



Mr Brett Tobin  
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30 August 2019

Dear Mr Tobin

<b>Application No.</b>	1-7051219364
<b>Applicant</b>	Northcoast Property Holdings Pty Ltd
<b>Application for</b>	Extended trading authorisation in relation to a hotel licence
<b>Licence name</b>	Toormina Hotel
<b>Licence number</b>	LIQH400123132
<b>Current trading hours</b>	<u>Consumption on premises</u> Monday to Saturday 5:00 am – 12:00 midnight Sunday 10:00 am – 10:00 pm <u>Take away sales</u> Monday to Saturday 5:00 am – 11:00 pm Sunday 10:00 am – 10:00 pm
<b>Proposed trading hours</b>	<u>Consumption on premises (excl. beer garden and playground)</u> Monday to Saturday 10:00 am – 2:00 am Sunday 10:00 am – 12:00 midnight <u>Consumption on premises (beer garden and playground)</u> Monday to Saturday 10:00 am – 12:00 midnight Sunday 10:00 am – 10:00 pm <u>Take away sales</u> Monday to Saturday 5:00 am – 11:00 pm Sunday 10:00 am – 10:00 pm
<b>Premises</b>	Minorca Place Toormina NSW 2452
<b>Legislation</b>	Sections 3, 11A, 12, 45, 48, 49 and 51 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority  
Application for an extended trading authorisation – Toormina Hotel**

The Independent Liquor & Gaming Authority considered the application above for an extended trading authorisation in relation to Toormina Hotel (LIQH400123132), and decided on 19 June 2019 to **refuse** to grant the authorisation under section 49 of the *Liquor Act 2007*.

A statement of reasons for this decision is attached at the end of this letter.

If you have any questions, please contact the case manager at  
[lucas.ho@liquorandgaming.nsw.gov.au](mailto:lucas.ho@liquorandgaming.nsw.gov.au).

Yours faithfully

Philip Crawford  
Chairperson  
For and on behalf of the Independent Liquor & Gaming Authority

## Statement of reasons

### Decision

1. On 22 November 2018, Northcoast Property Holdings Pty Ltd (“Applicant”) lodged an application (“Application”) with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”). The Application sought the granting of an extended trading authorisation (“Authorisation”) relating to the Applicant’s existing hotel licence for the premises at Minorca Place, Toormina (“Premises”), trading as Toormina Hotel.
2. If granted, the Authorisation would permit the sale and supply of liquor for consumption within the internal area of the Premises during the following extended trading periods:
  - Monday to Saturday: 12 midnight – 2 am
  - Sunday: 10 pm – 12 midnight.
3. The Authority considered the Application at its meeting on 19 June 2019, and decided to refuse to grant the Authorisation under section 49 of the *Liquor Act 2007* (“Act”), on the basis that it could not be satisfied:
  - a) for the purposes of section 48(5) that the overall social impact of granting the Authorisation would not be detrimental to the wellbeing of the local or broader community, or
  - b) for the purposes of section 49(8)(b) that granting the Authorisation would not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the Premises.
4. In reaching this decision, the Authority has had regard to the relevant material before it, and the legislative provisions of the Act and the Liquor Regulation 2018 (“Regulation”).

### Material considered by the Authority

5. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
6. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
7. In accordance with the Authority’s Guideline 6, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
8. A list of the material considered by the Authority is set out in Schedule 1.

### Legislative framework

9. The Authority has considered the Application in the context of the following legislative provisions under the Act:
  - a) Section 3: Statutory objects of the Act and relevant considerations.
  - b) Section 11A: The mandatory 6 hour period during which liquor cannot be sold.
  - c) Section 12: The standard trading period for certain licensed premises, including hotels.
  - d) Section 45: Criteria for granting a liquor licence
  - e) Section 48: Requirements in respect of a CIS.
  - f) Section 49: General provisions in respect of an Authorisation.
  - g) Section 51: General provisions relating to licence-related authorisations.
10. An extract of these sections is set out in Schedule 2.

## **Key findings**

11. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

### Validity, procedural and trading requirements

12. The Authority is satisfied on the material before it that:

- a) the Application has been validly made and meets the procedural requirements under section 51 of the Act and clauses 20 to 29 of the Regulation,
- b) the extended trading periods sought by the Applicant are within the periods which the Authority has the power to grant under section 49(2) of the Act, and
- c) the proposed six hour closure period is consistent with the proposed trading hours and complies with section 11A of the Act.

13. The Authority notes however that the existing take away liquor sales hours shown on the licence document, ending at 11 pm Monday to Saturday, exceed the standard trading period prescribed by section 12(1B) of the Act for take away liquor sales at a hotel, which must end at 10 pm.

14. The Authority therefore considers it appropriate to vary the hotel's trading period for take away liquor sales, so that it ends at 10 pm on all trading days. The Authority notes that this would not have any practical impact on the hotel's operation, as the exemption provision under clause 117 of the Regulation permits take away liquor sales between 10 pm and 11 pm on days other than Sundays and restricted trading days.

### Fit and proper person, responsible service of alcohol, and development consent

15. The Authority is satisfied, pursuant to sections 45(3)(a) and 45(3)(c) of the Act, that:

- a) the Applicant is a fit and proper person to carry on the business to which the proposed Authorisation relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies, and
- b) the requisite development consent permitting the conduct of a hotel business at the Premises with the proposed extended trading period is in force, noting that the relevant consent issued by Coffs Harbour City Council does not impose any restrictions on trading hours.

16. The Authority also accepts, for the purposes of sections 45(3)(b) and 49(8)(a) of the Act and having regard to the Applicant's plan of management, that practices are and will remain in place to facilitate the responsible service of alcohol and prevent intoxication on the Premises.

17. However, the Authority is not satisfied that these practices and the licence conditions consented to by the Applicant are sufficient to ensure, for the purposes of section 49(8)(b) of the Act, that granting the Authorisation would not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the Premises.

18. The Authority's reasons for this consideration are elaborated below as part of the Authority's consideration of the overall social impact of granting the Authorisation.

### Community impact of gambling activities

19. The Authority is satisfied that the CIS meets the minimum requirements of clause 28 of the Regulation in addressing matters relating to gambling activities on the Premises during the proposed extended trading hours.

### Community impact statement

20. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into

consideration the CIS and other available information in making the findings below about the social impact of granting the Authorisation on the local and broader communities.

21. For the purposes of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the suburb of Toormina, and the relevant “broader community” comprises the Local Government Area (“LGA”) of Coffs Harbour.

#### Positive social impacts

22. According to the L&GNSW liquor licensing records dated 20 May 2019, both Toormina and Coffs Harbour LGA have a relatively low density of full hotel licences compared to the NSW state average. The Authority notes that its determination of the Application will have no impact on the density figures.
23. The Premises is the only hotel in Toormina and currently ceases trading by midnight Monday to Saturday and by 10 pm on Sundays. There is one club in Toormina that is authorised to trade after midnight.
24. The proposed Authorisation covers the entire internal area of the Premises, including an entertainment area, TAB, lounge bar, gaming room and restaurant, and occupying some 1700 square metres in total. If the Authorisation is granted, the hotel will be permitted to open for an additional late night trading period of 14 hours per week.
25. Having regard to the above, the Authority accepts the Applicant’s contention that granting the Authorisation would provide members of the local community with increased convenience and additional access to the liquor, gaming and food services offered at the Premises during later hours of the night.
26. The Authority notes, however, that there is insufficient evidence before it to substantiate the extent to which the proposed benefits of granting the Authorisation align with the community’s actual needs and expectations. The Authority notes in particular the absence of any evidence of community support for the Application, and the objections received from local residents, a community organisation and the local police against granting the Authorisation.

#### Negative social impacts


27. In considering the negative social impacts that may be associated with granting the Authorisation, the Authority has had regard to the relevant statistics and stakeholder submissions as discussed below.
28. The BOCSAR crime data for the two years to December 2018 indicates an elevated level of alcohol-related domestic and non-domestic assault, malicious damage to property and alcohol-related disorderly conduct in both Toormina and Coffs Harbour LGA, compared to the NSW state average. For example, the rates of these crimes in Toormina for the year to December 2018 were between 1.5 to 2.3 times the state average.
29. The BOCSAR crime maps for the year to December 2018 further indicate that the Premises was located in a medium density hotspot for incidents of alcohol-related assault, high density hotspot for domestic assault and malicious damage to property, and low density hotspot for non-domestic assault.
30. The most recent HealthStats NSW data before the Authority indicates that Coffs Harbour LGA recorded a higher level of alcohol attributable deaths for the period 2015-16, and a marginally lower level of alcohol attributable hospitalisations for the period 2015-17, compared to the NSW average.
31. The 2016 ABS Census data indicates that Toormina was one of the most disadvantaged suburbs, and Coffs Harbour LGA ranked in the midrange among other LGAs, in NSW on the Index of Relative Socio-economic Advantage and Disadvantage.

32. A submission was received from NSW Police Force (“Police”) stating that it does not support the Application, although it endorses the harm minimisation measures set out in the Applicant’s plan of management. Police notes the prevailing levels of alcohol-related crime in Toormina, contending that there is a foreseeable risk of increased crime around the Premises if the Authorisation is granted. Police also notes that this risk could be mitigated by compliance with the measures set out in the plan of management.
33. Submissions were received from one community organisation, Lifeline North Coast, and two members of the public opposing the granting of the Authorisation. The concerns raised in these submissions include:
- the proximity of the Premises to residential premises,
  - the existing high levels of late night alcohol-related anti-social behaviour in areas around the Premises, including physical violence, loud noises and damage to public and private property,
  - the inadequacy of the hotel’s current harm minimisation measures and staff training to manage late night patron intoxication and disturbances to the amenity of the neighbourhood,
  - the absence of substantive social benefit associated with the proposed late night trading, noting the Applicant’s contention to promote the Premises as a community focal point,
  - the low socio-economic status of the local community, and
  - that granting the Authorisation is not in the best interests of the community and would likely exacerbate the existing alcohol and gambling problems in the community.
34. Roads & Maritime Services made a submission noting that drink driving is a concern for the broader community of Coffs Harbour LGA. On average, 8.5 percent of casualty crashes in the LGA between 2013 and 2017 were alcohol-related, twice the NSW state average of 4.5 percent for the same period. Roads & Maritime Services recommended that additional harm minimisation initiatives be considered if the Application is approved.
35. The L&GNSW Compliance Operations Unit made a submission noting that the Premises has had a number of gaming-related complaints against it (none of which were ultimately substantiated) and several penalty and warning notices in 2018 for gaming-related breaches. The submission also drew the Authority’s attention to an ongoing gaming-related investigation, and suggested that the Authority should be mindful of the potential increase in gambling-related harm associated with increased trading hours.
36. The Applicant has provided reply submissions addressing each of the submissions above.
37. Having regard to the relevant statistics and the submissions received, including the Applicant’s reply submissions, the Authority finds that Toormina and Coffs Harbour LGA are experiencing a high level of alcohol-related harm. The Authority is not persuaded by the Applicant’s contention that alcohol-related domestic assault in Toormina has continued to drop, noting that both Toormina and Coffs Harbour LGA recorded an increase in this category of crime in 2018.
38. The Authority accepts the Applicant’s argument that the Premises is located in a retail and commercial precinct and does not immediately adjoin any residential premises. The Authority nevertheless finds that the Premises is in reasonably close proximity to residential areas, and that the behaviour of patrons leaving the Premises, particularly during later hours of the night, would likely have an impact on the amenity of those areas.
39. Noting the local circumstances and the scope of the proposed Authorisation, the Authority considers that there is a real risk that granting the Authorisation would, over time, contribute to an increase in alcohol-related harm in the community in the form of violence and other social and amenity issues.

40. The Authority also considers that any exacerbation of the already high level of alcohol-related harm experienced in the local and broader communities may be detrimental to the wellbeing of these communities, noting in particular the significant level of socio-economic disadvantages in the local community of Toormina.
41. In the absence of any substantive evidence, the Authority does not accept the Applicant's contention that the older age profile recorded for Toormina (medium age of 44 compared to the NSW average of 38) explains the suburb's low socio-economic status, or could be regarded as a 'protective factor' against anti-social behaviour and problem gambling.
42. The Authority notes and has given weight to the submissions from Lifeline North Coast and L&GNSW Compliance Operations on the existing gambling-related problems in the community, and the risk of increased gambling-related harm associated with granting the Authorisation. The Authority also notes from the information provided by the Applicant that the revenue generated from gaming facilities at the Premises forms a large portion of its income.
43. Accordingly, the Authority accepts that extending the late night trading hours of the Premises may have an adverse social impact on the problem or at-risk gamblers in the community, particularly those with socio-economic disadvantages, by allowing them to engage in gambling activities continuously for a longer period.
44. The Authority accepts the Applicant's claim that the staff members at the Premises are adequately qualified, and that steps have been and will continue to be taken to facilitate the responsible service of alcohol, responsible conduct of gambling and management of patron behaviour. The Authority has also had regard to the Applicant's argument that the Premises had not received any previous complaints from residents, Police or Council, or been subject to any formal disciplinary action.
45. The Authority is, however, not satisfied that the existing and proposed harm minimisation measures will sufficiently mitigate the risk of harm to the community associated with the granting of the Authorisation.
46. The Authority notes the Applicant's contention, in response to the objections received, that the proposed late night trading aims to benefit those shift workers who finish their work late and wish to access the facilities of the Premises thereafter. The Authority considers such social benefits to be limited and outweighed by the adverse community impacts associated with the proposed extended trading period.

#### Overall social impact

47. The relevant test under section 48(5) of the Act requires the Authority to be satisfied that the overall social impact of granting the Authorisation will not be detrimental to the well-being of the local or broader communities.
48. Having considered the positive benefits and negative impacts that are likely to flow from granting the Authorisation, and taking a risk-based approach in accordance with its Guideline 6, the Authority is unable to reach the requisite state of satisfaction.
49. Having regard to the prevailing circumstances of the relevant communities and the nature and scope of the Applicant's proposal, the Authority is also not satisfied that granting the Authorisation will not, as required by section 49(8)(b) of the Act, result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the Premises.
50. Accordingly, the Authority refuses to grant the Authorisation under section 49(2) of the Act.



Philip Crawford  
Chairperson

**Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the Liquor & Gaming website <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

## Schedule 1 – Material before the Authority

1. Development consent issued by Coffs Harbour City Council on 27 February 2015 approving development application no. 0476/15DA in relation to the Premises.
2. ABS SEIFA data based on the 2016 Census indicating that, on the Index of Relative Socio-economic Advantage and Disadvantage for NSW on a scale of 1 to 10, with the 10<sup>th</sup> decile being the most advantaged and 1<sup>st</sup> decile the most disadvantaged:
  - a. Toormina ranked in the 1<sup>st</sup> decile, and
  - b. Coffs Harbour LGA ranked in the 5<sup>th</sup> decile.
3. HealthStats NSW data showing that Coffs Harbour LGA recorded:
  - a. for the period 2015-16, a spatially adjusted rate of 23.4 per 100,000 of the population for alcohol attributable deaths, compared to the NSW rate of 18.1, and
  - b. for the period 2015-17, a spatially adjusted rate of 563.9 per 100,000 of the population for alcohol attributable hospitalisation, compared to the NSW rate of 580.6.
4. Submission from Roads & Maritime Services on 8 October 2018 and 21 March 2019 in relation to the Application.
5. Submission from Aboriginal Affairs, Department of Education, on 10 October 2018 in relation to the Application.
6. Completed application dated 22 November 2018, with relevant notices of application attached.
7. Completed Category B CIS dated 22 November 2018 and relevant supporting documents.
8. Submissions from two members of the public on 24 September, 11 October and 26 November 2018 in relation to the Application.
9. Submission from Lifeline North Coast on 11 December 2018 in relation to the Application.
10. BOCSAR Crime Hotspot Maps for the year to December 2018, indicating the location of the Premises relative to hotspots for incidents of alcohol-related assault, domestic assault, non-domestic assault, and malicious damage to property.
11. NSW crime statistics published by BOCSAR indicating that:
  - a. for the year to December 2017, the rates of:
    - i. alcohol-related domestic assault were 114.9 for NSW, 239.8 for Coffs Harbour LGA, and 189.0 for Toormina,
    - ii. alcohol-related non-domestic assault were 131.6 for NSW, 250.5 for Coffs Harbour LGA, and 126.0 for Toormina,
    - iii. malicious damage to property were 790.6 for NSW, 988.7 for Coffs Harbour LGA, and 1039.7 for Toormina,
    - iv. alcohol-related disorderly conduct were 43.1 for NSW, 72.3 for Coffs Harbour LGA, and 47.3 for Toormina,
  - b. for the year to December 2018, the rates of:
    - i. alcohol-related domestic assault were 116.5 for NSW, 242.5 for Coffs Harbour LGA, and 267.8 for Toormina,
    - ii. alcohol-related non-domestic assault were 123.9 for NSW, 255.9 for Coffs Harbour LGA, and 189.0 for Toormina,
    - iii. malicious damage to property were 755.1 for NSW, 1003.5 for Coffs Harbour LGA, and 1134.2 for Toormina, and
    - iv. alcohol-related disorderly conduct were 37.9 for NSW, 33.5 for Coffs Harbour LGA, and 63.0 for Toormina.
12. NSW Recorded Crime Statistics for the year to December 2018, outlining alcohol-related offences by day of week and time of day in Toormina and Coffs Harbour LGA compared to NSW.



13. NSW Recorded Crime Statistics 2018 outlining the number and proportion of selected offences flagged as alcohol-related in Coffs Harbour LGA compared to NSW.
14. Submission from NSW Police on 8 January 2019 in relation to the Application.
15. Plan of management for the Premises, dated 8 January 2019.
16. Submission from L&GNSW Compliance Operations Unit on 12 March 2019 in relation to the Application.
17. Certifications of advertising dated 19 and 21 March 2019.
18. L&GNSW liquor licensing records as at 20 May 2019 setting out the number and density (in terms of licences per 100,000 persons of the population) of all types of liquor licences in NSW, Coffs Harbour LGA and Toormina. The density of full hotel licences was 27.04 in NSW, 19.2 in Coffs Harbour LGA and 16.15 in Toormina.
19. L&GNSW liquor licensing records as at 20 May 2019 listing all liquor licences in Toormina.
20. L&GNSW liquor licensing records as at 27 May 2019, setting out the key liquor licence details for the Premises.
21. Google map images extracted from the Google website on 27 May 2019, showing the location and photo of the Premises in map view, earth view and street view.
22. L&GNSW Compliance report dated 27 May 2019 in relation to the compliance history of the Premises between 1 July 2008 and 27 May 2019.
23. Correspondence between L&GNSW staff and the Applicant's legal representative between 5 December 2018 and 18 June 2019 in relation to the assessment of the Application and the submissions received.
24. Floor plan for the Premises, setting out the boundaries of the licensed area and proposed areas the subject of the Authorisation.

## Schedule 2 – Relevant extracts from the *Liquor Act 2007*

### 3 Objects of Act

- (1) The objects of this Act are as follows:
  - (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
  - (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
  - (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
  - (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
  - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
  - (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

### 11A Special licence condition—6-hour closure period for licensed premises

- (1) This section applies in relation to:
  - (a) any licence granted on or after 30 October 2008, and
  - (b) any licence in force before that date, but only if an extended trading authorisation granted on or after that date is in force in relation to the licensed premises concerned.
- (2) A licence to which this section applies is subject to the condition that liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours (as determined in accordance with this section) during each consecutive period of 24 hours (the 6-hour closure period).
- (3) Except as provided by subsection (4), the 6-hour closure period for any particular licensed premises is the period that is approved for the time being by the Authority.
- (4) In the case of a licence:
  - (a) granted on or after 30 October 2008 but before the date on which this section (as inserted by the Liquor Legislation Amendment Act 2008) commenced, or
  - (b) granted by the Local Court (as provided by clause 25 of Schedule 1) at any time after the date on which this section commenced,the 6-hour closure period for the licensed premises is, subject to subsection (5), the period from 4 am to 10 am.
- (5) The Authority may at any time, on application by the licensee or by the Secretary or the Commissioner of Police, or on its own initiative, approve of licensed premises having a different 6-hour closure period than:
  - (a) the period as last approved by the Authority, or
  - (b) the period specified in subsection (4).
- (6) Any such application by the licensee must be accompanied by the fee prescribed by the regulations.
- (7) To avoid doubt, during the 6-hour closure period for any licensed premises:
  - (a) the licensed premises are not authorised to stay open for the retail sale of liquor on the premises, and
  - (b) the licensee is not authorised to sell liquor by retail for consumption away from the licensed premises.
- (8) This section has effect despite any other provision of this Act (in particular, those provisions relating to the standard trading period for licensed premises).
- (9) This section does not, however, apply to the sale or supply of liquor to a resident of licensed premises if the liquor is sold or supplied for consumption in the room in which the resident is residing or staying.
- (10) The regulations may also create exceptions to this section.

### 12 Standard trading period for certain licensed premises

- (1) For the purposes of this Act, the standard trading period means:
  - (a) for any day of the week other than a Sunday:
    - (i) the period from 5 am to midnight, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed, and
  - (b) for a Sunday:
    - (i) the period from 10 am to 10 pm, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed.
- (1A) Despite subsection (1), the standard trading period for a small bar is the period from noon to midnight on any day of the week.

**Note.** Small bars are subject to the 6-hour closure period under section 11A.

- (1B) Despite subsection (1) (a), the standard trading period for premises to which this subsection applies ends at 10 pm.
- (1C) Subsection (1B) applies to the following premises or part of premises:
- (a) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is the sale or supply of liquor for consumption away from the licensed premises—the licensed premises,
  - (b) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is not the sale or supply of liquor for consumption away from the licensed premises—the part of the premises that is a liquor sales area (within the meaning of section 30) of the licensed premises,
  - (c) if a hotel licence, club licence, on-premises licence or producer/wholesaler licence authorises the licensee to sell liquor for consumption away from the licensed premises—any part of the licensed premises to the extent that it is used for that purpose.
- (2) Any regulation that prescribes a shorter period for the purposes of subsection (1) may:
- (a) apply to a specified class of licensed premises, and
  - (b) apply in relation to a specified day or days, and
  - (c) in the case of licensed premises on which liquor may be sold or supplied for consumption on the premises as well as for consumption away from the premises—specify different periods for the sale or supply of liquor for consumption on the premises and for the sale or supply of liquor for consumption away from the premises.
- (3) Without limiting subsection (2) (a), a class of licensed premises may be specified by reference to licensed premises that are located in a particular area (however described).

#### 45 Decision of Authority in relation to licence applications

- (1) The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (2) The Authority may, in such circumstances as the Authority considers appropriate, treat an application for a licence as having been withdrawn.
- (3) The Authority must not grant a licence unless the Authority is satisfied that:
  - (a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and
  - (b) practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and
  - (c) if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) 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.

**Note.** Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.
- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.
- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
  - (a) that the person:
    - (i) is a member of, or
    - (ii) is a close associate of, or
    - (iii) regularly associates with one or more members of,
 

a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and
  - (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.
- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
  - (a) is of good repute, having regard to character, honesty and integrity, and
  - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.

## 48 Community impact

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
- (a) the views of the local community, and
  - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
- (2) In this section:
- relevant application** means any of the following:
- (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
  - (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),
  - (e) an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),
  - (f) any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,
  - (g) any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,
- but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).
- (3) A relevant application must be accompanied by a community impact statement.
- (3A) However, a small bar application is not required to be accompanied by a community impact statement if:
- (a) development consent is required under the Environmental Planning and Assessment Act 1979 to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
  - (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.
- (3B) For the purposes of subsection (3A), a **small bar application** means any of the following:
- (a) an application for a small bar licence,
  - (b) an application for approval to remove a small bar licence to other premises,
  - (c) an application for an extended trading authorisation for a small bar,
  - (d) an application to vary an extended trading authorisation for a small bar.
- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:
- (a) the application relates to the same premises as the premises to which a general bar licence relates, and
  - (b) development consent has been obtained under the Environmental Planning and Assessment Act 1979 to sell liquor during the times to which the application relates and those times are specified in the development consent.
- (3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:
- (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
  - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the Registered Clubs Act 1976.
- (4) The community impact statement must:
- (a) be prepared in accordance with the regulations and any requirements of the Authority, and
  - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
- (a) the community impact statement provided with the application, and
  - (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),
- that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.
- (6) The regulations may make provision for or with respect to the following:

- (a) the requirements that must be satisfied in relation to the preparation of a community impact statement (including consultation requirements),
  - (b) the matters to be addressed by a community impact statement,
  - (c) the information to be provided in a community impact statement,
  - (d) the criteria for determining the local and broader community for the purposes of a relevant application,
  - (e) any other matter relating to the preparation and content of a community impact statement.
- (7) Without limiting subsection (6), the regulations may provide that the matters to be addressed by a community impact statement are, in the case of an application for an extended trading authorisation in relation to a hotel licence, to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.

## **49 Extended trading authorisation—general provisions**

### **(1) Application of section**

This section applies in relation to the following types of licences (referred to in this section as a relevant licence):

- (a) a hotel licence,
- (b) a club licence,
- (c) an on-premises licence (other than an on-premises licence that relates to a vessel),
- (d) a packaged liquor licence,
- (e) a producer/wholesaler licence.

### **(2) Extended trading authorisation for consumption on premises**

In the case of a relevant licence (other than a packaged liquor licence) that authorises the sale or supply of liquor for consumption on the licensed premises, the Authority may, on application by the licensee, authorise the licensee to sell or supply liquor, for consumption on the licensed premises only, during any of the following periods:

- (a) in the case of a hotel licence—a specified period between midnight (other than midnight on a Sunday) and 5 am on any day of the week (other than a Monday),
- (b) in the case of a relevant licence other than a hotel licence—a specified period between midnight and 5 am on any day of the week,
- (c) in any case—a specified period between 5 am and 10 am on a Sunday,
- (d) in any case—a specified period between 10 pm and midnight on a Sunday.

- (2A) Without limiting subsection (2), the Authority may, in the case of an on-premises licence, authorise the licensee, on application by the licensee, to sell or supply liquor for consumption on the licensed premises during any of the following periods:

- (a) a specified period between 5 am and noon on a restricted trading day,
- (b) a specified period between 10 pm and midnight on a restricted trading day.

**Note.** The sale of liquor at these times is subject to the requirement that a meal is also served—see section 25 (3).

- (3) Despite subsection (2) (a), the Authority may, in the case of a hotel:

- (a) situated in the area constituting the City of Sydney (as at 1 July 1994), or
- (b) situated in the Kings Cross precinct, or
- (b1) situated in the area including and bounded by the parts of streets specified in Schedule 3 (Oxford Street–Darlinghurst precinct) or that fronts or backs onto, or abuts, any such specified part, or
- (c) situated in the Kosciuszko National Park,

authorise the licensee, on application by the licensee, to sell or supply liquor, for consumption on the licensed premises only, during a specified period between midnight on a Sunday and 5 am on a Monday.

### **(4) Extended trading authorisation for take-away sales on Sundays**

In the case of a relevant licence (including a packaged liquor licence) that authorises the sale or supply of liquor for consumption away from the licensed premises, the Authority may, on application by the licensee, authorise the licensee to sell or supply liquor, for consumption away from the licensed premises only, during either or both of the following:

- (a) a specified period between 5 am and 10 am on a Sunday,
- (b) (Repealed)

### **(5) Nature of extended trading authorisation**

An extended trading authorisation operates to authorise the sale or supply of liquor on the licensed premises:

- (a) on a regular basis (until such time as the authorisation is varied or revoked by the Authority), or
- (b) if the authorisation so provides—on a special occasion that takes place on a specified date, or
- (c) if the authorisation so provides—on up to 12 separate occasions in any period of 12 months.

- (5A) Despite subsection (2) (a), the Authority may, in the case of a hotel licence, authorise the licensee, on application by the licensee, to sell or supply liquor for consumption on the licensed premises during a specified period between midnight on a Sunday and 5 am on a Monday, but only on or in connection with a special occasion that takes place on a specified date.

- (6) Extended trading period to be specified In granting an extended trading authorisation, the Authority is to specify:
- (a) the extended trading hours during which the licensee is authorised to sell or supply liquor, and
  - (b) the part or parts of the licensed premises to which the authorisation applies.
- (7) **Extended trading not permitted on or in relation to restricted trading days—hotels and licensed public entertainment venues**
- Despite any other provision of this section, an extended trading authorisation cannot, in the case of a hotel licence or an on-premises licence that relates to a public entertainment venue (other than a cinema or a theatre), be granted to authorise the sale or supply of liquor for consumption on the licensed premises during any of the following periods:
- (a) between 5 am and noon on a restricted trading day,
  - (b) between 10 pm and midnight on a restricted trading day,
  - (c) between midnight and 5 am on any day immediately following a restricted trading day.
- (8) **Restrictions on granting extended trading authorisation**
- The Authority must not grant an extended trading authorisation in respect of licensed premises unless the Authority is satisfied that:
- (a) practices are in place, and will remain in place, at the licensed premises that ensure as far as reasonably practicable that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and
  - (b) the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.
- (9) For the purposes of this section, a special occasion means the occasion of a unique or infrequent event of local, State or national significance that persons independent of the licensee (and of the owner or occupier of the premises) desire to celebrate or mark on the licensed premises concerned.

## **51 General provisions relating to licence-related authorisations**

- (1) This section applies to the following authorisations granted by the Authority under this Act:
- (a) an extended trading authorisation,
  - (b) a drink on-premises authorisation,
  - (c) any other authorisation that may be granted by the Authority under Part 3 (other than a licence),
  - (d) a minors area authorisation,
  - (e) a minors functions authorisation.
- (2) An application for an authorisation to which this section applies must:
- (a) be in the form and manner approved by the Authority (or, in the case of an application for an extended trading authorisation for a small bar, by the Secretary), and
  - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
  - (c) if required by the regulations to be advertised—be advertised in accordance with the regulations, and
  - (d) comply with such other requirements as may be approved by the Authority (or, in the case of an application for an extended trading authorisation for a small bar, by the Secretary) or prescribed by the regulations.
- (3) In determining an application for an authorisation, the Authority has the same powers in relation to the application as the Authority has in relation to an application for a licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (4) If, before an application for an authorisation is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including information provided under this subsection), the applicant must immediately notify the Authority of the particulars of the change.
- (5) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application for an authorisation.
- (6) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to grant the authorisation.
- (7) The regulations may prescribe, or provide for the determination of, a fee in respect of the granting of an authorisation. If any such fee is prescribed or determined, the authorisation does not take effect unless the fee has been paid.
- (8) The Authority may, in granting an authorisation, specify requirements that are to be complied with before the authorisation takes effect. The authorisation does not take effect until such time as any such requirements have been complied with.
- (9) An authorisation:
- (a) is subject to such conditions:
    - (i) as are imposed by the Authority (whether at the time the authorisation is granted or at a later time), or
    - (ii) as are imposed by or under this Act or as are prescribed by the regulations, and
  - (b) may be varied or revoked by the Authority on the Authority's own initiative or on application by the licensee, the Secretary or the Commissioner of Police.

- (10) Any such application by a licensee to vary or revoke an authorisation (including any conditions to which the authorisation is subject that have been imposed by the Authority) must be accompanied by the fee prescribed by the regulations.
- (11) For the purposes of this Act, any condition to which an authorisation is subject is taken to be a condition of the licence to which the authorisation relates.
- (12) An authorisation has effect only while all the conditions to which it is subject are being complied with.
- (13) The Authority must not impose a condition on an authorisation, or revoke or vary an authorisation, other than a variation made on application by a licensee, unless the Authority has:
  - (a) given the licensee to whom the authorisation relates a reasonable opportunity to make submissions in relation to the proposed decision, and
  - (b) taken any such submissions into consideration before making the decision.
- (14) This section does not authorise the revocation or variation of a condition to which an authorisation is subject if the condition is imposed by this Act or is prescribed by the regulations.