



# Independent Liquor & Gaming Authority

A statutory board established under the *Gaming and Liquor Administration Act 2007*

Mr George Smith  
Design Collaborative  
[georgesmith@designcollaborative.com.au](mailto:georgesmith@designcollaborative.com.au)

21 May 2020

Dear Mr Smith,

<b>Application No.</b>	1-7143209088
<b>Applicant</b>	Mr Dipak Niraula
<b>Application for</b>	Variation to an extended trading authorisation
<b>Licence name</b>	Penshurst Hotel
<b>Licence number</b>	LIQH400104677
<b>Current trading hours</b>	<u>Consumption on premises – Whole of the licensed premises excluding the bottle shop</u> 5:00 am to 2:00 am Monday to Saturday 10:00 am to 12:00 midnight Sunday
	<u>Take away sales</u> 5:00 am to 12:00 midnight Monday to Saturday 10:00 am to 12:00 midnight Sunday
<b>Proposed trading hours</b>	<u>Consumption on premises – Lounge bar and gaming room</u> 5:00 am to 4:00 am Monday to Saturday 10:00 am to 12:00 midnight Sunday
	<u>Consumption on premises – Function room and public bar</u> 5:00 am to 2:00 am Monday to Saturday 10:00 am to 12:00 midnight Sunday
	<u>Take away sales</u> 5:00 am to 10:00 pm Monday to Saturday 10:00 am to 10:00 pm Sunday
<b>Premises</b>	Victoria Avenue and Penshurst Street Penshurst NSW 2222
<b>Legislation</b>	Sections 3, 11A, 12, 14-17, 48, 49 and 51 of the <i>Liquor Act 2007</i> (NSW)

## Decision of the Independent Liquor and Gaming Authority Application to vary an extended trading authorisation – Penshurst Hotel

At its meeting of 14 August 2019, the Independent Liquor and Gaming Authority (“Authority”) considered the application made by Mr Dipak Niraula to vary an existing extended trading authorisation attaching to the full hotel licence number LIQH400104677 trading as Penshurst Hotel.

The Authority decided, pursuant to section 51(9)(b) of the *Liquor Act 2007*, to **refuse** the application.

If you have any questions, please contact the case manager Mr Lucas Ho via email to [lucas.ho@liquorandgaming.nsw.gov.au](mailto:lucas.ho@liquorandgaming.nsw.gov.au).

Yours faithfully

A handwritten signature in blue ink, appearing to read "Philip Crawford".

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

## **Statement of reasons**

### **Decision**

1. On 8 January 2019, the Independent Liquor and Gaming Authority (“the Authority”) received from Mr Dipak Niraula (“Applicant”), through Liquor and Gaming New South Wales (“LGNSW”), an application (“Application”) to vary an existing extended trading authorisation (“ETA”). The Applicant is the licensee of full hotel licensed premises with licence number LIQH400104677 located at Victoria Avenue and Penshurst Street, Penshurst New South Wales (“NSW”) 2222 (“Premises”), trading as the Penshurst Hotel (“Hotel”).
2. The Authority notes that the ETA currently in place permits licensed trading beyond the standard trading period prescribed for a hotel under section 12 of the *Liquor Act 2007* (NSW) (“Act”). The Hotel’s current licensed hours are from 5:00 am to 2:00 am on Monday through Saturday and from 10:00 am to 12:00 Midnight on Sunday in respect of the sale or supply of liquor for consumption on the Premises. The ETA applies to the whole of the Premises, save for the bottle shop.
3. In this Application, the Applicant seeks to vary the ETA and increase the trading hours with the result that the Hotel would be licensed to sell or supply liquor for consumption on the Premises from 5:00 am to 4:00 am on Monday through Saturday, but in respect of the lounge bar and gaming room areas only. The existing extended hours would remain in respect of the function room and public bar areas.
4. At its meeting on 14 August 2019, the Authority decided, pursuant to section 51(9)(b) of the Act, to refuse the Application by reason that the Authority was not satisfied that the further extension of late trading was in the public interest.
5. In determining the Application, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 14 - 17, 48, 49 and 51 of the Act and relevant provisions of the *Liquor Regulation 2018* (NSW) (“Regulation”).

### **Material considered by the Authority**

6. The Authority notes that at the time of making this Application, the published application form AM0020H required that an application to vary an ETA for a hotel be accompanied by a Category B Community Impact Statement (“CIS”). The Authority has considered the Application, accompanying CIS, and all submissions received in relation to the Application.
7. 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.
8. In accordance with its *Guideline 6*, the Authority has also had regard to relevant LGNSW liquor licensing records and data published by the Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health and the Australian Bureau of Statistics (“ABS”).
9. A list of the material before the Authority is set out in Schedule 1.

### **Legislative framework**

10. The Authority has considered the Application in accordance with the following provisions of the Act:

- (a) Section 3: Statutory objects of the Act and relevant considerations.
- (b) Section 11A: 6-hour closure period.
- (c) Section 12: Standard trading period.
- (d) Sections 14-17: Specific provisions in respect of a hotel licence.
- (e) Section 48: Requirements in respect of a CIS.
- (f) Section 49: General provisions in respect of an ETA.
- (g) Section 51: General provisions relating to licence-related authorisations.

11. An extract of these sections is set out in Schedule 2.

### **Key findings**

12. Having regard to the information before it and the relevant legislative requirements, the Authority makes the following findings on the Application.

#### Validity, procedural and trading hour requirements

- 13. The Authority notes an inconsistency between the hours sought, as specified in the Application Form and accompanying notices (being 5:00 am to 4:00 am Monday to Saturday) and the information provided in the CIS (which specified 5:00 am to 4:00 am Monday to Friday). The Authority has not needed to consider whether this potentially misleading information should affect the scope of extended hours that may be granted by reason that the Application has been refused in its entirety.
- 14. The Authority notes that the hours sought otherwise fall within the scope of licensed hours that may potentially be granted to a hotel, having regard to sections 11A, 12, 14 and 49 of the Act. Notably, since the licence and existing ETA were granted prior to 30 October 2008, the Premises is *not* subject to a 6-hour liquor cessation period and would not become so should this Application be granted.

#### Community impact statement

- 15. For the purposes of this decision and consistent with Authority *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Penshurst and the relevant “broader community” comprises the local government area (“LGA”) of Georges River (“Georges River LGA”).

#### Public Interest Test

- 16. On the basis of all the information before it, the Authority is *not* satisfied that extending the late trading hours as sought in the Application is in the public interest, having regard to the objects and considerations specified by section 3 of the Act.

#### *Section 3(1)(a) of the Act – community expectations, needs and aspirations*

- 17. The Authority notes that the Hotel’s trading hours are already extensive across the course of the week, applying to all of the Premises (excluding the bottle shop). This provides a substantial opportunity for the sale or supply of liquor, gambling or other hospitality goods and services to the community that is served by this Hotel.
- 18. In this context, expanding the trading hours from 2:00 am to 4:00 am in respect of the lounge bar and gaming room could *potentially* advance, to only a modest extent, the statutory object in section 3(1)(a) of the Act of regulating the sale, supply and

consumption of liquor in a way that is consistent with the expectations needs and aspirations of the community.

19. The Applicant contends in the CIS that extending the hours as proposed will allow “the small numbers who work shifts or the like or who enjoy staying out late at the Hotel to do so”. The Applicant further contends that some patrons have told the Applicant that they would “like to be able to stay longer” with others having stated that they “go to hotels in adjoining suburbs which stay open later”. The Applicant also contends that the Hotel’s busiest trading times are on Thursday and Friday “about the close of ordinary business hours”.
20. The Applicant contends that they counted the number of patrons in the Hotel on each night from Monday to Saturday, from 8:00 pm to 2:00 am during a 14-week period between August and November 2018. The Authority notes however, that Annexure 4 to the CIS only provides a head count for Wednesday to Saturday.
21. The Authority accepts the submission in the CIS that the number of patrons declined as each hour passed, with the highest number counted at 2:00 am being 23 on a Saturday night/Sunday morning. The highest number of patrons counted was 151 at 8:00 pm on a Saturday when the Hotel hosted a function.
22. This head count provides some information as to the extent of patrons utilising the Hotel’s facilities at 2:00 am. However, there are a number of days where the Hotel recorded a count of 0 patrons utilising the Hotel across the bar, bistro and gaming areas at 2:00 am. This head count data does not provide any indication of the employment type, demographic status or residence of patrons on the Premises during these times. It simply records the number of patrons counted in the bar, bistro and gaming areas of the Hotel. This limits the weight that can be given to the contended benefit of meeting the expectations of local community shift workers.
23. While the Authority accepts that opening until 4:00 am may afford some limited further opportunity for persons in the community served by this Hotel (primarily Penshurst, but also likely to be neighbouring suburbs) to enjoy licensed entertainment, the Authority is not persuaded that granting the Application would advance community expectations, needs and aspirations to any great extent.
24. When assessing the expectations of the relevant community as a whole, no submissions were received in support of the Application yet six submissions were received from local residents/business owners objecting to the Application. One of those submitters advised that they had obtained a petition signed by some 170 people opposing the Application. However, the Authority notes that it has before it a petition bearing the names and address of persons who almost entirely live in Penshurst, with 28 signatures and a further typed document of 80 names and addresses.
25. The Authority finds that the existing licensed trading hours (some 140 hours per week) provide ample opportunity to serve community expectations. Moreover, this Application runs counter to the expectations of a significant body of Penshurst residents.

*Section 3(1)(b) of the Act – balanced development of the liquor industry*

26. The Authority notes that the focus of this statutory object is not *any* development of the relevant liquor industry, but the *balanced* development of the industry.

27. As noted above, the Hotel already has extensive licensed trading hours across the week. The Authority is satisfied that maintaining those hours, rather than expanding them until very late in the morning presents a more *balanced* outcome in terms of the development of the local liquor industry.
28. The Applicant submits in the CIS that granting the Application will bring the Hotel's hours of trade into line with those of nearby hotels including the Meridian Hotel, Tiger Bar Hotel and Ritz Hotel in Hurstville, the Beverly Hills Hotel, the Riverwood Hotel and the Mortdale Hotel, some of which can trade continuously from 5:00 am Monday until 5:00 am Sunday.
29. The Authority notes that LGNSW licensed premises information as at 9 July 2019 indicates that there are 11 licensed premises in the suburb of Penshurst, with 1 full hotel licensed venue (the subject of this Application) and 1 registered club, the Penshurst RSL. The Authority accepts the information in the CIS that the Penshurst RSL is licensed to trade until 3:00 am on Sunday to Thursday and 4:00 am on Friday and Saturday.
30. The Authority does not accept the proposition that maximising the licensed trading hours of a hotel, to accord with other licensed venues in this suburb or neighbouring areas, equates to the "balanced" development of the liquor industry in what is a primarily residential suburb. Comparisons with the extensive hours of the local registered club are not of great assistance, since clubs are primarily community based rather than for profit enterprises whose licensed hours were (in the case of clubs established prior to the commencement of the current Act) not limited with respect to their on premises trading hours.
31. The Applicant has provided little in the Application and CIS to establish any particular point of difference in respect of other mainstream hotels and clubs in the services to be offered at this venue during the very late hours proposed. The Authority does not accept that extending the hours of this venue represents the preferable decision with respect to the "balanced" development of the local liquor industry.

*Section 3(1)(c) of the Act – responsible development of related industries*

32. On the information before it, the Applicant has not established how extending licensed trading between 2:00 am and 4:00 am on Monday through Saturday would, to any significant degree, contribute to the *responsible* development of related industries such as the live music, entertainment, tourism and hospitality industries per the object in section 3(1)(c) of the Act.
33. Of the range of services potentially available, the Authority would not expect bistro services to be operating well beyond peak dining hours in a suburban hotel. In the CIS, the Applicant confirms that its bistro provides pub-style meals between noon and 3:00 pm on Wednesday to Sunday and between 5:00 pm and 9:00 pm every day, but concedes that at "all other times" the food offering is limited to "bar snacks".
34. Noting that this variation of the ETA will only apply to the lounge bar and gaming room areas of the Hotel, a significant focus of this Application is the further extension of gambling services during very late hours of the morning. The Hotel already has a gaming machine threshold of 28 with 27 gaming machine entitlements and 1 poker machine permit. That is, the venue is operating just below the maximum threshold of 30 permitted by section 11 of the *Gaming Machines Act 2001 (NSW)* ("GMA")

35. As recorded on the Hotel's OneGov licence at 10 July 2019, the venue has the standard gaming machine shutdown period under section 39 of the GMA from 4:00 am to 10:00 am. While the Hotel only elects to open from 10:00 am, it is nevertheless licensed to operate gaming machines some 110 hours per week.
36. Should the Application be granted, these 28 gaming machines will be able to operate for an additional 2 hours per day from Monday to Saturday, that is, an additional 12 hours per week. This means that the Hotel will be capable of selling liquor for some 152 hours per week [if the Hotel chooses to open from 5:00 am] and providing gaming machine operations for some 122 hours per week.
37. The Authority considers gaming machines to be a relevant "related industry" requiring consideration for the purposes of the statutory object in section 3(1)(c) of the Act.
38. The hotel's gaming machine operations are a focus of submissions from the Applicant. The Authority accepts the Applicant's contentions in the CIS, that:
  - The Hotel has had gaming machines for many years and has provided that form of entertainment with no apparent adverse issues.
  - The Hotel ranks 306<sup>th</sup> in the most recent rankings of hotels in NSW by gaming machine profits, published by LGNSW.
  - The Thomas Hotels Group uses Gamecare as its problem gambling counseling provider but has received no enquiry about using its services since taking over the Hotel. There are a number of persons who are self-excluded from the Hotel's gaming room but they have not self-excluded at the Hotel. The Hotel has been informed of their self-exclusion by the St George Liquor Accord.
  - It is reasonable to assume that the populations of the suburb of Penshurst and the LGA are not likely to experience serious problems with gambling although it is probable that some individuals are experiencing, or may experience, problems with gambling.
  - The Hotel displays all the relevant signage relating to gambling, which is required by the legislation in the Hotel and on the machines. The Hotel will continue to do so if the Application is granted.
  - There is a staff member in the gaming room at all times after midnight and that would continue if the Application is granted.
  - Players have access to water and a range of low alcohol and full strength beverages and food suitable for consumption with those beverages from the service counter in the gaming room and that would continue during the additional hours sought, being available until closing time.
  - The Thomas Hotels Group, as the owner of the Hotel, insists that its hotels be conducted in accordance with all legislative requirements including the responsible conduct of gaming and harm minimisation. This will remain the situation if the Application is granted.
39. Authority Guideline 6 places licence applicants on notice that the Authority may consider certain gaming related research and information when considering an ETA for a gaming venue. The Authority accepts the independent analysis of the research provided by the Productivity Commission ("Commission"), expressed at Chapter 14 of The Australian Government Productivity Commission Inquiry Report, *Gambling*, No. 50, 26 February 2010 ("PC Report"), where the Commission examined the available empirical evidence on gaming machine shut down periods across several Australian jurisdictions and found that existing shut down periods in hotels and clubs were too brief and mostly occur at the wrong times of day. The Commission recommended requiring a more extended shut down for all hotels and clubs that commences "before 2 am" and

that is of “*at least* six hours” duration. This would better target problem gamblers without unduly restricting non-problem gamblers.

40. The Commission states in the Overview of the PC Report that there is evidence of higher risk gamblers presenting a much greater share of those people playing at night, and at that time gamblers are more likely to be playing under the influence of alcohol, thus reducing the capacity for informed consent on a potentially very costly activity where impulsivity and faulty cognitions are already widespread. [This is expanded upon in Chapter 14 of the PC Report where the Commission refers to the Blue Moon Research (2008), *Evaluation of the 6 Hour Shutdown of Electronic Gaming Machines in NSW*; Corporate Research (2005), *Nova Scotia, VLT Time Change* (a Canadian study which assessed the effects of the shutdown of video lottery terminals at midnight); Briscoe, S. and Donelly, N. (2001), ‘*Temporal and regional aspects of alcohol related violence and disorder*'; Allen Consulting Group (2009a), *Alcohol-related Harm and the Operation of Licensed*; and Hare, S. (2009), *A Study of Gambling in Victoria – Problem Gambling from a Public Health Perspective*].
41. The Authority has taken into account the fact that this Hotel is located in a “Band 1” SA2 area as designated by the Authority under section 33 of the GMA but that does not overcome the Authority’s concern, arising from the Commission analysis, that it is desirable for gaming machines to shut down for a longer period to reduce the scope for adverse social impact on problem and at risk gamblers.
42. The Applicant has not demonstrated through evidence, information or persuasive analysis a profile of its patrons using gaming machines at very late hours in this residential suburb or how further expanding the gaming machine operations of a hotel that is already operating at its maximum threshold of 110 hours per week would be the more *responsible* course to develop this related industry.
43. There is insufficient evidence before it to establish that granting the Application will conform with the *responsible* development of this related industry for the purposes of section 3(1)(c) of the Act in respect of the local community. Maintaining the current extended hours presents as the preferable course in respect of the *responsible* development of the gaming machines industry.

*Section 3(2)(a) of the Act – minimise harm associated with the misuse and abuse of liquor*

44. When considering an application of this kind the Authority must, pursuant to section 3(2)(a) of the Act have regard to the need to minimise harm associated with misuse and abuse of liquor, including harm arising from violence and other anti-social behaviour.
45. BOCSAR hotspot data from April 2018 to March 2019 indicates that the Hotel is located within: a low-density hotspot for alcohol related assault; a high-density hotspot for domestic assault; a medium density hotspot for non-domestic assault; a high-density hotspot for malicious damage to property. This is an adverse factor warranting some weight when assessing the current exposure of the local community to alcohol related crime.
46. However, BOCSAR crime data for the year to March 2019 indicates that the suburb and LGA have lower *rates* per 100,000 compared to NSW for incidents of alcohol related assault (domestic assault), alcohol related non-domestic assault, malicious damage to property and incidents of alcohol related disorderly conduct (offensive

conduct). By New South Wales standards, Penshurst performs reasonably well in terms of its comparative exposure to alcohol related crime.

47. ABS Socio-Economic Indexes For Areas data based on the 2016 Census indicates that the suburb is located in the 7<sup>th</sup> decile and the LGA in the 9<sup>th</sup> decile on the Index of Relative Socio-Economic Indexes. That is, socio-economic disadvantage is not a compounding risk factor. Furthermore, the Authority notes that Healthstats data for alcohol attributable deaths (between 2015 to 2016) and hospitalisations (between 2016 to 2018) in the LGA are not elevated above the NSW spatially adjusted rates per 100,000 population.
48. Although there is no Plan of Management for the Hotel, the Applicant advises in the CIS that the Hotel will operate under a new comprehensive Plan of Management dated August 2018. The Authority notes this new plan addresses operational details (such as interactions with Police and the community, operating hours and use of the Premises), management measures (which include general amenity, technical noise criteria, complaints and the incident register, footpath management, waste management and signage), responsible service of alcohol (detailing what is the law, harm minimisation measures and monitoring responsible consumption and patron behaviour), security (the operation of a CCTV system) and other relevant matters (including crime scene preservation guidelines).
49. The Applicant makes the submission in the CIS that the demographic characteristics of the populations of the local and broader communities are not suggestive of any appreciable propensity to harm from either alcohol or gambling. The Applicant further contends that the examination of characteristics which have been suggested as being indicative of potential problems with either alcohol or gambling do not indicate the communities are at risk of unreasonable harms.
50. The Authority further notes the contention in the CIS that with the removal of the bottle shop, very little packaged liquor is sold.
51. The Authority notes that the Applicant consented in the 18 February 2019 email to imposing conditions pertaining to CCTV, crime scene preservation and operating the Premises in accordance with the Plan of Management.
52. The Authority accepts that the proposed licence conditions and enforceable Plan of Management are tools that will help manage the increased risk of harm associated with the misuse and abuse of alcohol from further late-night trading.

#### *Section 3(2)(b) of the Act – responsible attitudes and practices*

53. The Authority has considered the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor per section 3(2)(b) of the Act.
54. As noted above, the Hotel would operate subject to a Plan of Management dated August 2018 and this Plan will be enforceable through a licence condition should the Application be granted.
55. When having regard to this consideration the Authority has taken into account the absence of any significant adverse regulatory history pertaining to the responsible supply of alcohol on the Premises since the Thomas Group Hotels took over ownership of the Hotel in 2018.

56. The Authority further notes that Police do not object to the Application, while a LGNSW Compliance Licence Detail report for the Hotel from 1 July 2008 to 10 July 2019 does not indicate any information of concern since the Thomas Group Hotels commenced as owners and Mr Niraula commenced as the licensee.
57. However, the Authority must not only consider the practices of the licensed *business*, but the risk posed to the responsible *consumption* of liquor by *patrons* on the Premises. Expanding licensed trading hours until very late on Monday through Saturday will cumulatively increase the risk of *patrons* not engaging in responsible practices regarding the consumption of liquor on the Premises. Patrons will be permitted to drink on the Premises for prolonged hours and may attend the Premises after drinking at other venues late at night. On balance and having regard to the information as to prevailing amenity impacts that residents have attributed to the Hotel during its present late licensed hours, the more responsible course is to maintain the current 2:00 am closing time.

*Section 3(2)(c) of the Act – amenity of community life*

58. On the material before it, the Authority has given weight to this statutory consideration to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life, per the consideration in section 3(2)(c) of the Act.
59. The Authority accepts the Applicant's contentions in the CIS that:
  - In the past, the Hotel provided night-club style entertainment but that ceased some years ago and it was replaced by karaoke on Friday evenings. However, since the Thomas Hotels Group acquired the Hotel in June 2018, karaoke has been terminated and there is no proposal to provide entertainment in the Hotel in the foreseeable future.
  - The Hotel currently employs a security guard from 9.00 pm until closing time, Monday to Thursday, and from 7.00 pm until closing time, Friday and Saturday.
  - The Hotel does not provide any car parking space with patrons relying on street parking or using the Council car park off Connelly Street, which can be reached via a walkway from Penshurst Street almost opposite the Hotel.
  - In order to reduce patrons disturbing the amenity of residents of nearby buildings on Victoria Avenue, the Applicant proposes to restrict all entries to, and exits from, the Hotel to doorways opening onto Penshurst Street.
60. However, Google maps sourced by licensing staff on 9 July 2019 indicate that while the Hotel is situated within a strip of shops, it is in very close proximity to residential premises.
61. The venue is a substantial two-storey hotel with a patron capacity of 150 people and a licensed area of 1695 sqm. The area proposed to be covered by the additional trading hours between 2:00 am and 4:00 am is some 436 sqm.
62. The Authority accepts the generally credible concerns raised by submitters that existing anti-social behaviour and amenity issues are being experienced by community members. The Authority notes that the existing issues surround: broken beer bottles on footpaths; people urinating on storefronts; “[n]oise and bad behaviour” outside the Hotel and up Victoria Avenue; litter in residential properties; patrons “throwing up” outside residential properties; and being “accosted and harassed” by patrons. There is some concern with regard to these impacts being exacerbated if additional late hours

are granted and the potential for increased noise and disruption from the Premises, vehicle movements and anti-social behaviour coming from the carpark.

63. The Authority finds that increasing the late night trading hours in the manner proposed, at a time when most other businesses are closed and residents are asleep, will further increase the scope for this venue, whose primary purpose is the sale or supply of liquor and which operates in an overwhelmingly residential suburb, to adversely impact local amenity. This scope is increased through the prospect of later patron migration during longer and later hours where public transport options are limited. Granting the ETA will permit this licensed business to operate very late in the evening when most if not all non-licensed premises are closed and the area is quiet. It will also permit patrons to continue to consume alcohol at the venue over a longer duration than is presently the case.
64. The Authority considers that granting 4:00 am trading will mean that there is scope for significant numbers of patrons to leave the Premises at later and more sensitive times of the morning than permitted by the current 2:00 am closing time.
65. This will significantly increase the scope for adverse amenity impact arising from conduct that need not rise to the level of criminality.
66. The licence type, scale and patron capacity of this venue and its close proximity to residential homes renders it likely that potentially significant numbers of patrons will walk to and from the neighbouring venue, through neighbouring streets, affected to varying degrees by the consumption of alcohol. Regardless of whether they engage in any criminal conduct, there is the real prospect of patrons talking amongst themselves, creating noise engaging with Uber or taxi services or leaving and arriving through private cars. All of this is likely to adversely impact the amenity of residents in nearby streets, at particularly sensitive times of the morning, across the working week.

#### Conclusion

67. Having considered the objects and considerations set out in section 3 of the Act, the Authority is not satisfied that it is in the public interest to grant the Application. The Application to vary the ETA is refused pursuant to section 51(9)(b) of the Act.

#### Additional Note: Overall Social Impact Test

68. When the Authority made its decision on 14 August 2019, the Authority did not consider the “overall social impact” of granting the Application pursuant to section 48(5) of the Act, but rather asked itself whether the variation of the ETA was in the public interest, having regard to the material before it and the objects of the Act.
69. In the course of preparing these reasons, the Authority has concluded that the application was a “relevant application” within the meaning of section 48(2) of the Act. This means that the Applicant faced an additional hurdle to the variation of the ETA, being that the Authority needed to be satisfied that the overall social impact of granting the Application “will not be detrimental to the well-being of the local or broader community” (the “overall social impact test”).
70. The Authority has concluded that it is neither permissible nor appropriate to revisit its decision of 14 August 2019, noting that the overall social impact test provides an additional requirement which may not have been satisfied in the Application. The Applicant is therefore no worse off: even if the Application satisfied the overall social

impact test, the Authority would still need to decide whether to grant or refuse the Application. It was open to the Authority to reason as it did on 14 August 2019, without reference to the overall social impact test, that the Application should be refused because the Authority was not satisfied that it was in the public interest to grant the Application.

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Philip Crawford  
**Chairperson**

## **Schedule 1 – Material considered by the Authority Penshurst Hotel**

### **Application Material**

1. Completed Application Form number AM0020H *Extended trading authorisation: hotel licence* signed by Mr Dipak Niraula (“Applicant”) dated 28 November 2018, filed under cover of letter from Design Collaborative Planning Consultants dated 9 January 2019 but filed with Liquor and Gaming New South Wales (“LGNSW”) on 8 January 2019. This is accompanied by the prescribed notices to Local Consent Authority, NSW Police and Site Notice (“Application”).
2. Completed Category B Community Impact Statement (“CIS”) signed by the Applicant and dated 26 November 2018 accompanied by a map depicting the area in which notification was distributed (which was provided on 15 March 2019); Google aerial images and maps of the premises and surrounds; and a 21-page submission on social impact from Design Collaborative (accompanied by 11 attachments).
3. Diagram or floor plan of the premises provided with the Application highlighting the licensed area in yellow, the existing extended trading authorisation area (“ETA”) in green and the proposed ETA area in red.
4. Draft Plan of Management for the premises prepared by Design Collaborative dated August 2018, provided with the Application.

### **Certificates of Advertising for the Application**

5. A Certificate of Advertising signed by the Applicant on 12 February 2019 was provided in support of the Application with regard to the Site Notice. A further certificate signed by Mr Costa Dimitriadis (Design Collaborative) dated 14 February 2019 was provided regarding service of neighbouring residents of notice of the Application within 2 working days after filing. Also provided was a certificate signed by Mr George Smith (Design Collaborative) dated 18 February 2019 regarding service of Police, Council and persons required to be notified of a CIS B not later than 2 working days after making the Application. The Applicant provided these documents on 18 February 2019.

### **Development consent**

6. Notice of determination dated 23 July 1999 issued by the former Hurstville City Council (“Council”) on development application 19990409 for alterations and additions to a hotel (“DA”); notice of determination number AD2/2000 dated 19 January 2000 modifying the DA and determination No 20020183 dated 23 April 2002 further modifying the DA; determination dated 10 November 2015 No 2015/0150 permitting further alterations to the premises. The 1999, 2002 and 2015 development consents were provided by the Applicant on 5 July 2019.

### **LGNSW records and submission**

7. LGNSW analysis of harm minimisation data prepared by licensing staff including licence density information as of July 2019, setting out the number and density of all types of liquor licences in the suburb of Penshurst, the Local Government Area of Georges River (“LGA”) and NSW. There are 27.00 full hotel licences (per 100,000 persons of population) in NSW, 10.22 in the LGA, and 7.82 in Penshurst. LGNSW liquor licensing records as at 9 July 2019 list 11 licensed premises in Penshurst including 1 Hotel (the Penshurst Hotel – the subject of this Application) and 1 registered club (Penshurst RSL). Staff also sourced the crime, health and socio-economic indexes for areas (“SEIFA”) data discussed below.
8. OneGov licence record for Penshurst Hotel LIQH400104677 (“the Hotel”), sourced by licensing staff as at 10 July 2019.

9. LGNSW email submissions dated 9 May 2019 advising compliance holding records of a complaint dated 3 April 2018 regarding gaming machine malfunctioning and two unspecified complaints from 2009 and 2011 that were not detailed due to age. LGNSW Compliance submit that there is an increased risk associated with the extension of licensed trading hours of a hotel due to the sale of liquor over an extended period, particularly during late evening hours.
10. LGNSW Licence Details report for the Hotel between 1 July 2008 and 10 July 2019 printed on 10 July 2019.

#### **BOCSAR Crime Data**

11. Bureau of Crime Statistics and Research (“BOCSAR”) NSW Recorded Crime Statistics for April 2018 to March 2019 comparing certain offences by day of week and time of day in Penshurst, the LGA and NSW, sourced by licensing staff on 9 July 2019.
12. BOCSAR NSW Recorded Crime Statistics 2018 comparing the number and proportion of selected offences flagged as alcohol related by NSW Police in the LGA and NSW, sourced by licensing staff on 9 July 2019.
13. BOCSAR crime hotspot maps for April 2018 to March 2019, indicating the location of the premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property, sourced by licensing staff on 9 July 2019. The premises is located within a place recording a low density concentration of alcohol related assault, an extensive high density concentration area for domestic assault, a medium density area for non-domestic assault and a high density location for malicious damage.
14. NSW crime statistics published by BOCSAR indicating that for April 2018 to March 2019 the rates (per 100,000 population) of:
  - a) alcohol-related domestic assault in the LGA and Penshurst were 72.3 and 37.2 respectively, compared to the NSW average of 115.5,
  - b) alcohol-related non-domestic assault in the LGA and Penshurst were 50.5 and 52.1 respectively, compared to the NSW average of 118.8,
  - c) malicious damage to property in the LGA and Penshurst were 349.6 and 470.3 respectively, compared to the NSW average of 737.8, and
  - d) alcohol-related offensive conduct in the LGA and Penshurst were 6.4 and 0 respectively, compared to the NSW average of 36.6.

#### **Health data**

15. HealthStats NSW data showing that the LGA recorded a spatially adjusted rate of:
  - a) 15.0 alcohol attributable deaths per 100,000 of population, compared to 18.1 for NSW during period 2015-16; and
  - b) 411.9 alcohol attributable hospitalisations per 100,000 of population, compared to 555.6 for NSW in the period 2016-18.

#### **Socio-economic data**

16. Australian Bureau of Statistics (“ABS”) SEIFA data based on the 2016 Census indicating that, on the Index of Relative Socio-Economic Advantage and Disadvantage for NSW with the 10<sup>th</sup> decile being the most advantaged, Penshurst ranked in the 7<sup>th</sup> decile and the LGA ranked in the 9<sup>th</sup> decile. This data was sourced by licensing staff on 9 July 2019.

#### **Stakeholder submissions**

17. Email submissions dated 3 October 2018, 6 October 2018 and 12 October 2018 (from authors whose name and email address have been redacted) to Mr James Lidis Design Collaborative

during CIS consultation contending that there is local opposition to the Application and raising a number of specific social impact concerns about the purpose and public interest in 4 am trading.

18. Letter from NSW Roads and Maritime Services (“RMS”) dated 15 October 2018 to Mr James Lidis during the CIS consultation period providing data on the role of alcohol in road crashes in the Sydney metro and LGA areas, advising that during 2016 there were 9 alcohol related crashes resulting in 12 casualties in the LGA. RMS propose certain harm minimisation measures should the Application be granted, including pedestrian fencing, improved lighting, liquor accord participation and facilitating patron access to information about public transport and taxi options.
19. Email submission dated 29 October 2018 (from an author whose name and email address is redacted) to Mr James Lidis during CIS consultation contending that the writer is a resident of 18 years and has a number of specified adverse amenity impacts from Hotel patrons over the years, questioning whether further extending trading will create even more concern about these matters.
20. Email submission dated 29 October 2018 (from an author whose name and email address is redacted) to Mr James Lidis during CIS consultation contending that the writer is a local business owner of 20 years and contends that there is local opposition to the Application. The writer specifies a number of anti-social behaviours to which local business owners and residents have experienced attributable to hotel patrons and submits the Mortdale Hotel and Club Central Hurstville 1 km away services any late-night need by trading until 3 am. The writer attaches a petition and contends that 170 members of the community oppose the Application. The petition is provided. However, the Authority has before it two pages containing some 28 signatures and a typed document listing some 80 names and residential addresses of petitioners.
21. Email submission from Georges River Council’s Senior Building Surveyor, Fire Safety dated 23 January 2019 advising that any change to the existing operating hours will require further planning consideration and the Application should be held in abeyance until such time that the proposed extended trading hours are consistent with any existing trading hours for the premises.
22. Submission letter from St George Area Command of NSW Police dated 7 February 2019 noting crime data, the number of late trading premises in the Command and the residential nature of the suburb, including local opposition noted in the CIS. Police do not object to the Application having considered the Plan of Management and on the proviso that the Plan of Management is enforceable through a licence condition.
23. Submission from Applicant via Design Collaborative dated 18 February 2019 agreeing to the proposed imposition of licence conditions regarding the regulation of takeaway liquor sales, CCTV, participation in a local liquor accord and compliance with the Plan of Management and enclosing Certificates of Advertising. The Applicant submits that the Hotel was constructed before town planning legislation and there is no historical development regulating the permitted hours of trading.
24. Email from Georges River Council’s Development and Building Advisory Officer dated 20 June 2019 advising that Council cannot locate the original development approval for the Hotel and submitting that the Applicant should lodge a fresh Development Application if they need to “amend their hours”.
25. Submission to licensing staff from Hatzis Cusack lawyers on behalf of the Applicant dated 5 July 2019 addressing the available development consent information and submitting that the Hotel is not restricted as a matter of planning law as to trading hours. The relevant development consents and a copy of *Ryde Municipal Council v Royal Ryde Homes* (1970) 19 LGERA 321 and *Auswild & Ors v Blacktown City Council* [1999] NSWLEC 67 (23 March 1999) accompanied this submission.

26. Submission on LGNSW community submission form completed from R Roberts dated 17 February 2019 objecting to the Application on the basis that it is unnecessary in a quiet suburb. The writer contends that their apartment is exposed to Hotel noise and movement in a nearby carpark and these impacts will worsen with later trading. The writer contends that the Hotel does not provide benefits by way of "additional entertainment" or dining.

**Other relevant information**

27. Google map images extracted from the Google website on 9 July 2019 by licensing staff, showing the location and photos of the premises in map view, earth view and street view.
28. Email from the Applicant via Design Collaborative dated 15 March 2019 attaching updated CIS material amending an error in the Executive Summary to the Supplementary Note to the CIS and providing the map of the neighbouring premises.
29. Email correspondence between licensing staff and the Applicant regarding deficiencies with the CIS and the Council submission between 15 March 2019 and 15 April 2019.
30. Submission from the Applicant via Design Collaborative undated, but provided on 17 April 2019, addressing why an editorial error should not result in any curtailing of the Application (accompanied by 4 annexures).

## **Schedule 2 – Relevant extracts from the *Liquor Act 2007 (NSW)* Penshurst Hotel**

### **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).

## **14 Authorisation conferred by hotel licence**

- (1) A hotel licence authorises the licensee to sell liquor by retail on the licensed premises for consumption on or away from the licensed premises.
- (2) **Trading hours for consumption on premises**

The times when liquor may be sold for consumption on the licensed premises are as follows:

  - (a) during the standard trading period or at such other times as may be authorised by an extended trading authorisation,
  - (b) on 31 December in any year (but without limiting the operation of any extended trading authorisation)—from the start of the standard trading period for that day until 2 am on the next succeeding day,
  - (c) at any time on any day (including a restricted trading day) to a resident of the licensed premises or to a guest of such a resident while the guest is in the resident's company.
- (3) **Restricted trading days**

Despite subsection (2) (a), the times when liquor may be sold for consumption on the licensed premises on a restricted trading day are as follows:

- (a) between midnight and 5 am on that day (but only if authorised by an extended trading authorisation),
  - (b) between noon and 10 pm on that day.
- (3A) In the case of Christmas Day, liquor must not be sold for consumption on the licensed premises between noon and 10 pm unless it is sold with or ancillary to a meal served in a dining area on the licensed premises.

(4) **Trading hours for consumption away from premises**

Liquor may be sold for consumption away from the licensed premises during the standard trading period or at such other times as may be authorised by an extended trading authorisation.

- (4A) An extended trading authorisation must not authorise the sale after 10 pm on any day of liquor for consumption away from the licensed premises.

(5) **No take-away sales on restricted trading days**

However, the sale of liquor for consumption away from the licensed premises is not authorised on a restricted trading day.

(6) **Functions on other premises**

A hotel licence also authorises the licensee to sell liquor by retail for the purposes of a function to be held on such other premises as the Authority may, on application by the licensee, authorise, but only for consumption on those premises and at such times as may be specified by the Authority in the licence.

**Note.** Section 51 applies to an authorisation referred to in this subsection.

## **15 Hotel licence—general provisions**

- (1) The following provisions apply in relation to a hotel licence (***the hotel primary purpose test***):
- (a) except as provided by section 15A, the primary purpose of the business carried out on the licensed premises must at all times be the sale of liquor by retail,
  - (b) the keeping or operation of gaming machines (as authorised under the [Gaming Machines Act 2001](#)) on the licensed premises must not detract unduly from the character of the hotel or from the enjoyment of persons using the hotel otherwise than for the purposes of gambling.
- (2) The authorisation conferred by a hotel licence does not apply unless the hotel primary purpose test is complied with in relation to the licensed premises.
- (3) Any premises (other than the actual hotel) that are authorised by the Authority for the sale of liquor under a hotel licence are, for the purposes of this Act, taken to be part of the licensed premises to which the licence relates.

## **15A Cessation of liquor sales during trading hours**

(1) **Extended trading periods**

A hotelier may, at any time during the period that an extended trading authorisation is in force in relation to the licensed premises:

- (a) cease to sell or supply liquor on the licensed premises, and
- (b) continue to provide, or make available, other services and facilities on the licensed premises (such as food and non-alcoholic beverages, entertainment and the use of the premises for conferences or meetings and for gambling activities that are otherwise permitted on the premises).

(2) **Authority may approve of cessation of liquor sales during standard trading period**

A hotelier may, at any time during the standard trading period:

- (a) cease to sell or supply liquor on the licensed premises, and
- (b) continue to provide, or make available, other services and facilities on the licensed premises (such as food and non-alcoholic beverages, entertainment and the use of the premises for conferences or meetings and for gambling activities that are otherwise

- permitted on the premises),  
but only with the approval of the Authority.
- (3) An application for the approval of the Authority under subsection (2) may be made by the hotelier concerned. Any such application must be accompanied by the fee prescribed by the regulations.
- (4) The Authority may give its approval only if it is satisfied that:
- the operation of gaming machines on the licensed premises during the period to which the approval relates will not detract unduly from the character of the hotel, and
  - gambling activities on the licensed premises will be conducted in a responsible manner.

(5) **Cessation of liquor sales during standard trading period without gambling activities**

A hotelier may, at any time during the standard trading period:

- cease to sell or supply liquor on the licensed premises, and
- continue to provide, or make available, other services and facilities on the licensed premises (such as food and non-alcoholic beverages, entertainment and the use of the premises for conferences or meetings).

However, it is a condition of the licence that the licensed premises must not be used for the purposes of any gambling activities during any such time that liquor is not being sold or supplied unless an approval is in force under subsection (2) in relation to the licensed premises.

## **16 Hotel licence may be designated as a general bar licence**

- The Authority may, in granting a hotel licence, designate the licence as a general bar licence and specify in the licence that it is a general bar licence.
- The designation of a hotel licence as a general bar licence cannot be changed.
- It is not lawful to keep or operate gaming machines on the premises to which a general bar licence relates. Accordingly, the keeping or operation of gaming machines on any such premises cannot be authorised under the *Gaming Machines Act 2001*.
- Despite section 14, a general bar licence does not authorise the sale or supply of liquor for consumption away from the licensed premises at any time.

## **17 Hotel licence—miscellaneous conditions**

(1) **Cash advances prohibited**

A hotelier must not:

- provide a cash advance in the hotel, or
- permit a cash advance to be provided in the hotel on behalf of the hotelier, except as a prize or bonus won as a direct or indirect consequence of participating in a form of gambling that may lawfully be conducted on the licensed premises.

(2) **Hotels must be open to general public**

The business carried out under a hotel licence must not be, or include, a business that is limited to the sale or supply of liquor only:

- to persons who have been invited to use or attend the hotel, or
- to a particular class, or particular classes, of persons using or attending the hotel.

(3) Subsection (2) is subject to such exceptions as may be approved by the Authority on a temporary basis in relation to any particular hotel or to such other exceptions as may be prescribed by the regulations. Also, subsection (2) does not apply to the extent that is necessary to comply with any other provision of this Act or with any other law.

(4) **Food must be made available**

Liquor may only be sold or supplied in a hotel if food of a nature consistent with the responsible sale, supply and service of alcohol is made available whenever liquor is sold or supplied on the premises for consumption on the premises. If any requirements are prescribed by the regulations in relation to the nature of any such food, those requirements must be complied with.

(5) **Prohibition on residents and employees drinking liquor in bar area outside trading hours**

Liquor may not be sold or supplied to, or consumed by, a resident or an employee of the

licensee in a bar area of the hotel except at the time when liquor is authorised to be sold or supplied to other persons in that or any other bar area of the hotel. This subsection has effect despite any other provision of this Act, but is subject to subsection (6).

- (6) The Authority may, on application by a hotelier, authorise the use of a bar area of the hotel for the sale, supply or consumption of liquor exclusively to, or by, residents at a time when liquor may not otherwise be sold or supplied in a bar area of the hotel.

**Note.** Section 51 applies to an authorisation referred to in this subsection.

#### 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:
- (c) a specified period between 5 am and 10 am on a Sunday,
  - (d) (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.