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27 October 2020

Dear Mr Tobin

<b>Application No.</b>	1-7564845074
<b>Applicant</b>	Ms Karma Elliott-Cosmos
<b>Application for</b>	Extended trading authorisation in relation to a full hotel licence
<b>Licence name</b>	Warilla Hotel
<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</u> Monday to Saturday 8:00 AM – 2:00 AM Sunday 10:00 AM – 12:00 Midnight <u>Take away sales</u> Monday to Saturday 8:00 AM – 11:00 PM Sunday 10:00 AM – 10:00 PM
<b>Premises</b>	61-67 Shellharbour Road Warilla NSW 2528
<b>Legislation</b>	Sections 3, 11A, 12, 14, 15, 15A, 16, 17, 40, 45, 48, 49 and 51 of the <i>Liquor Act 2007</i> (NSW)

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

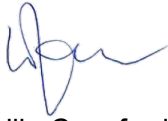
The Independent Liquor and Gaming Authority has finalised its consideration of the application for an extended trading authorisation (“Application”) in relation to the full hotel licence LIQH400114532 trading as Warilla Hotel (the “Hotel”).

The Authority has decided, with effect from the date of this letter, to ***grant the application in part*** pursuant to section 49(2) of the *Liquor Act 2007* (NSW), so that the Hotel (save for the gaming machine room) may trade until 1:00 am on Saturday and Sunday morning, subject to the imposition of conditions set out in Schedule 1. These conditions will operate alongside the pre-existing conditions.

A statement of reasons is enclosed for the purposes of section 36C of the *Gaming and Liquor Administration Act 2007* (NSW).

If you have any questions, please contact the case manager Mr Lucas Ho at [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', with a stylized, cursive script.

Philip Crawford

**Chairperson**

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

## Statement of reasons

### Decision

1. On 9 October 2019 the Independent Liquor and Gaming Authority (“the Authority”) received from Ms Karma Elliott-Cosmos (“the Applicant”), through Liquor and Gaming New South Wales (“L&GNSW”), an application (“Application”) for an extended trading authorisation (“ETA”) in respect of a full hotel licensed premises (LIQH400114532) at 61-67 Shellharbour Road, Warilla, New South Wales (“NSW”) 2528 (“the Premises”), trading as *Warilla Hotel* (“the Hotel”).
2. L&GNSW licensing records for the Hotel from the OneGov database as at 12 February 2020 (“the OneGov Record”) indicate that Ms Elliott-Cosmos has been the licensee of the Hotel since 10 January 2019.
3. The Authority gave preliminary consideration to this matter at its meeting of 15 April 2020 and after further consultation with the Applicant has decided to **grant the Application in part** pursuant to section 49(2) of the *Liquor Act 2007* (NSW) (“Act”).
4. As discussed below, the Authority is *only* persuaded that the overall social impact of granting the authorisation would not be detrimental to the well-being of the local community of Warilla *if* the ETA is confined to 1:00 am on Friday and Saturday evenings and does not extend to the gaming machine room. A list of all new conditions imposed on the licence (that will accompany the pre-existing conditions) is set out in Schedule 1 to this decision.
5. The Authority notes, for the purpose of section 49(6) of the Act, the Hotel will be permitted to trade during extended hours between 12:00 midnight and 1:00 am on Saturday and Sunday morning, in all areas of the premises, other than the gaming machine room.
6. In determining the Application, the Authority has had regard to sections 3, 11A, 12, 14, 15, 15A, 16, 17, 40, 45, 48, 49 and 51 of the Act, plus relevant provisions of the *Liquor Regulation 2018* (NSW) (“Regulation”).

### Material considered by the Authority

7. The Authority has considered the Application, the accompanying Community Impact Statement (“CIS”), and all submissions received in relation to the Application.
8. 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.
9. In accordance with its *Guideline 6*, the Authority has also had regard to relevant L&GNSW 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”).
10. A list of the material before the Authority is set out in Schedule 2.

### Legislative framework

11. 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 40: Minimum procedural requirements for a liquor licence application to be validly made.
- (f) Section 45: Criteria for granting a liquor licence
- (g) Section 48: Requirements in respect of a CIS.
- (h) Section 49: General provisions in respect of an ETA.
- (i) Section 51: General provisions relating to licence-related authorisations.

12. An extract of these sections is set out in Schedule 3.

### **Key findings**

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

#### Validity, procedural and trading hour requirements

- 14. On the basis of the Application, CIS material and Certificates of advertising signed by the Applicant on 12 November 2019 and the Applicant's legal representative on 31 October 2019, the Authority is satisfied that the Application and CIS have been validly made and meet the minimum procedural requirements under sections 48(4) and 51(2) of the Act and clauses 20 through 29 of the Regulation.
- 15. The Authority is also satisfied that the extended hours sought fall within the scope of licensed hours that are potentially available for a hotel, as specified by sections 12, 14 and 49 of the Act and that the proposed daily 6-hour liquor cessation period conforms with the requirements of section 11A of the Act.

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

16. The Authority is satisfied that:

- (a) For the purposes of section 45(3)(a) of the Act, the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, on the basis that no issues of concern were raised regarding the Applicant's probity following consultation with relevant law enforcement agencies, including NSW Police ("Police") and the compliance section of L&GNSW.
- (b) For the purposes of section 45(3)(b) and section 49(8)(a) of the Act, practices will be in place from the commencement of licensed trading on the Premises to ensure the responsible serving of alcohol and prevent intoxication. This finding is made on the basis of the Applicant's business planning document – the *Plan of Management* dated June 2019.
- (c) For the purposes of section 45(3)(c) of the Act, the requisite development consent permitting the operation of a hotel business with the proposed extended trading hours is in force. This finding is made on the basis of an email from Shellharbour City Council ("Council") dated 4 November 2019 in which Council provided an annotated copy of the local consent authority notice referring to development consent 486/2007 Part 2 and advising that development consent is not required to permit the proposed extended trading activity the subject of this Application.

#### Further restrictions on granting an ETA

17. For the purpose of section 49(8)(b) of the Act, the Authority accepts, on the basis of the Plan of Management dated June 2019 that if granted, there would be measures in place during the extended trading period to ensure that the ETA would not result in the *frequent* undue disturbance to the quiet and good order of the neighbourhood. Nevertheless, the Authority maintains significant concerns regarding likely adverse impacts upon local amenity, that are discussed below.

#### CIS and Gambling Activities

18. The Authority is satisfied that the CIS meets the minimum content requirements of clause 28 of the Regulation in that it addresses matters relating to the proposed gambling activities to be conducted on the Premises during the period in which the ETA will be in force.

#### Community impact statement

19. 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 Warilla, and the relevant “broader community” comprises the local government area (“LGA”) of the Shellharbour City Council (“Shellharbour LGA”).

#### Positive social impacts

20. L&GNSW licensed premises records establish that this is the only hotel licenced venue in Warilla, with no other late trading licensed premises. The Authority is satisfied, on the information provided in the CIS that extending the licensed hours at this venue will increase options for late night hotel style entertainment in the local community and in this sense may be said to advance the needs expectations and aspirations of the local community for the purposes of section 3(1)(a) of the Act.
21. The Applicant has provided a petition signed by around 140 persons in support of extending the Hotel’s trading hours. However, only around 45 signatures are recorded by persons who indicate Warilla as their residential address, with others from neighbouring suburbs and others beyond the local and broader communities. So there is only modest support among the local community (being the community most likely to be serviced and impacted by this proposal) apparent from this petition.
22. It is telling that the description of the proposal on the first page of the petition (which demonstrates a considerable degree of “push polling” by the Applicant) makes no reference to the provision of extended gambling facilities, including gaming machines, during the proposed late trading hours. The Authority gives little weight to this document as evidence of local community needs, expectations or aspirations in respect of the provision of gambling services.
23. Furthermore, in terms of those members of the community who were actually moved to engage with the Application through written submissions, there are three submissions before the Authority- all of which were written by local residents who live in the neighbourhood of the Premises and oppose the proposal on amenity grounds. Their submissions are discussed below.
24. The Authority accepts the Applicant’s submission dated 11 February 2020 that permitting the Hotel to remain open during these extended hours will afford some

incremental measure of convenience to those patrons who wish to remain on the premises and continue utilising the Hotel's facilities after midnight.

25. However, the extent to which granting the ETA furthers the needs, expectations and aspirations of this *local* community are limited by the matters noted above. On the evidence and material before the Authority the convenience benefits to the local community from having a late trading hotel in this suburb are significant, but not substantial. The Authority considers that the scope for convenience benefits are likely to be more pronounced on peak trading evenings, such as Friday and Saturday evenings.
26. The Authority also accepts that granting an increase in late trading hours will facilitate, for the purposes of section 3(1)(b) of the Act, some modest contribution to the balanced development, in the public interest, of the local liquor industry. The scope for this development is less apparent after 1:00 am, given that the Applicant does not propose to sell or supply liquor after 1:00 am. It is apparent from the Applicant's proposal that the focus of trade between 1 and 2 am would be the operation of gaming machines.
27. As discussed below, the Authority has strong countervailing concerns that extending the Hotel's gaming machine operations would not facilitate the *responsible* development of this related industry, for the purpose of section 3(1)(c), as discussed below.

#### Negative social impacts

28. Turning to the risk factors identified in Authority Guideline 6, the *licence type* is one that poses relatively higher social impact. Pursuant to section 15 of the Act, the primary purpose of a licensed premises with a "full" hotel licence is the sale or supply of liquor by retail, for consumption both on and off the premises. A full hotel licensed business (as distinct from a general bar) is permitted by the liquor and gaming legislation to provide gambling services, including TAB, KENO and gaming machines.
29. That is, this licence type enables the broadest range of licensed entertainment services to be provided to the communities that it services, with the broadest scope for adverse social impacts upon those communities.
30. On the basis of information provided by the Applicant in its submission dated 11 February 2020, the *scale* of this hotel is substantial, at some 1400sqm, with a patron capacity of 450. During extended trading some 1000sqm of the venue will be in operation, with a more moderate patron capacity of 200 persons, to be enforced through a Management Plan. The scale of the venue will enable the premises to attract and accommodate substantial numbers of late- night patrons.
31. The *licensed trading hours* sought by this Application pose the most substantial risk factor in terms of the scope for adverse social impact upon the local community, particularly for residents in neighbouring streets. If the Application is granted, the Hotel may trade until 2:00 am Monday through Saturday and until Midnight on Sunday – a total of 14 more late evening trading hours across the course of the week.
32. Google maps of the site reveal that the premises hotel is situated near some other retail businesses with a large car open car park. There are however, residential premises in close proximity, just directly across the road on Veronica Street and on nearby Beverley Avenue.
33. The Authority is satisfied that local community members are likely to migrate to the premises on foot, particularly if they want to drink alcohol. Granting the Application will

facilitate this conduct across the week, during the early morning when other businesses have closed and this (primarily residential) suburb is otherwise likely to be very quiet.

34. With respect to the hours of operation, a nearby resident of Veronica Street, Ms C Boag makes the following contentions in an email submission dated 15 August 2019:

"I am writing this letter in regards to the planned extended trading hours for Warilla Hotel and the letter which was placed in residents letter boxes on 14th August 2019.

I am informing the NSW Justice Liquor & Gaming and the local Council that I am not supporting this move to extend the hours due to the neighbourhood already affected by the noise with patrons during the evening and with leaving the premises at 12am.

I feel if the premises was open until 2am, this would have an impact to all residents living in the vicinity of the hotel, as the noise of drunk & disorderly patrons leaving the premises at that time of the morning would be extremely noisy and would have a major impact on people sleeping and having to get up for work. This is a residential area and these types of hours do not fit in.

Over the 8 years of living in this suburb and close proximity to the hotel (directly opposite Veronica Street) it has never been to much of an issue until opening hours changed to closing time to 12am without notice, where noise levels have increased with yelling from patrons late in the evening.

Constantly I am woken in the evening with this noise and I am up at 4.15am Monday to Saturday to attend my job. My workdays are long 6am to 4.30pm Monday to Friday & 6am to 2pm Saturday so having my sleep broken regularly makes my work life a little hard so I strongly disagree as these hours as it would be an injustice to local residents who have young families and the elderly.

I have witnessed patrons leaving with their drinks. There has also been glass broken on the road and footpaths outside the hotel which has not been cleaned up for weeks at a time and I am also having to clean up my backyard which backs on to Shellharbour Road at times due to alcohol cans, glasses or mixed alcohol glass bottles which have been thrown into my yard when patrons are passing.

I understand that the hotel is a community focal point where people meet, relax, socialise and dine but to be open at these hours in a residential area is not good for this area for families to have their peace and quiet disrupted.

There are hotels in areas away from residential areas which cater for people who need to stop and have a drink if this is their work hours."

35. In a second submission from a nearby resident in Beverley Avenue dated 15 August 2019, D Zapps reiterates concerns about late trading and amenity:

"We have concerns about the noise of patrons leaving the premises in the early hours of the morning and what will be done to combat this also I feel that there is not enough lights in the carpark and surrounding streets"

36. In a third submission from a nearby resident of Veronica Street dated 27 August 2019, a Mrs Dickson attaches a news media report of two men being stabbed in the Hotel Carpark (discussed by Police below) on 24 August 2019 and makes the following contentions, again focussing on amenity impacts:

"We don't need the pub to be open after midnight.

Don't you think that 14 hours, 7 days a week is enough time to get piss (?)

What about our sleep, hay!

We are always picking up bottles and can(s).

We are across the road, we cop it all.

People can go to the ones at Wollongong.

Get your drinks and take it home!

37. Turning to the *location* of the Premises and the circumstances of this local community, the rates of alcohol related crime in Warilla and the broader community of Shellharbour LGA are below NSW Averages. This is a significant mitigating factor in relation to this Application.
38. However, the primary concern raised by nearby residents above is the increased scope for adverse impact on *local amenity*, through patron related noise and alcohol litter from migrating patrons late at night. Residents have focused their concerns on post-midnight trading. Local amenity is a consideration in respect of which the Authority must have regard under section 3(2)(c) of the Act.
39. The Authority finds these resident concerns to be credible. The submitters live close to the venue and well placed to make these observations. Unlike casual visitors, they may gauge the cumulative amenity impact from Hotel patrons over time.
40. The Hotel security guard proposed by the Applicant may alleviate patron misconduct occurring on or immediately near the Hotel, but the guard will not be able to address alcohol affected patron noise or anti-social conduct or alcohol litter in neighbouring streets.
41. The Authority accepts Ms Boag's detailed claims that migrating patrons are *already* adversely affecting nearby residents on a regular basis during the standard trading hours. There is clearly scope for patrons migrating to or from the Premises on foot or through arriving and departing vehicles, after midnight, to have adverse amenity impacts across the entire working week, while residents are trying to get to sleep. The Authority accepts that this type of late evening amenity impact poses a significant impact on residents on weekdays, regardless of whether it rises to the level of criminality. The later this conduct occurs, the greater the scope for adverse amenity impact.
42. The Authority notes that the rate of malicious damage offences in Warilla is around 30% above the NSW rate, with this venue located in an extensive medium density hotspot for the occurrence of those events. While BOCSAR caution that it is difficult to discern the role that alcohol plays in property offences (by reason of a low rate of identifying perpetrators in property crime events) this data indicates localised anti-social conduct and social problems. It is consistent with the concerns arising from ABS Quickstats data indicating serious local socio-economic disadvantage, discussed below.
43. Otherwise, the local and broader community fare relatively well for rates of alcohol related crime, with the rates of alcohol related domestic and non-domestic violence below NSW wide rates. This is a *mitigating* factor when considering the vulnerability or pre-existing exposure of the local and broader communities to alcohol related crime. The Authority accepts the Applicant's information in its submission dated 11 February 2020 that the venue has not been a "declared premises" under Schedule 4 to the Act by reason of the level of assaults recorded on the premises.

44. Rates of alcohol related death and hospitalisations are a neutral factor in this case, with NSW Healthstats data recording that the LGA has a lower spatially adjusted rate per 100,000 persons for alcohol attributable hospitalisations (409.9) compared to NSW (555.6) for the period between 2016 and 2018, while alcohol attributable deaths in the LGA (17.60 per 100,000 persons) were on par with the State wide rate of 17.4 between 2016 and 2017.
45. With respect to any harm minimisation measures that will go over and above the minimum requirements of the legislation, the Authority notes the *Plan of Management* dated June 2019, which will become enforceable by way of a licence condition. The Plan includes, notably, use of a security guard when the venue trades after midnight and the use of a lockout with cessation of liquor sales from 1:00 am. These are meaningful harm minimisation measures that have been given some weight, but they will not prevent potentially significant numbers of patrons migrating to the venue until 1:00 am and away from the venue as late as 2:00 am, 6 days per week.
46. With respect to the position taken by Police, a submission from the Lake Illawarra Police District dated 9 December 2019 notes the location of residential premises on the western side of the Hotel and summarises two recent crime incidents that post-date the commencement of the current licensee and business owner in the first half of 2019.
47. Police advise that on Saturday 20 July 2019 a common assault was perpetrated in the beer garden by a seriously intoxicated female against a moderately intoxicated victim. On 24 August 2019 a male gaming machine patron who had won money in the Gaming Machine Room was followed out of the Hotel to the car park by two other gaming machine patrons, who attempted to rob the winning patron. The winning patron resisted the robbery and stabbed both of the robbers. All three patrons were barred from the premises, with charges “yet to be laid” as of the date of this submission. (The Authority notes, for the purposes of the discussion below, that this was a *gambling related* robbery).
48. Notwithstanding these events, Police advise no objection to the Application, provided that the special conditions recommended by them are imposed upon the licence. Police advise that they are familiar with business owners, Mr O’Hara and Mr Fromhold and contend that since they took over the Berkeley Hotel on 2008, that hotel transformed from one of the most problematic hotels in terms of alcohol related crime to one of the best trading hotels in the Lake Illawarra Police District in terms of alcohol related crime such as violence.
49. Police note the caveat that, in assuming management of the Hotel the licensee and business owners “no doubt needed to break some long-term cultures in what was occurring at the hotel previously”. Police also observe that some other venues in the Lake Illawarra Police District have extended trading to **1:00 am**.
50. The Authority notes that no particular adverse regulatory or social impact concerns were raised by Council, NSW Roads and Maritime Services, the Department of Communities and Justice or any other agencies consulted on the Application.
51. While L&GNSW advise that their records do not identify any adverse findings, LGNSW note that there is a generalised increase in risk associated with any proposed increase in trading hours, by reason that liquor may be consumed on the premises over a longer

period. This increase in risk is “particularly so when the trading hours encompass the late trading period”.

52. In conclusion, the Authority finds that the Hotel and the local community perform relatively well in respect to the prevailing incidence of *alcohol related crime*. The venue has a limited record of alcohol related violence, but this is also a product of its standard trading configuration, which reduces the exposure of hotel to alcohol related violence compared to late trading venues.
53. Nevertheless, the Authority is also obliged to consider the broader *local amenity* impacts posed by 2:00 am trading, 6 nights per week and until midnight on Sunday in this residential area. It is satisfied that granting the Application will exacerbate the existing, regular forms of nuisance to which nearby residents are exposed from migrating hotel patrons.
54. The identification by Police of patron “culture” as an issue for management and the generalised risk identified by L&GNSW lend further credence to resident concerns about the scope for patron conduct to have a greater adverse impact upon local amenity should the venue operate during later hours.

#### *Responsible Development of Related (Gaming Machines) Industry*

55. Gaming machines are a financially dominant part of this Hotel's operations. The Applicant's submission of 11 February 2020 satisfies the Authority that during the “latest” 6 months period (the Authority assumes July to December 2019) the hotel's revenue was as follows:
  - Gaming takings approximately \$1,253,000.00
  - Bar takings approximately \$620,000.00
  - Food approximately \$250,000.00
56. Section 3(1)(c) of the Act provides that one statutory object of the Act is to contribute to the *responsible* development of related industries. The gaming machines industry constitutes one such “related” industry, whose operation on hotel (and club) licensed premises is regulated by the *Gaming Machines Act 2001* and the *Liquor Act 2007*.
57. In the CIS the Applicant submits data that persons seeking licensed entertainment in Warilla after midnight will need to leave the suburb and travel to Warrawong to the North or Shellharbour to the South. The Authority accepts that this is the case on the basis of licensed premises information noted above.
58. The Applicant contends that the Hotel is popular in the evening with local residents and an unquantified number of “shift workers” who work in Wollongong and Shellharbour on their way home from work and have expressed an intention to utilise late trading hours at this Hotel to unwind.
59. The Authority accepts some evidence of local community demand in the around 40 local signatories to the petition. However, the Applicant's claims about shift workers are not well supported and are given little weight.
60. In a submission dated 18 March 2020 the Applicant makes a number of claims about the patron profile of the venue at various times. The information provided is brief, generally expressed and not supported by any independent analysis or evidence.

Notwithstanding these limitations, the Authority accepts the Applicant's contention that, aside from its gaming room, the Hotel's patronage broadly reflects the demographics of the local community.

61. Accepting the Applicant's observations on gaming room patronage in the evening, for the purposes of this decision, 32% of persons had an average age between 18 – 40 years, 53% were between 41 – 65 years and 15% were 65 and above, with patrons of both genders and no predominant ethnic group.
62. The OneGov Record indicates that the Hotel currently operates 15 gaming machines, with a gaming machine shut down period under section 40 of the Gaming Machines Act 2001 in force between 4:00 am to 10:00 am Monday to Friday but with a reduced shutdown period of between 6:00 am and 9:00 am Saturday, Sunday and Public Holidays.
63. The venue is classified as a "Band 3" SA2 statistical area for the purposes of section 33 of the *Gaming Machines Act 2001*. As explained in the L&GNSW Fact sheet *Local Impact Assessment scheme overview* published on the L&GNSW website, each SA2 area in the State is classified into Band 1 (low risk), Band 2 (medium risk) and Band 3 (high risk) depending on the gaming machine density, gaming machine expenditure and the relative socio-economic disadvantage of the SA2. Each SA2 is assigned a score with a weighting of:
  - 70% SEIFA
  - 15% gaming machine expenditure per capita
  - 15% number of gaming machines per capita.
64. All SA2s in the State are ranked into Band 1, Band 2, Band 3, with:
  - The bottom 20% (i.e those with the highest levels of socio-economic disadvantage) are put into Band 3.
  - The next 30% are put into Band 2.
  - The remaining 50% (i.e. those with the lowest levels of socio-economic disadvantage) are put into Band 1.
65. As noted above, based on the ABS 2016 Census the State Suburb of Warilla ranks in the lowest decile across NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (IRSEAD). Moreover, ABS Quickstats data from 2016 establishes the following indicia of serious relative socio-economic disadvantage:
  - Median weekly household income was \$854 (\$1486 for NSW)
  - 33% of households had less than \$650 per week gross income (19.7% for NSW)
  - Unemployment was 10.4% (6.3% for NSW)
  - Aboriginal and Torres Strait Islander population was 5.5% (2.9% for NSW)
  - 39.4% of the population over 15 years were married (48.7% for NSW)
  - Single parent families were 27% of the population (16% for NSW)
  - 5.7% had a university or tertiary education (16.2% for NSW)
  - 16.3% had a Year 9 or below education (8.4% for NSW)

- 15.3% worked as labourers (8.8% for NSW)
  - 27.7% of households had no internet access from dwelling (14.7% for NSW)
  - 49% of the population are male (49.3% for NSW)
  - 23.3% of the population were aged 65 years and over (16.3% for NSW)
66. While the Applicant describes the socio demographic data as “mixed” (citing a higher proportion of persons aged over 65 and females as mitigating factors for gaming machine harm) the Authority is satisfied that this is a *very disadvantaged* community, whose socio economic make up exhibits numerous indicia of vulnerability to adverse gaming related impacts. The Applicant’s estimates of the age group breakdown of gaming room patrons provides little comfort, in that 85% were between 18-65 in the evening.
67. In its submission of 11 March 2020 the Applicant provides information on average gaming machine net profits at the Hotel from 1 January 2017 to 30 June 2019, submitting that the venue was ranked 334<sup>th</sup> in the State for gaming machine profits for the 6 months to 30 June 2019 and noting the Shellharbour LGA average.
68. Licensing staff have provided the Authority with information from the Central Monitoring System (CMS) for gaming machines in New South Wales, indicating during the four quarters to *30 June 2019* the average “profit” per gaming machine (meaning all money put through a machine less payouts) at this venue was \$168,751. This was well above the average profit per gaming machine, during that same period, across all hotels in the Shellharbour LGA (\$98,811) and well above the average for all NSW country hotels with between 11-20 EGMs *for the entire twelve months to 30 June 2019* at \$53,545.
69. For the sake of completeness, licensing staff have updated the Authority with CMS data during the four quarters to 30 June 2020, disclosing the following very high and ongoing levels of relative gaming machine expenditure:
- Average hotel gaming machine profit for Hotel Warilla was **\$153,151**
  - Average hotel gaming machine profit for the 7 hotels in Shellharbour LGA was **\$86,724**
  - Average hotel gaming machine profit for the 205 NSW country hotels with 11-20 EGMs was **\$46,380**
  - Average hotel gaming machine profit for the 428 NSW hotel with 11-20 EGMs, including metro and country areas was **\$50,196**
70. Authority Guideline 6 places applicants on notice that the Authority may consider certain gaming related research and information when considering an ETA for a gaming venue. This includes the findings and recommendations of the Productivity Commission (“Commission”) Inquiry Report *Gambling*, No. 50, 26 February 2010 (“PC Report”).
71. At Chapter 14, 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 a more extensive shut down for all hotels and clubs that commences “before 2 am” and is of “at least six hours” duration.

This would better target problem gamblers without unduly restricting non-problem gamblers.

72. In the Overview and Chapter 14 to the PC Report, the Commission noted evidence that higher risk gamblers present 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.
73. More recent quantitative and qualitative research funded by the NSW Responsible Gambling Fund (RGF) performed by Smith *et al* for Snapcracker Research + Strategy, as reported in its November 2019 report: *Shutdown periods for electronic gaming machines* ("Snapcracker Report") examined the relationship between problem and at risk gamblers and gaming machine use by time of day. As noted in the Executive Summary:
- The shutdown is a policy response that only seems required for community members who struggle with serious gambling issues (problem and higher-end moderate-risk gamblers).
  - It seems that any late-night shutdown is most likely to impact those gamblers for whom the policy has been designed – problem gamblers are significantly more likely than any other group to be gambling after midnight, and to be playing for longer periods overall.
  - Conceptually, a clear majority of NSW gamblers believe that a shutdown period is a positive. 68 per cent of problem gamblers believe that a shutdown is a good idea.
  - A break in play is felt by gamblers to create a significant number of benefits for those who are 'in the zone'. It is clear that there are some players who require the venue to make poker machines unavailable (usually by closing) in order to prompt a break in play.
  - It seems that in the vast majority of cases, a shutdown would likely result in gamblers going home to rest, with few indicating that other forms of gambling could truly replace pokies.
  - However, venue hopping appears to be most likely among problem gamblers in response to poker machines not being available, and this group are also most likely to travel the farthest (an average of 10.6km in order to play their favourite pokie).
  - Late at night seems to be the best time to consider any shutdown. Gamblers identify that late-night play often occurs in an environment where the atmosphere is more intense compared to other times of the day, and there are a range of drawbacks identified by gamblers which are specific to late-night play.
  - A majority of gamblers appear to support the current time periods for the shutdown, though problem gamblers are most likely to believe that it should be shorter and at other times of the day. Based on the responses across the research, it would seem that this is largely driven by a desire to be able to gamble for longer periods without interruption.
  - A minimum shutdown period of four hours seems to be supported by most gamblers, although again problem gamblers are significantly more likely to believe that a shorter shutdown period is sufficient.
  - Conceptually, all gamblers believe that a shutdown period that is longer and affects a greater number of people would be more effective in reducing harm, though in reality it seems clear that there would potentially be push-back against this if it started to affect more gamblers, particularly those at lower risk levels.
  - Ultimately, most are happy for a shutdown to exist, provided it does not impact them personally.
  - As a result of this venue hopping, it seems that a critical consideration to ensure the success of any shutdown is to maintain a uniform time period – gamblers themselves express that a non-uniform shutdown makes little sense if the aim is to minimise harm.

74. In the RGF funded *NSW Gambling Survey 2019* (Prevalence Survey) conducted by Browne *et al* for the University of Central Queensland (UCQ), the authors made the following findings in the Executive Summary:

- 53% of NSW adults surveyed participated in at least one gambling activity in the last 12 months, down from 65% in a 2011 prevalence survey.
- Buying lottery tickets is the most prevalent form of gambling (37%) followed by electronic gaming machines (EGMs)(16%) betting on horse or greyhound racing (13%), instant scratch cards (13%), Keno at hotels clubs or the casino (9%) sports betting (6%) and casino table games (5%).
- According to the Problem Gambling Severity Index (Ferris and Wynne, 2001), 1% of the NSW population were problem gamblers
- Men in NSW are significantly more likely to be problem gamblers (1.7%) compared to women (0.4%). Men are more prevalent in all PGSI gambling risk categories.
- A further 9.4% of participants were classified as low (6.6%) or moderate (2.8%) risk gamblers.
- Based on self-reported gambling spend, problem gamblers account for 36.7% of gambling expenditure, with low and moderate risk gamblers accounting for a further 19.5% and 14.5% respectively, or 70.7% in total.
- Consistent with previous research, problem gambling is more prevalent among younger people, especially younger men (aged 18 to 24).
- Younger adult gamblers were most likely to be moderate risk and problem gamblers (14.9%) compared to 7.2% of NSW gamblers overall
- The riskiest form of gambling is playing EGMs, with EGM play associated with 3.6 times greater odds of being a moderate risk or problem gambler.
- Moderate risk and problem gambling was higher among unemployed gamblers (19.5% compared with 7.2% overall) and gamblers who spoke a language other than English at home (14%) and lower among those with a university degree (4.9%)
- EGMs stand out as a form of gambling that is of greatest concern, being the second most prevalent form (after lotteries) and with participation predictive of the highest risk of problem gambling.
- Of the 21 moderate to severe gambling related harms surveyed, 94.7% were reported by low risk, moderate risk and problem gamblers. Based on self- report data, these three groups together account for 70.7% of gambling expenditure
- As for preferred venue, problem gamblers (54%) and moderate risk gamblers (44%) were more likely to gamble on EGMs at a hotel/pub than non-problem gamblers (37%).

75. At Chapter 9, the authors made the following more specific findings on electronic gaming machine (EGM) gambling in NSW:

- In a 2006 prevalence study, 31% of NSW adults played EGMs, which declined to 27% in 2011 study and was found to be 16% in this 2019 study.
- However, the prevalence of persons having played EGMs increases with increasing PGSI risk category, with 84% of problem gamblers having participated in EGM gambling in the past 12 months.
- The rate of problem gambling among EGM players is 5.4%, compared to 0.4% among those who do not play EGMs.

- Overall, 36% of EGM gamblers indicate some degree of gambling problems
  - Although rates of gambling problems among EGM players tend to decrease slightly with age, these differences are not significant except for those aged 65+ years
  - Males were significantly more likely to have played EGMs (19%) than females (13%)
  - Regional NSW residents were significantly more likely to have participated in EGM gambling (20%) than Greater Sydney residents (14%).
  - Those living in the Illawarra Shoalhaven District (23%) were more likely to play EGMs than those in the Northern Sydney district (10%)
76. The Applicant has made a number of submissions on whether the local community exhibits certain socio demographic risk factors associated with problem gambling, on the basis of certain well-known indicia arising from problem gambling research. The Authority has considered the Applicant's observation arising from the Snapcracker Report that some "problem" gamblers may potentially travel some distance for their "favourite" machines. The Applicant has identified the location and trading hours of eight other hotels and clubs ranging from 1.5 to 8.2kms away offering gaming machines, to call into question the effectiveness of seeking a longer shutdown of machines at this Hotel.
77. The Authority accepts the Applicant's observation that the Shellharbour Workers Club is 3.7 kilometres from the Hotel, holds 289 gaming machines and is open until 4:00 am from Sunday to Thursday and until 6:00 am on Friday and Saturday. However, the Authority does not accept the contention that these machines are "readily accessible" to EGM players at the Warilla Hotel. They are not in walking distance to local residents and patrons playing at Warilla Hotel would need to rely upon private transport to migrate to other gaming venues late at night in the LGA.
78. As noted above, the Warilla Hotel is the only hotel in this suburb, with no other venues in this local community to which gaming machine players may conveniently resort once the machines at this Hotel shutdown for the night. When considering which course of action best serves the *responsible* development of this industry, the Authority is not merely focused on "problem" gamblers, but "at risk" gamblers as well. The Prevalence Survey establishes that this combined cohort make up a substantial proportion of NSW gaming machine players and gambling expenditure generally.
79. The Authority considers that there is increased scope for adverse social impact arising from gaming machine use in this very low-income suburb. The Authority does not accept the Applicant's submission that this local community is not one that is at an elevated risk of gambling related harm. Noting that well understood risk factors such as younger age (Browne, *et al* 2019), male gender (Browne *et al*, 2019), lower income (Armstrong *et al* 2017), living in a low socio economic area (Armstrong, *et al* 2017), reliance upon income support (Armstrong *et al* 2017) unemployment (Browne *et al* 2019), lower educational attainment (Billi *et al* 2014), and Aboriginality (Armstrong *et al* 2017) are all socio demographic factors that are associated with an increased risk of problem gambling, this local community exhibits an over-representation of several such indicia, to a substantial degree, when compared to the State average.
80. There is only a marginal difference in the representation of males (who are riskier for gambling than females) in this suburb compared to New South Wales as a whole, but

there is a significantly higher than State average representation of local persons who are aged 65 or over.

81. This older group is identified in the Prevalence Survey as having lower levels of “problem” gambling. While the extent to which this cohort would favour attending this venue after midnight is unclear from the Applicant’s information, some 29% of this group were identified by the Prevalence Survey as either in a “problem” and “at risk” category for EGM gambling, compared to 36% for all EGM players.
82. Given the number of gambling risk factors and the overall economic vulnerability of this financially constrained community to sustain gambling losses, the Authority is satisfied that maintaining the status quo is the more *responsible* approach to the development of the gaming machines industry in *this* local community. It will ensure a longer effective shutdown of machines across the course of the week in this local community, giving “at risk” or “problem” gamblers a meaningful opportunity to stop gambling for the night.
83. The Authority accepts the Applicant’s submission that notwithstanding the research, Parliament has only *mandated* a standard shutdown period between 4:00 am and 10:00 am. Nevertheless, the Authority is not bound by *minimum requirements of the legislation* when assessing the whether an applicant’s proposal to *increase the risk profile* of a venue by trading later into the evening will satisfy the overall social impact test.
84. The Authority has considered the Applicant’s submissions that there will be “substantial” benefits for gamblers from extending operations until 2:00 am but finds these claims to be overstated. There is no evidence of local community support, from the petition or otherwise, for late night gaming machine operations. If the *status quo* is maintained, local recreational gaming machine players will still enjoy access to the Hotel’s 15 machines from 10:00am to Midnight, Monday through Friday (12 hours per day), 9:00 am to Midnight Saturday (13 hours per day) and 10:00am to 10:00 pm on Sunday (12 hours per day).
85. This amounts to 85 x 15 EGM operating hours each week - or 1275 hours of total gaming machine availability each week, with more if there is a public holiday. As noted above, the primary purpose of any hotel is the sale of liquor by retail. Gambling services should only constitute an ancillary purpose.
86. The Authority accepts the Applicant’s advice in its submission dated 11 February 2020 that the Hotel participates in the *GameCare* self-exclusion scheme and there have been no referrals or self-exclusions at the Hotel. The Applicant submits that this adds weight to a conclusion that the Hotel is not a problematic one for problem gambling.
87. The Authority finds that while maintaining a self-exclusion scheme meets the *minimum requirements* of the legislation, a venue’s reliance upon an “informed choice” approach to harm minimisation cannot be given great weight as a countermeasure to the *increased risk posed by extended trading* in a vulnerable community.
88. The RGF funded *Responsible Conduct of Gambling Study* performed by CQU dated 19 February 2020 made the following key findings:
  - NSW clubs and hotels use an informed choice approach to RCG. This is the approach required by NSW regulations in respect of signage, product information, financial transactions, advertising, inducements, minors and RCG training. Venues are required

to offer self-exclusion and counselling, with no obligation to proactively intervene with patrons showing signs of problem gambling who do not ask for help.

- Most employees reported that their venue implements regulated RCG practices but some (around 10% of respondents to this survey) were aware of illegal practices occurring including the supply of free liquor to induce gambling (9.6%), supplying credits, vouchers or cash advances (10.9%) and supplying an inducement that is likely to encourage the abuse of gambling activities (10.4%).
- Employees reported being responsive to patrons asking for help for their gambling with 80% of respondents identifying established procedures whereby such patrons would be escalated for help. However, monitoring of self-exclusion has numerous difficulties in that staff reported a lack of familiarity with self-excluders, failure to update the self-exclusion register, difficulty monitoring multi venue exclusion orders and difficulty identifying self-excluded persons from poor quality photographs. The researchers noted the 2019 Prevalence Survey findings that 22% of self-excluders had tried to re-enter a venue during their period of self-exclusion and 92% of those who tried were successful in doing so.
- Very few patrons directly ask for help for their gambling, despite research indicating that a considerable proportion of EGM players are likely to be experiencing problems with their gambling. Survey respondents indicated that they were approached by an average of 2.2 persons per year. This low help seeking rate, compared to the number of EGM players gambling at harmful levels, indicates that only a small proportion of these patrons directly ask a venue for help. Furthermore, the literature indicates that this assistance, while important, typically occurs only after the patron has already experienced substantial harm, is financially destitute and at crisis point.
- Employees report regularly observing patrons showing signs of problem gambling, but rarely approach those who do not ask for help or report them upwards. 21.3% of respondents report seeing patrons with problem gambling “most of the time” while 62.5% observed them “sometimes”. Respondents indicated unwritten pressure by management to keep people gambling, with barriers to approaching patrons including: that the patron would deny having a problem, concerns about insulting the patron, being afraid of making an incorrect judgment and fear of the patron becoming angry or violent. Respondents reported that escalation to supervisors and concerns raised by significant others would result in limited interaction by way of a general chat and the provision of problem gambling information.
- Genuine management commitment to patron welfare can improve some RCG practices, but these venues were reported to be in the minority, and respondents indicated that those venues that extended RCG beyond the minimum required by the regulations were also in the minority.
- The current approach to RCG is having little positive impact on harm prevention or reduction, in that current RCG practices in NSW clubs and hotels largely ignore the vast majority of their patrons showing observable signs of gambling unless they ask for help. Population surveys indicate that, despite several decades of the informed choice approach to RCG, a large proportion of venue patrons still experience gambling problems, especially in relation to EGM gambling (Armstrong and Carroll, 2017; Browne et al 2019; Productivity Commission, 2010). This study and other recent research (Rintoul et al) indicate that harmful, extended and intensive gambling is a normalised feature of EMG use that is routinely witnessed, and largely ignored, in gaming venues. Given that rates of problem gambling have remained static and EGMs continue to be the major source of gambling problems in NSW (Browne, et al 2019), the current informed choice approach to RCG is clearly having little impact on preventing or reducing gambling harm, and is incompatible with the objective of harm minimisation in NSW gambling legislation.

- Other jurisdictions, including the ACT, New Zealand, the United Kingdom and Norway are adopting a more proactive approach to address harm minimisation, aimed at the early recognition of gambling harm before a severe problem has developed. As demonstrated in Norway, mandatory pre-commitment systems can further advance harm minimisation by enabling customers to set limits in advance of gambling, and provide personalised feedback to gamblers, prevent self-excluders from gambling and incorporate behavioural tracking to support the basis of venue interventions (Livingstone et al 2019, Productivity Commission, 2010).
- Substantial changes to RCG practices and training in NSW are needed to minimise gambling harm. A mandatory pre-commitment system across all venues in NSW that requires all gamblers to set binding daily, weekly or monthly limits should be a high priority consideration. Structural changes to EGMs should be trialled, given the high strength of evidence for a reduction in maximum bet size to \$1, the abolition of jackpots, bonus features and losses disguised as wins. Reducing the maximum number of EGMs per venue and EGM operating hours, especially in areas of relative disadvantage, should be considered to reduce gambling harm. Staff training is an important part of RCG and can be improved, but RCG training on its own will have very little impact on minimising gambling harm without initiatives that make the gambling product and environment safer, limit EGM accessibility, strengthen requirements for venues to intervene and require venues to demonstrably reduce gambling harm among patrons.

89. The Authority has considered the Applicant's critique of this study in their submission dated 10 June 2020 and its defence of the current policy framework and its staff practices. The Authority nevertheless accepts that there is a substantial body of independent research demonstrating that the *minimum* RCG requirements of the legislation do not overcome the *practical* barriers to detecting and addressing problem or at-risk gambling on licensed premises.
90. The research indicates that a low rate of problem EGM players actually seek help from venues and tend to do so late in the process. The research reinforces the desirability of longer shut down periods and the need to consider regulatory measures that exceed minimum legislative requirements for venues in disadvantaged areas.
91. The Authority accepts that the Warilla Hotel is complying with minimum RCG requirements, but the presence of a self-help scheme and the absence of persons approaching this business for help are matters that can be given only limited weight when contemplating the increased scope for adverse gaming machine impacts posed by extending the gaming operations of *this* Hotel in *this* local community.
92. The Authority finds that permitting some extended licensed trading to 1:00 am to enable the Hotel to fulfil its primary purpose of selling liquor by retail will provide a modest increase in convenience for local patrons, while avoiding an increase in adverse social impact from the Hotel's gaming machine operations on weeknights..
93. In its 10 June 2020 submission, the Applicant submits that the information provided in Prevalence Survey on gambling by time of day achieved similar results to the April 2009 Report prepared by Blue Moon Research for then former Office of Liquor Gaming and Racing entitled "Evaluation of the 6 Hour Shutdown of Electronic Gaming Machines in NSW".
94. The Applicant further submits that the findings of the Snapcracker Research are an outlier and that research does not establish a "significant over representation" of problem gamblers during the midnight to 4:00 am time period, or "such an acute over

representation” to “warrant the necessary shut down of gaming machines as a harm minimisation measure”.

95. The Authority does not need to find an “acute” over representation of “problem gamblers” after midnight when deciding whether the overall social impact of extending the late trading *will not be detrimental* to the local or broader community.
96. As indicated in previous liquor and gaming decisions, the Authority is concerned with both *problem* and *at-risk gambling* which, according to the Prevalence Study, comprise some 36% of NSW EGM users.
97. According to the 2019 Snapcracker Research, 22% of problem gamblers participating in that study identified the time between midnight and 2:00 am as a time in which they “usually” play EGMs in a hotel, with that number dropping to only 4% between 2:00 am and 8:00 am. Higher numbers of problem gamblers (48%) identified between 9:00pm and midnight as a “usual” time to gamble, with 45% identifying 4:00pm to 9:00pm and 25% identifying 8:00am to 4:00pm.
98. By contrast, the 2019 Prevalence Survey recorded 8.3% of problem gamblers identified between midnight and 5 am as a “usual” time to gamble with 7.7% of moderate risk and 6.6% of low risk gamblers indicating this time of day. That is, a total problem and at-risk cohort of 22% of EGM gamblers indicated midnight and 5 am as a “usual” time for them to gamble compared to 7% of non-problem gamblers.
99. The 2008 Blue Moon Research recorded that 9% of problem gamblers indicated between midnight and 4:00 am as a time that they “usually” use gaming machines, with 8% of moderate risk and 5% of low risk gamblers specifying that time of day.
100. Notwithstanding some divergence in these results, it is apparent that the combined cohort of *problem* and *at-risk* gamblers who identify post- midnight trading as a “usual time” in which they gamble is substantial.
101. The gambling research before the Authority, combined with CMS data (indicating very high average local gaming machine profits that are odds with a financially constrained and socially disadvantaged local community) satisfy the Authority that the more “responsible” course is to not extend gaming machine operations at this venue.
102. In conclusion, notwithstanding some modest levels of support for longer hours among local residents, the Authority has given significant weight to the amenity impacts posed to residents in nearby streets should this venue trade until 2:00 am 6 nights per week and until midnight on Sunday.
103. In balancing the objects and considerations of section 3, the Authority finds that a moderate increase in late night licensed trading, to 1:00 am on Friday and Saturday only, may accommodate the expectations of some Hotel patrons without causing increased adverse amenity impacts across the working week.
104. The Authority has given substantial weight to the prevailing levels of social disadvantage in the local community and decisive weight to the increased scope for adverse social impacts to flow to this local community from extending the hotel’s gaming machine operations to the extent proposed.
105. By reason that the Authority has confined extended trading to only one hour on Saturday and Sunday mornings, the Authority has decided that it need not encumber

the licence with the complete set of drink restrictions proposed by Police, which would be appropriate had the Application been granted in full. The Authority is satisfied that the use of a security guard will be a substantial harm minimisation measure on Friday and Saturday evenings, which are typically peak trading nights that pose a higher risk of alcohol related anti-social conduct.

#### Overall social impact

106. Having considered together the positive and negative impacts that are likely to flow from granting the ETA, the Authority is only satisfied, the purposes of section 48(5) of the Act, that the overall social impact of granting extended trading would not be detrimental to the well-being of the local community of Warilla if extended trading is limited to 1:00 am Saturday and Sunday mornings, with no extended trading in the gaming machine room.
107. The Application is *granted in part* pursuant to section 49(2) of the Act.



Philip Crawford  
**Chairperson**

#### **Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* (NSW) 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 the New South Wales Civil and Administrative Tribunal ("NCAT") for an administrative review under the *Administrative Decisions Review Act 1997* (NSW).

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions> 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 – Licence conditions to be imposed Warilla Hotel**

1. The licensee must ensure that all gaming machines cease operation during extended trading hours.
2. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 2:00 am and 8:00 am during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
3. Closed-circuit television system
  - 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
    - a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
    - b) recordings must be in digital format and at a minimum of six (6) frames per second,
    - c) any recorded image must specify the time and date of the recorded image,
    - d) the system's cameras must cover the following areas:
      - (i) all entry and exit points on the premises, and
      - (ii) the footpath immediately adjacent to the premises, and
      - (iii) all publicly accessible areas (other than toilets) within the premises.
  - 2) The licensee must also:
    - a) keep all recordings made by the CCTV system for at least 30 days,
    - b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
    - c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.
4. Crime scene preservation

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

  - 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
  - 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,
  - 3) make direct and personal contact with NSW Police to advise it of the incident, and
  - 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.

- 5) In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.
5. Incident register
- 1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:
- a) any incident involving violence or anti-social behaviour occurring on the premises,
  - b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
  - c) any incident that results in a person being turned out of the premises under section 77 of the Liquor Act 2007,
  - d) any incident that results in a patron of the premises requiring medical assistance.
- 2) The licensee must, if requested to do so by a police officer or Liquor & Gaming NSW inspector:
- a) make any such incident register immediately available for inspection by a police officer or Liquor & Gaming NSW inspector, and
  - b) allow a police officer or Liquor & Gaming NSW inspector to take copies of the register or to remove the register from the premises.
- 3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.
6. The licensee or its representative must join and be an active participant in the local liquor accord.
7. The premises is to be operated at all times in accordance with the Plan of Management dated June 2019 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
8. The business authorised by this licence must not operate with a greater overall level of social impact on the well-being of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining the extended trading authorisation on 27 October 2020.
9. A licensed security officer will be present whenever the hotel trades after 12:00 AM (midnight) until close.

## **Schedule 2 – Material considered by the Authority**

### **Warilla Hotel**

#### **Application material**

1. Application Form for a new extended trading authorisation (“ETA”) in respect of full hotel licence LIQH400114532 known as Warilla Hotel, lodged by Ms Karma Elliott-Cosmos on 9 October 2019, including the required notices (“Application”).
2. Completed Category B Community Impact Statement dated 3 October 2019, accompanied by: a map depicting the 100-metre area in which notice of the Application was distributed; a list of stakeholders and special interest groups that were notified of the Application; and a nine-page document providing additional information in respect of the Application including Attachment A - the Warilla Hotel Venue Management Plan dated June 2019.
3. Plan/diagram of the licensed premises provided with Application highlighting the licence boundary in yellow, the ETA area in pink and minors area boundary in blue.

#### **Development consent**

4. An annotated copy of the local consent authority notice was provided by Shellharbour City Council (“Council”) on 4 November 2019 advising that development consent is not required to permit the proposed activity, referring specifically to development approval 486/2007 Pt2.

#### **L&GNSW records**

5. Liquor and Gaming NSW (“L&GNSW”) liquor licensing records as at 19 November 2019, indicating the number and density of all types of liquor licences in the State suburb of Warilla, the Shellharbour Local Government Area (“LGA”) and New South Wales (“NSW”).
6. L&GNSW liquor licensing records as at 19 November 2019 listing all licensed premises in Warilla.

#### **Crime data**

7. Bureau of Crime Statistics and Research (“BOCSAR”) NSW Recorded Crime Statistics October 2018 to September 2019 comparing certain offences by day of week and time of day in Warilla and the LGA compared to NSW, sourced by licensing staff on 5 December 2019.
8. 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 5 December 2019.
9. BOCSAR crime hotspot maps for October 2018 to September 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 5 December 2019.
10. NSW crime statistics published by BOCSAR indicating that for the year to September 2019, the rate (per 100,000 population) of:
  - a) alcohol-related domestic assault in the LGA and Warilla were 81.7 and 60.4 respectively, compared to the NSW average of 117.7,
  - b) alcohol-related non-domestic assault in the LGA and Warilla were 54.9 and 90.5 respectively, compared to the NSW average of 118.8,
  - c) malicious damage to property in the LGA and Warilla were 714.1 and 1056.1 respectively, compared to the NSW average of 732.2 and

- d) alcohol-related offensive conduct in the LGA and Warilla were 11.3 and 0.0 respectively, compared to the NSW average of 35.0.

(sourced by licensing staff on 5 December 2019).

### **Health data**

- 11. HealthStats NSW data showing that the LGA recorded a spatially adjusted rate of:
  - a) 17.6 for alcohol attributable deaths per 100,000 of population, compared to the corresponding NSW figure of 17.4, in the period 2016-17; and
  - b) 409.9 for alcohol attributable hospitalisations per 100,000 of population, compared to the corresponding NSW figure of 555.6, in the period 2016-18.

(sourced by licensing staff on 15 November 2019).

### **Socio-economic data**

- 12. Australian Bureau of Statistics Socio-Economic Indexes For Areas 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, Warilla ranked in the 1<sup>st</sup> decile and the LGA ranked in the 5<sup>th</sup> decile. This data was sourced by licensing staff on 5 December 2019.

### **Stakeholder submissions**

- 13. Submission from the Department of Communities and Justice dated August 2019 advising that the Department is unable to determine that this proposal would adversely affect the local community and for that reason, the Department holds no legitimate grounds for concern.
- 14. Submission from Warilla resident Ms C Boag, dated 15 August 2019 opposing Application.
- 15. Submission from Warilla resident Ms D Zapps, dated 15 August 2019 raising amenity concerns.
- 16. Submission from NSW Roads and Maritime Services ("RMS") dated 20 August 2019 advising that RMS does not object to the Application and recommends that the Applicant join the Liquor Accord to maintain awareness of best practice responsible service of alcohol.
- 17. Submission from NSW Aboriginal Affairs dated 23 August 2019 advising no objection provided that the Applicant notifies NSW Aboriginal Land Council and the local Aboriginal Land Council.
- 18. Submission from Warilla resident Mrs W Dickson dated 27 August 2019 opposing Application.
- 19. Submission from L&GNSW Compliance dated 26 November 2019 advising that its records did not identify adverse findings against Warilla Hotel while noting an increased risk of alcohol-related harm when trading hours are increased, particularly during late trading.
- 20. Submission from Sergeant Gary Keevers, Licensing Firearms Supervisor, Lake Illawarra Police District of NSW Police dated 9 December 2019 advising Police have no objection to the Application provided that proposed special conditions are imposed on the licence.
- 21. Submission from Aboriginal Affairs dated 10 October 2019 repeating their earlier submission. This submission was Annexure F to the Applicant's 11 February 2020 submission.
- 22. Submission from RMS dated 21 October 2019 repeating their earlier submission of no objection. This submission was Annexure E to the Applicant's 11 February 2020 submission.

23. An eighteen-page submission from the Applicant's legal representative dated 11 February 2020 responding to an email from staff dated 31 October 2019. The following documents accompanied this submission:
  - Certificates of advertising signed by Brett Tobin of Hatzis Cusack Lawyers dated 31 October 2019 and Ms Karma Elliott-Cosmos dated 12 November 2019.
  - The Warilla Hotel Venue Management Plan dated June 2019.
  - The Applicant's NSW RSA Competency Card with expiry date 1 April 2024.
  - Stock Item Sales Report from the Warilla Hotel's till system dated 20 July 2019 between 09:00:00 to 17:59:59.
  - A petition signed by 140 members of the community in support of the Application.
  - Table 50 of the 2019 NSW Responsible Gambling Fund *NSW Gambling Survey 2019*.
  - Central Monitoring System Gaming Tax Invoices for the Warilla Hotel between 1 January 2017 and 30 June 2019.
  - ABS 2016 Census Quickstats data for the suburb of Warilla.
  - ABS 206 Census Quickstats data for the LGA.
24. Nine-page submission from the Applicant's legal representative dated 18 March 2020 responding to the Snapcracker Report, which was put to the Applicant for comment on 25 February 2020 by staff.
25. Department of Customer Service Licence Details Report for the Hotel between 1 July 2008 to 12 February 2020, sourced by staff on 12 February 2020.
26. Email from the Authority Secretariat to the Applicant dated 27 May 2020 inviting comment on:
  - A document prepared by the Department of Customer Service Regulatory Research Directorate dated 8 May 2020 titled *Information to support interpretation of the NSW Gambling Survey 2019 and the report Shutdown Periods for Electronic Gaming Machines*.
  - The 2020 Responsible Conduct of Gambling Study: Hing, N., Russell, A. & Rawat, V. (2020). Responsible Conduct of Gambling. [Central Queensland University]. Commissioned by New South Wales Responsible Gambling Fund, Sydney.
27. Email from the Applicant's legal representative dated 10 June 2020 providing a submission of the same date in which the Applicant responds to the research put to the Applicant for comment on 27 May 2020.

### **Other Background Research**

28. Report commissioned by the NSW Responsible Gambling Fund from *Snapcracker Research + Strategy* (Craig Smith, Andrew Wolstenholme and Claire Duffy) dated November 2019 *Shutdown periods for electronic gaming machines* ("Snapcracker Report").
29. New South Wales *Gambling Survey 2019 Report (Revised)* prepared by Central Queensland University for the NSW Responsible Gambling Fund (Prevalence Survey)
30. Victorian Responsible Gambling Foundation: *Risk Factors for Problem Gambling* (May 2015)
31. NSW Office of Liquor Gaming and Racing: *Evaluation of the 6-hour Shutdown of Electronic Gaming Machines in NSW*, report prepared by Blue Moon Research (April 2008)
32. Media clips sourced by staff including:

- An article published online at Illawarra Mercury on 25 August 2019 titled, *Two men stabbed in the legs at Warilla*.
  - An extract from what appears to be a social media post regarding the stabbing at Warilla.
  - An online article by Shannon Tonkin dated 22 October 2019 titled, *Two men stabbed in the legs at Warilla face court on assault charges*.
33. OneGov licence record for the Hotel, sourced by staff on 12 February 2020.
34. Google Map depicting the Hotel and surrounding SA2 statistical areas, sourced by staff on 17 February 2020
35. Google map images extracted from the Google website by staff on 5 December 2019, showing the location and photos of the Premises in map view, earth view and street view.

## Schedule 3 – Relevant extracts from the Liquor Act 2007 (NSW)

### Warilla 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:
    - (a) 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
    - (b) 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:
    - (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).

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**

- (1) 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.
- (2) The designation of a hotel licence as a general bar licence cannot be changed.
- (3) 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](#).
- (4) 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:
  - (a) provide a cash advance in the hotel, or
  - (b) 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:
  - (a) to persons who have been invited to use or attend the hotel, or
  - (b) 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.

#### **40 Licence applications**

- (1) Licence applications are to be made to the Authority.

- (2) An application for a licence may be made by:

- (a) an individual, or
- (b) a corporation, or
- (c) in the case of a club licence—a club (or a person on behalf of a club) that meets the requirements specified in section 10 (1) of the *Registered Clubs Act 1976*.

- (3) An application for a licence may not be made by:

- (a) an individual who is under the age of 18 years, or
- (b) a person who is disqualified from holding a licence or who holds a suspended licence, or
- (c) an individual who is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*.

**Note.** Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.

- (4) An application for a licence must:

- (a) be in the form and manner approved by the Authority, 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) be advertised in accordance with the regulations, and
- (d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.

**Note.** See also section 48 which requires a community impact statement to be provided with certain licence applications.

- (5) If, before an application for a licence is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including any information provided in accordance with this subsection), the applicant must immediately notify the Authority of the particulars of the change.

#### **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:

- (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.