



Ms Fiona Myatt

AMW Lawyers

By email to: [FMyatt@amwlawyers.com.au](mailto:FMyatt@amwlawyers.com.au)

22 November 2023

Dear Ms Myatt

<b>Application No.</b>	1-8384672801
<b>Applicant</b>	Kofuki Pty Ltd
<b>Application for</b>	Hotel (full) licence - new extended trading authorisation (ETA)
<b>Licence name</b>	Winmalee Tavern
<b>Licence number</b>	LIQH400106904
<b>Current trading hours</b>	<b>Consumption on premises</b> Monday to Saturday 5:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM <b>Takeaway</b> Monday to Saturday 5:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM
<b>Proposed trading hours</b>	<b>Consumption on premises</b> Monday to Saturday 10:00 AM – 1:30 AM Sunday 10:00 AM – 10:00 PM <b>Takeaway</b> Monday to Saturday 10:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM
<b>Premises</b>	30 White Cross Road Winmalee NSW 2777
<b>Legislation</b>	Sections 3, 11, 12, 14, 15, 40, 44, 45, 48, 49 and 121 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority**  
**Application for a Hotel (full) licence -**  
**new extended trading authorisation (ETA) – Winmalee Tavern**

The Independent Liquor & Gaming Authority (Authority) considered the application above and decided on 17 May 2023 to **refuse** the application pursuant to section 49 of the *Liquor Act 2007*.

**Statement of reasons**

Overall, we are concerned that approving the application is likely to be detrimental to the well-being of the local and broader community.

Whilst recognising the proposed trading hours for the Premises meet the requirements under sections 11A, 12 and 14 of the Act in respect of trading and 6-hour closure periods, we believe that the proposed additional 9 hours per week of after midnight trade would, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues.

The venue is located in a residential area, and we are concerned about the potential frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises. Whilst recognising the updated liquor and gaming plan of management, we are not satisfied that measures in the plan mitigate the risk of harm in the local and broader communities.

## **Our findings**

### **Procedural requirements**

We are satisfied that:

- the application is valid and meets the Act's requirements for procedural fairness
- the proposed trading hours for the Premises meet the requirements under sections 11A, 12 and 14 of the Act in respect of trading and 6-hour closure periods
- the Community Impact Statement (CIS) meets the relevant requirements

### **'Fit and proper person'**

The applicant is a 'fit and proper person' to operate the business to which the proposed licence relates.

### **Responsible service of alcohol**

Procedures for the responsible service of alcohol are in place at the premises from the start of the current licensed trading, under the plan of management and the conditions on the licence. The applicant advised that responsible service of alcohol procedures would continue during the proposed trading hours.

### **Development consent requirements**

The necessary development consent is in force. Blue Mountains City Council approved the development application, Reference X/216/2013, for the premises on 27 June 2013.

### **Community impact**

#### *Local and broader communities*

The relevant 'local community' is the community in the suburb of Winmalee, and the relevant 'broader community' comprises the Local Government Area of Blue Mountains.

#### *Diversity and density of licensed outlets*

L&GNSW Liquor & Gaming LiveData Report for Winmalee shows that although saturation of Hotel (full) licences and licences authorised to sell packaged liquor is lower in Winmalee compared to the Blue Mountains LGA and lower compared to all of NSW, there are 3 authorised liquor licenses; all are authorised to sell packaged liquor. This includes two packaged liquor licenses and one full hotel licence.

#### *ABS Socio-Economic Index for Areas (SEIFA)*

Winmalee and the Blue Mountains LGA are ranked as relatively advantaged in terms of household income and residents in skilled occupations compared to other suburbs and LGAs in NSW.

### **Business model**

We note that the primary purpose of the existing licence is the retail sale of liquor on the licensed premises for consumption on and away from the licensed premises. The class of licence is appropriate to the existing business model.

### **Benefits proposed by applicant**

The applicant proposes that there would be these benefits:

- Increased convenience as there is no other late trading venues existing in the suburb

- Experienced operator in hotel management
- Extended hours are sought to meet the needs of patrons who wish to visit a comprehensive family friendly licensed premises in a highly accessible and convenient location within an existing local centre
- Extended trading hours would remove the need for patrons who want to continue socialising to have to travel reasonable distances to other venues which are open later with the associated concerns of such movement including disturbing neighbourhoods and drink driving

We believe that these proposed benefits are limited by the lack of concrete evidence of community support for the application. We were not persuaded that extended trading hours would meet the needs of the wider local community.

### Stakeholder submissions

We considered the submissions from:

- *NSW Police*, dated
  - 13 April 2023, which notes that there were nil adverse findings on the newly appointed manager.
  - 30 August 2023 and 21 September 2022, which note concerns in relation to previous assault incidents relating to the venue as well as a number of driving under influence incidents within the vicinity of the hotel. The lack of community consultation was also noted with police conducting a dip sample of persons / groups notified during the application process.
- *Local Council*, dated 4 October 2022, which notes the potential adverse impacts of extending hours regarding noise and amenity impacts to neighbours. There are no council records that note trading hours.
- *L&GNSW Compliance* noted nil adverse findings on the newly appointed manager on 11 April 2023. It was earlier noted, dated 29 September 2022, that there are nil adverse findings on the license, that the liquor plan of management requires amendments and that the applicant should further engage with affected stakeholders.
- *Gaming L&GNSW*, dated 16 March 2023, which notes that the Gaming Plan of Management requires updates.
- 6 Submissions were received by members of the public between 14 September and 23 September 2022. The common themes in those submissions were concerns about increased noise in the neighbourhood and the potential anti-social behaviour in the area. Three submissions also noted that no notification of application was received.

We also considered the Applicant's submission in response, to these submissions, which notes that :

- the applicant rebuts the claims that the notification of the application was not completed correctly and states that all advertising requirements were complied with.
- despite mentioned incidents by NSW Police, the Winmalee Tavern has a history of being a family-friendly establishment and has not recorded any assaults on its premises for many years
- an amended liquor plan of management and Gaming Plan of Management was provided
- development approval issued by council does not restrict the trading hours for the hotel and therefore the hotel has no restrictions on it in relation to the permitted trading hours
- several measures to ensure the quiet and good order of the neighbourhood is not disturbed and to ensure there is no anti-social behaviour around the hotel

- the applicant has consented to the amended CCTV and complaint register condition to be imposed on the licence

### **Findings of concern**

We are concerned that if the application were granted it may increase the harm associated with the misuse and abuse of gaming activities or fail to facilitate the balanced development, in the public interest, of the hospitality industry due to:

- being situated in a residential area
- the incident rate of malicious damage to property in the LGA is higher than the NSW rate
- the application proposing an additional nine hours per week of trade past 12:00 midnight, increasing the gaming availability at the venue
- gaming intensity at the venue being higher than comparable venues in the LGA and NSW

The risks may be mitigated by the:

- the rate across all crime categories usually considered by the Authority in the suburb is lower than the NSW rate, while alcohol-related assault (domestic and non-domestic) as well as alcohol-related disorderly conduct is lower in the LGA compared to NSW
- low licence saturation with the venue being the only hotel in the suburb
- data indicating that both the suburb and LGA are above average for relative socio-economic advantage
- venue is located in a Band 1 SA2 (low risk) area
- harm minimisation measures outlined in the liquor plan of management

### **The material we considered**

We considered all the material we received about the application, including:

#### **Application Material**

- completed application dated 24 August 2022
- completed Category B Community Impact Statement (CIS) dated 25 July 2022
- completed certification of advertising dated 9 October 2022
- plan of management documents for the premises, titled Winmalee Tavern Hotel Management Plan and dated February 2023
- Gaming Plan of Management, titled Gaming Plan of Management Winmalee Tavern Hotel and dated March 2023
- ASIC business records for the Applicant and associated companies
- floor plan for the premises, dated 22 October 2020, indicating the proposed licensed area to which the ETA will apply.

Under [Guideline 6](#), we also considered: data published by Bureau of Crime Statistics and Research (BOCSAR), NSW Department of Health and Australian Bureau of Statistics (ABS), and relevant L&GNSW liquor licensing records.

#### **Submissions**

- submission from NSW Police Force, dated 13 April 2023, 30 August 2022 and 21 September 2022
- submission from Local Council, dated 4 October 2022
- submission from L&GNSW Compliance, dated 11 April 2023 and 29 September 2022
- submission from L&GNSW Gaming, dated 16 March 2023
- Public submissions between 14 September 2022 and 23 September

#### Other relevant material

- correspondence between L&GNSW staff and the applicant between 7 September 2022 and 1 May 2023 in relation to the assessment of the Application
- Google map images extracted from the Google website showing the location and photos of the Premises in map view.

#### The law that applies

These sections of the *Liquor Act 2007* apply to this application:

- Section 3: Statutory objects of the Act and other relevant considerations
- Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold
- Sections 14 and 15: Specific provisions in respect of a hotel licence
- Section 40: Minimum procedural requirements for a liquor licence application to be validly made
- Section 44: Submissions to Authority in relation to licence applications
- Section 45: Criteria for granting a liquor licence
- Section 48: Requirements in respect of a CIS, including a requirement that the Authority must not approve the application unless it is satisfied, having regard to the CIS and other available information, that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community
- Section 49: General provisions in respect of ETAs
- Section 121: Minors in hotels in company of responsible adult

We also considered [Guideline 6](#) to assess the likely social impact to the local and broader community.

This decision will be published on the [Liquor & Gaming NSW website](#) in accordance with section 36C of the *Gaming and Liquor Administration Act 2007*.

#### If you're not happy with this decision

If the applicant, or a person who was notified of the application and made a submission, is unhappy with this decision, they may apply to [NCAT](#) for a review of the decision.

An application for review must be made no later 28 days after being notified that the decision is published on the [Liquor & Gaming NSW website](#). There is a fee to lodge the application.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney or visit the [NCAT website](#).

#### If you have any questions

Please contact the case manager, Glenn Barry, at [Glenn.Barry@liquorandgaming.nsw.gov.au](mailto:Glenn.Barry@liquorandgaming.nsw.gov.au) if you have any questions.

Yours sincerely



Sarah Dinning

**Deputy Chairperson**

For and on behalf of the **Independent Liquor & Gaming Authority**