1947.

The licensed premises of the Club were originally conducted from premises at at 397 Condamine Street North Manly and at a Kiosk at the corner of Condamine Street and Kentwell Road North Manly (now known as 292 Condamine Street North Manly following an application to Council for a Street number). A change of boundaries application was approved in 2022, whereby the licensed premises comprised 292 Condamine Street solely.

The change of boundaries application approved in 2022 was approved pursuant to the power conferred on the Independent Liquor and Gaming Authority ("ILGA") under Section 94 of the Liquor Act 2007. The relevant provisions of that section are as follows:

(2) The specified boundaries of any licensed premises may be changed by the Authority on the Authority's own initiative or on the application of:

(a) the owner of the premises, or

(b) the licensee...

(5) The Authority must not specify or change the boundaries of any licensed premises unless the Authority is of the opinion that any primary purpose requirement under this Act in relation to the licensed premises is or will be complied with

Given that the Authority last year exercised the Section 94 power to change the boundaries of the Club licence to comprise 292 Condamine Street, we expect that the Authority would be willing to again exercise that same power to relocate the Club licence to the proposed new clubhouse premises (which will be known as 433 Pittwater Road, North Manly).

Alternatively the Authority may require an application to "remove", or relocate, that same licence to the new clubhouse..

Nature of a club licence

A club licence authorises the licensee to sell liquor by retail on the licensed premises to a member of the Club or to a guest of a member, for consumption on or away from the licensed premises: sec. 18(1) *Liquor Act 2007*.[1]

[1] We understand from the Plan of Management that the Club in this case does not intend to sell packaged liquor for consumption away from the premises.

Such a licence can only be granted to a club which meets the requirements set out in sec. 10(1) of the *Registered Clubs Act 1976*: sec. 19(1)(a) Liquor Act 2007.

Among the requirements set out in that section are requirements that the relevant Club:

(a) be conducted in good faith as a club; …

(d) have a membership not less than the minimum number of members (presently 200).

(e) be a club established:

(i) for social, literary, political, sporting or athletic purposes or for any other lawful purpose; and

(ii) for the purpose of providing accommodation for its members and their guests…

(f) have premises of which the Club is the bona fide occupier for the purposes of a Club and which are provided and maintained from the funds of the Club.

(g) Contain accommodation appropriate for the purposes of the Club.

(h) Contain a properly constructed bar room.

The intent of these provisions in the Registered Clubs Act is tolerably clear – namely, that a certificate of registration as a club (and a registered club licence) are to be reserved only in respect of persons associated together in a common endeavour or purpose (a club) which is non proprietary in nature and established for one of the recognised purposes (including a sporting purpose, such as golf). To qualify, such a Club must also have appropriate bar facilities and other accommodation appropriate and relevant to social interaction between members and their guests.

In the present case there is no doubt that the relevant purpose is the playing, promotion and advancement of the game of golf. The original grant of a certificate of registration under the Registered Clubs Act, and subsequent grant of a club licence to the Warringah Golf Club, reflect the golfing nature of this Club.

Indeed, the Warringah Golf Club's constitution (a copy of which has been provided to us) differentiates between "playing members" "provisional playing members", "community playing members", "junior playing members", "limited playing members", "social playing members", "associate playing members" and "non-playing members". The Constitution contemplates a match program (Rule 82) and the establishment of a Women's Golf Committee (Rules 82 – 94). The Constitution adopts the rules of the game of golf as adopted from time to time by the Royal and Ancient Golf Club of Saint Andrews (Rule 128).

The golfing purposes of the Club are quite clear and unequivocal from the Constitution, as well as from the nature and standard of playing facilities available to members. The Club is affiliated with PGA Australia and offers coaching programs, social golf

equipment and apparel and a golf club repair service. Having regard to the totality of the activities of the Warringah Golf Club, there can be no doubt that its purpose is the playing, advancement and promotion of the game of golf.

Indeed, the golfing nature of this club clearly differentiates the Warringah Golf Club from many other clubs which are purely social in their nature and purpose. As can be seen from sec. 10(1)(e) of the Registered Clubs Act, some clubs can be established solely for social purposes; whereas the Warringah Golf Club may be said to have primary purpose of advancing the sport of golf, **and an ancillary social purpose**.

The most efficient means of ensuring that the new clubhouse will be licensed to allow the sale of liquor to members and guests is to seek an order for change of boundaries under sec. 94 *Liquor Act 2007*, so that the new clubhouse premises become the premises of the Warringah Golf Club under the Liquor Act 2007.

In other words, the existing club licence would continue to apply, but would relate to the new clubhouse facility to be constructed.

An Alternative

Another alternative is that the club obtain a different form of licence, namely an on-premises licence in respect of the clubhouse.

An on-premises licence authorises the sale of liquor by retail on the licensed premises for consumption on the premises only: sec. 25. In other words, it does not authorise takeaway sales and liquor may be sold to any members of the public.

Such a licence only authorises the sale of liquor for consumption with or ancillary to another product or service sold, supplied or provided to people on the premises: sec. 24. The business or activity being conducted on the premises to which an on-licence is granted must be specified in the licence: sec. 23(4).

Such licences are commonly granted to non-proprietary associations and sporting clubs. The form of activity usually specified in such licences is "club activity and support". Such licences are commonly granted, for example, to surf clubs and football clubs.

The Most Appropriate Licence

In the present case, it is our view that the existing club licence is the most apposite form of licence for the new clubhouse.

The existing club licence reflects the nature of the sporting club, which is set up for the promotion of a sport (golf) but which is also required by law to provide accommodation for the social enjoyment of its members. It is fundamental that an ancillary social purpose must exist in respect of all registered clubs, even if the Club's principal object is a sporting object: sec. 10(1) (e) Registered Clubs Act 1976; *Greedy v Maitland Licensing Inspector* [1964] NSWR 1761, 1767.

Put another way, the holding of a club licence in respect of the clubhouse properly reflects the ancillary nature of the clubhouse to the overall sporting purposes of the

Warringah Golf Club. That purpose is very much stamped upon the land on which the clubhouse is to be constructed.

2. Is it necessary to obtain prior development consent?

It is not a mandatory requirement of law that a prior development approval be obtained before ILGA exercises its sec. 94 discretion to change the boundaries of an existing licence.

However, it is our experience that ILGA, as a matter of discretion, will always require evidence either:

(a) that development consent exists for the proposed use of the relevant premises to become licensed; or

(b) that no development consent is required in the circumstances of a given case (for example, where there are existing use rights, or where the proposed use is ancillary to a dominant use for which there is development consent or existing use rights).

The apparent rationale for requiring such evidence is so that ILGA does not sanction a use of land that otherwise might be unlawful under the *Environmental Planning and Assessment Act.*

This policy is evident in sec. 45(3)(c) of the *Liquor Act 2007* which expressly applies to the grant of new licences. That section provides as follows:

"(3) The Authority must not grant a licence unless the Authority is satisfied that: -

(c) if development consent is required under the Environmental Planning and Assessment Act 1979... to use the premises for the purposes of the business or activity to which the proposed licence relates – that development consent or approval is in force".[2]

It often happens that an application for grant of a licence is filed before the applicant has obtained a necessary development approval for the subject premises. In those cases, the ILGA will require that the development approval be granted before the ILGA exercises power to grant a new licence. Further, it is our experience that ILGA will not consider an application until it is satisfied that a development approval is in place for the subject premises. Time standards apply, such that if any required development approval is not provided within 5 months of the date of lodgement, ILGA may treat the licence application as withdrawn.

Where a DA has been obtained (or ILGA is satisfied that no DA is required in the circumstances) but the subject premises have not yet been constructed, ILGA may grant the application, but impose conditions whereby ILGA's order does not take effect until the premises have been completed and evidence of completion has been provided to

[2] That same requirement also applies where a licence is relocated ("removed") from one set of premises to another in exercise of the removal power in sec. 59. That is because a removal application is treated as though it were an application for a new licence in respect of the newly relocated premises: sec. 59(3).

ILGA (such as an occupation certificate or photographs of the completed premises). This mechanism is of particular utility where the issue of a licence is required to satisfy the requirements of a bank financing the construction/fit-out works, or in the case where an existing licence is being relocated and it is sought to continue to trade from the existing premises until the new premises are ready to commence trade.

It follows that development applications are made and determined anterior to the relevant licence application being determined. Indeed, the Liquor Act regime reflects a policy that a development application must be obtained first. This means that in some cases a DA is obtained, but the licence application might be subsequently refused by ILGA when ILGA applies itself to the discretions available to ILGA under the Liquor Act. In our experience, there are other cases where DA and licensing approvals are both obtained, but the premises are not constructed due to commercial considerations. These are all permutations that can follow from the requirement that DA be obtained prior to consideration of a licence application.

We trust that this deals with the issues raised by you. Please contact us if you have any further questions.

Yours faithfully,

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Solicitor - Director
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