

**ITEM 6. TRANSFER OF CITY-OWNED LIQUOR LICENCES TO CUSTOMS  
HOUSE TENANTS CUSTOMS HOUSE CAFÉ PTY LIMITED AND  
CIRCULAR QUAY BAR PTY LIMITED**

**FILE NO: S099079**

**SUMMARY**

This report seeks Council's approval for the transfer of two City-owned liquor licences to Custom House tenants, Customs House Café Pty Limited (trading as Café Sydney) and Circular Quay Bar Pty Limited (trading as Quay Bar).

In 1998, the City entered into a 60 year lease for the historic, Commonwealth-owned, Customs House building, which is located at 31 Alfred Street, Sydney. This lease was granted to enable the City (as lessee) to establish a cultural and community facility at the northern end of the Central Business District.

In addition to this primary purpose, the City also entered into a number of commercial and retail subleases for areas within the building, which included Café Sydney and Quay Bar.

Liquor licences for both Café Sydney and Quay Bar were granted to, and held by, the City as "Governor's Licences" under s.19 (1)(b) of the Liquor Act 1983, which required that licences be vested in the Crown or a public authority.

This Act was repealed by the Liquor Act 2007 and "Governor's licences" no longer exist. The existing licences were automatically converted to "on premises" licences associated with "restaurant" and "catering" businesses. As such, the former restrictions relating to the licences needing to be vested in the Crown or a public authority no longer apply.

However, a key condition of the new licencing arrangement is that the City must ensure a "licensee" is located at the site that utilises these liquor licences. As a result, the City employs two staff as Liquor Licence Licensees at both Café Sydney and Quay Bar, despite the City having no role in the day-to-day commercial operations of each tenant.

At the request of one of the tenants, the City has investigated and found that it would be possible for the City-owned liquor licences to be transferred to the tenants. The proposed transfer of liquor licences will result in the removal of the requirement of the City to employ staff to work at Café Sydney and Quay Bar, allowing these tenants to continue to operate with liquor licences. Should either sublessee vacate the premises, the license will revert to the City.

Transferring the liquor licenses enables Café Sydney and Quay Bar management to employ the Licensees directly under their own contracts of employment and conditions.

The Independent Liquor and Gaming Authority has confirmed that the transfer of these liquor licences must be undertaken via an application process which will be subject to their approval.

**RECOMMENDATION**

It is resolved that:

- (A) Council approve the transfer of liquor – on-premises licence from the City of Sydney Council to Customs House Café Pty Limited;
- (B) Council approve the transfer of liquor – on-premises licence from the City of Sydney Council to Circular Quay Bar Pty Limited; and
- (C) authority be delegated to the Chief Executive Officer to finalise the terms of this transfer and variation of tenant sub leases required to accommodate this transfer.

**ATTACHMENTS**

Nil.

**BACKGROUND**

1. In February 1998, the City entered into a 60 year lease over Customs House, 31 Alfred Street, Sydney with the Attorney General's Department, Commonwealth of Australia. This lease was granted to enable the City (the lessee) to provide a substantial cultural facility for the City of Sydney. In addition to establishing cultural and community services in Customs House, the City entered into a number of commercial and retail subleases which included Customs House Café Pty Limited (trading as Café Sydney) and Circular Quay Bar Pty Limited (trading as Quay Bar).
2. The City is the owner of two liquor licences for premises at Customs House. The licences are numbered LIQO624014302 (Café Sydney) and LIQO624007139 (Quay Bar). Both licences presently contain the following condition paraphrased as follows: (reference no. 200):

*"The Licence is to be owned by the Council of the City of Sydney and shall be held from time to time by such employee of the Council as may be nominated by the Council and approved by the Casino, Liquor and Gaming Control Authority under the Liquor Act 2007"*

3. In October 1998, the City was granted a liquor licence, with a second licence being granted in June 2006. Both "Governor's Licences" were originally issued to the City under s.19(1)(b) of the Liquor Act 1983. That sub-section provided as follows:

*"19(1) The Governor may, on recommendation of the Minister...authorise the court to issue a licence authorising the sale of liquor...(b) on premises vested in the Crown or a public authority..."*

4. The Liquor Act 1982 was repealed by the Liquor Act 2007. Governor's licences no longer exist. Under the transitional provisions of the new legislation, the two Customs House licences were automatically converted to "on premises" licences associated with "restaurant" and "catering" businesses. As such, the former restrictions relating to the licences needing to be vested in the Crown or a public authority no longer apply.
5. To meet the conditions of these liquor licences, the City must ensure a "licensee" is located at the site that utilises these liquor licences. As a result, the City of Sydney employs two staff as Liquor Licence Licensees at both Café Sydney and Quay Bar. These staff are employed under the City of Sydney Council Award. The employment contracts issued by the City of Sydney are for secondment to Café Sydney and Quay Bar. The licensees are paid via the City of Sydney's payroll system with these costs being recovered on monthly basis.
6. Customs House tenant, Customs House Café Pty Limited, has requested that the City investigate whether it is possible to transfer the City-owned liquor licence to Customs House Café Pty Limited.
7. The City assessed the benefits and costs associated with the transfer of the liquor licences to the Customs House tenants.

8. The transfer of the liquor licence removes the requirement of the City of Sydney to employ a Licensee whose employment relationship on a day-to-day basis is with Customs House Café Pty Limited and Circular Quay Bar Pty Limited. These employment relationships are complex to manage and administer due to the ambiguous nature of 'employer responsibilities' in relation to the Licensee.
9. The benefits to the City of transferring the liquor licenses are therefore the removal of the ongoing legal and financial exposure associated with these complex employment arrangements:
  - (a) the potential for industrial disputation between the three parties arising from conflicting application of relevant Industrial instruments, Policies and Procedures between Café Sydney or Quay Bar and City of Sydney;
  - (b) potential pay and conditions related breaches which may give rise to Licensee grievances that are outside the City's day-to-day management; and
  - (c) the City's responsibility to provide a safe workplace for the Licensee while the Licensees' work location and supervision is under the Café Sydney and Quay Bar management.
10. Transferring the liquor licenses enables Café Sydney and Quay Bar management to employ the Licensees directly under their own contracts of employment and conditions.
11. The costs of the transfer of liquor licences are minor administration costs, ie, application fees and the legal costs associated with the variation of leases to detail this change. These costs will be paid for by Café Sydney and Quay Bar.
12. A valuation of the liquor licences found that there was no commercial loss or disadvantage in transferring the on premises licences to the City's sublessees. The Valuer confirmed that the present cost of an on-premises liquor licence is \$700 each.
13. The City will vary the tenant subleases to detail this liquor licence transfer and note that, upon lease expiry, the Liquor Licence would revert back to the City of Sydney.
14. The sublease provisions will continue to apply with regard to the Café Sydney's and Quay Bar's use of the premises, requirements to hold a current Licence, requirement to not do anything which may result in the Licence being suspended and the associated reporting requirements to the City.
15. To the City's knowledge, neither Café Sydney nor the Quay Bar have breached the City's liquor licences. Both Café Sydney and Quay Bar will continue to be required to inform the City as landlord should this occur.

## **KEY IMPLICATIONS**

### **Strategic Alignment - Sustainable Sydney 2030 Vision**

16. *Sustainable Sydney 2030* is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This report is aligned with the following SS2030 strategic directions and objectives:
  - (a) Direction 10 - Implementation through Effective Governance and Partnerships

**Risks**

17. By transferring the liquor licences to Café Sydney and Quay Bar, the City removes the inherent industrial and employee relations risks associated with (the City) being the employer of the Licensee, but without the day-to-day relationship, oversight and supervision that is required to adequately manage and support an employee (the Licensee).
18. There are financial, legal and reputational risks to the City of managing the employment contracts of staff working in a “non City of Sydney” work environment. This includes:
  - (a) conduct and behaviour that may constitute breaches of the City’s Policies or Code of Conduct;
  - (b) Work Health and Safety; and
  - (c) increased exposure to litigation and dispute through the NSW Industrial Commission and other external regulatory bodies.

**Social / Cultural / Community**

19. The transfer of the liquor licences to the Customs House tenants will not diminish the tenants’ responsibilities under the liquor licences and should not present a risk to the community.

**BUDGET IMPLICATIONS**

20. The present cost of a new on premises liquor licence is \$700 each. The City’s appointed Valuer has advised that there is no commercial loss or disadvantage in transferring the on premises licence to the sublessees. The transfer costs will be payable by the City’s sublessees. The City is also making it a condition of the proposed transfer of the liquor licences that they revert back to the City at sublease expiry; the City will not be out of pocket.
21. As a result of the transfer of the liquor licences, the City will no longer be required to enter into or administer employment contracts with the Café Sydney and Quay Bar. This will result in minor staff cost savings due to a reduction of administration.

**RELEVANT LEGISLATION**

22. Liquor Act 2007.
23. Retail Leases Act 1994.

**OPTIONS**

24. The current liquor licence arrangements remain unchanged. The City will continue to employ licensees for Café Sydney and Quay Bar and administer the employment contracts.

25. The City terminates both the liquor licences and the tenants will be required to apply for new licences. The City could only do this at sublease expiry, as it would be a breach of the existing subleases. This option is not ideal, as the liquor licence terms and conditions may change and the expenses associated with this option are higher than through a transfer.

**AMIT CHANAN**

Director City Projects and Property

Tracey Hargans, Manager Property