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4 September 2019

Dear Mr Sammut,

<b>Application No.</b>	1-7187564431
<b>Applicant</b>	Mr Allan Jackson
<b>Application for Licence name</b>	Extended trading authorisation in relation to a hotel licence Shaft Tavern
<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: whole of licensed area excluding bottle shop and restaurant</u> Monday to Saturday 10:00 AM – 4:00 AM Sunday 10:00 AM – 12:00 midnight  <u>Consumption on premises: other areas of the licensed premises</u> Monday to Saturday 10:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM  <u>Take away sales</u> Monday to Sunday 10:00 AM – 10:00 PM
<b>Premises</b>	145 Croudace Avenue Elmore Vale NSW 2287
<b>Legislation</b>	Sections 3, 11A, 12, 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 – Shaft Tavern**

The Independent Liquor and Gaming Authority considered the above application at its meeting on 15 May 2019 and pursuant to section 49(2) of the *Liquor Act 2007* (NSW) decided to **refuse** the application.

If you have any questions, please contact [ash.maurya@liquorandgaming.nsw.gov.au](mailto:ash.maurya@liquorandgaming.nsw.gov.au).

Yours faithfully

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

## Statement of reasons

### Decision

1. On 31 January 2019 the Independent Liquor and Gaming Authority (“the Authority”) received from Mr Allan Jackson (“the Applicant”), through Liquor and Gaming New South Wales (“LGNSW”), an application for an extended trading authorisation (“ETA”) in respect of a full hotel licensed premises (LIQH400117566) at 145 Croudace Road, Elmore Vale New South Wales (“NSW”) 2287 (“Premises”), trading in the name of *Shaft Tavern* (“Application”).
2. The Authority has considered the matter at its meeting on 15 May 2019 and has decided to **refuse** the Application pursuant to section 49(2) of the *Liquor Act 2007* (NSW) (“Act”).
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 40, 45, 48, 49 and 51 of the Act and relevant provisions of the *Liquor Regulation 2018* (NSW) (“Regulation”).

### Material considered by the Authority

4. The Authority has considered the Application, accompanying Community Impact Statement (“CIS”), and all submissions received in relation to this Application.
5. 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.
6. In accordance with its *Guideline 6*, the Authority has also had regard to relevant LGNSW liquor licensing records and data published by the Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health and the Australian Bureau of Statistics (“ABS”).
7. A list of the material before the Authority is set out in Schedule 1.

### Legislative framework

8. 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) Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
  - (e) Section 45: Criteria for granting a liquor licence
  - (f) Section 48: Requirements in respect of a CIS.
  - (g) Section 49: General provisions in respect of an ETA.
  - (h) Section 51: General provisions relating to licence-related authorisations.
9. An extract of these sections is set out in Schedule 2.

### Key findings

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

### Validity, procedural and trading hour requirements

11. On the basis of the Application, CIS material and Certificate of Advertising dated 18 March 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.
12. While the Application has not been granted, the extended hours sought by the Applicant are within the scope of sections 11A and 49 of the Act with respect to a daily 6 - hour liquor sales cessation period and the extended trading hours that potentially may be granted in respect of a hotel licensed premises.

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

13. 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 LGNSW.
  - (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 April 2019.
  - (c) For the purposes of section 45(3)(c) of the Act, the requisite development consent permitting the conduct of a hotel liquor licensed business with the proposed extended trading hours is in force. The Authority notes development consent 08/0059 was granted by the City of Newcastle ("Council") on 16 April 2008, which is silent about restrictions on trading hours, and in a submission dated 5 February 2019 Council advised that further development consent is not required to permit the proposed exercise of extended trading hours on the Premises. In correspondence dated 7 March 2019 Council advise that they have "not put any restriction on hours through the DA process" and that "it is assumed that the tavern is working on an original licence that is not restricted (i.e. 24 hour licence)".

### Further restrictions on granting an ETA

14. For the purpose of section 49(8)(b) of the Act, the Authority notes the Plan of Management dated April 2019 and the conditions consented to by the Applicant in the submission dated 14 March 2019, intended to minimise the risk that the extended trading period will result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed Premises.

### CIS and Gambling Activities

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

### Community impact statement

16. 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 Elermore Vale, and the relevant “broader community” comprises the local government area (“LGA”) of the City of Newcastle (“Newcastle LGA”).

### Positive social impacts

17. In the CIS material the Applicant contends that the extended hours are sought “in order to allow patrons to enjoy the hotels amenities for an extended period of time”. Noting that the suburb has a total of 2 licensed premises, being 1 packaged liquor licence and 1 full hotel licence (the subject of this Application), the Authority is satisfied that the proposed extended trading at this hotel business would provide some increased convenience and choice for those in the local community who patronise this venue and wish to remain on the Premises later into the evenings.
18. In this sense, the proposal may *potentially* advance the expectations, needs and aspirations of the communities – in particular the local community of Elermore Vale – in furtherance of the statutory object in section 3(1)(a) of the Act.
19. However, the Authority finds that the extent of increased benefits by way of meeting community expectations is constrained by the fact that the *actual* expectations voiced by local residents and local Police (which are discussed in greater detail below) are in opposition to the proposal.
20. The Authority has considered the Applicant’s general contentions in the CIS that extending the trading hours would have a positive impact on the community by promoting business diversity, providing greater employment opportunities, and providing a leisure and passive entertainment venue to service the growing demand in the area.
21. The Authority accepts the general proposition that the current owner, Iris Capital (who acquired the hotel in December 2018), is an experienced operator and that the hotel is currently the subject of plans to renovate.
22. The Authority also accepts the general proposition that granting extended trading to one of only two licensed venues in this suburb has the potential to promote business diversity, extend the number of hours available for staff to work and continue to provide a leisure and passive entertainment venue to the community later in the evening.
23. The Authority has considered the Applicant’s provision of copies of a patron survey that were conducted by the Hotel on the premises. The date and time of these surveys is not provided, but those respondents indicate that drinking and dining were the main activities and services attracting those 20 patrons to the hotel. This survey information can only be given limited weight. It does not indicate the time and date(s) these surveys were performed nor does it provide any specific information as to how many patrons are utilising the hotel’s liquor, gambling and other services, nor the demand for those services until 4:00 am across the working week and on weekend evenings. This evidence or information is limited and it is difficult to discern from it the extent of positive benefits by way of meeting community desires or expectations that will flow to the local and broader communities from the proposed extension of hours at this venue. The Applicant’s positive case is poorly articulated and the evidence is weak.

24. Consequently, the Authority finds that extending licensed trading at this venue will service the expectations, needs and aspirations of the communities for the purposes of section 3(1)(a) of the Act, and develop the liquor industry serving these communities, for the purposes of section 3(1)(b) of the Act, to only a limited degree.

#### Negative social impacts

25. Having regard to the information in the Application, CIS and the information provided by Police and local submitters, the Authority considers that extending the late night trading hours as proposed will increase the scope for this venue to attract and generate incidents of disturbance, anti-social conduct and adverse impact upon amenity in the local and broader communities.

#### *Authority Guideline 6 risk factors*

26. This Application concerns an ETA in respect of a full hotel licensed premises that provides a full-service bar, restaurant facilities, lounge areas, TAB, sports bar, gaming and takeaway liquor service (although takeaway liquor will not be sold during the extended hours proposed).
27. The ETA is proposed to cover a relatively large area, comprising some 730 square metres of the 1,500 square metres total licensed area) including the gaming room, main bar, sports bar, lounge and TAB.
28. Should the ETA be granted as proposed this venue will be licensed to sell and supply liquor for consumption on the premises from 10:00 am to 4:00 am Monday to Saturday, 10:00 am to 12:00 midnight Sunday (whole of the licensed area excluding bottle shop and restaurant) and from 10:00 am to 12:00 midnight Monday to Saturday, 10:00 am to 10:00 pm Sunday (other areas of the licensed premises) or a total of 122 hours across the week.
29. The increased trading hours sought in the Application are extensive, with the additional hours running from 12:00 midnight to 4:00 am Monday to Saturday and between 10:00 pm and 12:00 midnight on Sunday – some 26 additional late trading hours per week.
30. The scale and proposed hours both objectively increase the scope for the venue to attract and accommodate alcohol affected patrons over a prolonged period, 7 days per week.

#### *Alcohol related crime*

31. In assessing the suitability of the location for extended licensed hours, the Authority has considered BOCSAR crime maps between January 2018 and December 2018 which indicate that the Premises is located within a high-density hotspot for *domestic assault*. There are no hotspots at or near the location within the suburb for incidents of *alcohol-related assault*, *non-domestic assault* and *malicious damage to property*.
32. The Authority is satisfied that the prevailing alcohol related crime rates in the local community are generally not at troubling levels when compared to State-wide averages. However, data for the broader community is relatively troubling and adverse to the Application. BOCSAR data for the 12 months to December 2018 records:
- A rate of **52.6** for incidents of *alcohol related domestic assault* per 100,000 persons for the suburb, a rate of **128.6** for the LGA and a rate of **116.5** for NSW.
  - A rate of **17.5** for incidents of *alcohol related non-domestic assault* per 100,000 persons for the suburb, a rate **257.3** for the LGA and a rate of **123.9** for NSW.

- A rate of **420.8** for incidents of *malicious damage to property* per 100,000 persons for the suburb, a rate of **1278.9** for the LGA and a rate of **755.1** for NSW.
  - A rate of **0.0** for incidents of *alcohol related disorderly conduct (offensive conduct)* per 100,000 persons for the suburb, a rate of **59.7** for the LGA and a rate of **37.9** for NSW.
33. The Authority considers the extension of licensed trading into higher risk times of the evening or the week would increase the capacity of a hotel to contribute to levels of alcohol related crime impacting the local or broader communities and substantially increase the scope for this venue to attract and generate adverse amenity impacts in the neighbourhood of the Premises within the local community.
  34. The Authority has also considered concerns as to crime posed by extended late trading that were identified by Police. The Authority has given some weight to those concerns given their local knowledge of the crime environment. The Authority accepts as credible that extending the late-night trading hours will increase the risk of patrons, staff and the hotel becoming victims of crime due to the substantially increased opportunities for such incidents in light of the increase of hours proposed by this Application.
  35. The Authority accepts the Police contention that there are significant risks of patrons, staff and the hotel becoming exposed to crime as an incident of later trading. Police also refer to the Applicant's Plan of Management which concerns safe transport options and security patrols on weekends. Police contend that the proposed measure of one per 100-person security ratio during peak times are inadequate to address the risk of late trading across the course of the week. The Authority accepts the Police submission that the Applicant has not comprehensively addressed the increased scope for crime on or in relation to the Premises as the venue extends its hours into higher risk times of the week.
  36. Police make the non-venue specific contention that there are increased risks identified in the research associated with licensed trading after 12:00 midnight, with each one-hour extension of closing hours being associated with an increase of 17% in violence (Ingeborg Rossow & Thor Norstrom, the impact of small changes in bar closing hours on violence. The Norwegian experience from 18 cities). While Police have not provided the research, the Authority accepts the Police account of this research and accepts that there is a well-established association in the literature between an increase in risk of adverse social outcomes and late-night trading at licensed premises.
  37. Police contend that this venue is likely to attract a larger patronage due to limited drink restrictions and being in a highly populated suburban area with limited other licensed premises open after 12:00 midnight. Police also note that the BOCSAR crime data for October 2017 to September 2018 for the nearest suburb of Wallsend is above the NSW average in both alcohol related assaults and domestic assaults.
  38. The Authority finds credible the prospect that a substantial hotel licensed venue will have the capacity to attract late night patrons not only within the suburb but in nearby suburbs in the broader community like Wallsend and accepts that these factors increase the scope for adverse social impacts generated by late trading at the venue.
  39. Police also refer to current Australian research supporting the consistent application of restrictions on trading hours to ensure businesses can compete on a level playing field. In "Interventions for reducing alcohol supply, alcohol demand and alcohol-related harm" (Chikritzhs & Stockwell, 2002, 2006; Chikritzhs & Stockwell, 2007; Pennay et al., In press) the researchers found that alcohol-related intoxication and harm increased by

between 15 and 20 percent with every hour of trading after midnight. Police submit on the basis of this literature review that there is evidence-based support to reducing intoxication levels through closing all venues in an area earlier (Kypri et al., 2011; Kypri et al., 2014; Miller et al., 2012c).

40. The Authority has considered the Applicant's submission in response to Police concerns dated 14 March 2019.
41. The Authority accepts the Applicant's reply that no incidents have been evidenced by way of Computerised Operational Policing System ("COPS") event register (provided with the Police submission) pertaining to the time since the current owners have purchased the business (December 2018), the Authority notes that this Application was only lodged on 31 January 2019, just over one month after the current premises owner, business owner and licensee commenced those roles (14 December 2018). The Authority finds the previous (pre-midnight) trading history to provide relevant information about the environment in which this hotel will be trading and is relevant when assessing the increased scope for adverse social impacts that will be generated, at later and more sensitive times of the evening, should the ETA be granted.
42. While the available evidence and information do not establish that the local community is experiencing relatively high levels and concentrations of *crime* (with the exception of concentrations for domestic assault), this hotel is located within a broader community that has elevated crime rates and alongside a suburb that is experiencing elevated rates of alcohol related assaults and domestic assaults. In addition to this there is evidence of alcohol related misconduct and amenity impact involving patrons of the hotel that have been recorded during its lower risk standard trading hours configuration. Those incidents lend credence to Police and local resident concerns about the scope for an increase in anti-social conduct linked to the operation of the hotel if its late-night trading hours are extended as proposed.

#### *Healthstats data*

43. The Authority finds that there is some cause for concern arising from NSW Department of Health *HealthStats* data on alcohol attributable deaths with the LGA recording a spatially adjusted rate per 100,000 population for alcohol attributable deaths of 26.3 compared to the NSW rate of 18.1 during the period from 2015 to 2016. Alcohol attributable hospitalisations were less problematic, with a spatially adjusted rate per 100,000 population of 558.4, just below the NSW rate of 580.6 during 2015 to 2017. This is an adverse but not decisive factor in this case.

#### *Socio demographic profile and the representation of "at risk" groups*

44. Socio-economic index for areas data establishes a mixed picture with the suburb ranking in the 5<sup>th</sup> decile and the LGA in the 8<sup>th</sup> decile on the Index of Relative Socio-Economic Advantage and Disadvantage compared to other suburbs and LGAs within the State. That is, social disadvantage does not present as an additional risk factor when assessing these communities on the whole.
45. Notwithstanding this, the Authority accepts there are pockets of localised social disadvantage and accepts that the Hotel is in reasonable proximity Department of Housing homes (within approximately 200 metres).
46. The Authority notes the Applicant's observation that resident submissions are "not supported with any corresponding record or complaint". The Authority accepts that an

incident specified by nearby residents involving some local residents of an ATSI background did occur, but this is not recorded in the COPS Event information provided by Police. .

47. The Authority is satisfied that there are in fact pockets of social disadvantage located in close proximity to the venue. A Google map provided in a resident submission dated 21 March 2019 establishes that the hotel is in close proximity to residential areas, save for the adjoining land on which the Elermore Vale Shopping Centre is situated. The hotel is in reasonably close proximity to Department of Housing homes. Proximity to disadvantaged areas is an adverse factor when considering the suitability of the location, but in the context of the other socio demographic information this factor per se has not been given substantial weight.
48. Of greater concern as an adverse factor is information in ABS Quickstats data that the local community of Elermore Vale has a higher representation of certain groups vulnerable to adverse social impact from alcohol related harm, including a relatively higher Aboriginal and Torres Strait Islander population (3.7% compared to 2.9% for NSW), higher unemployment (7.9% compared to 6.3% for NSW) and a higher percentage of gross weekly household incomes less than \$650 (21.5% compared to 19.7% for NSW).

#### *Impact of late trading on problem gamblers*

49. A number of local residents raised concerns in their submissions regarding the impact that additional hours will have upon problem gamblers. In response to concerns about problem gambling, the Applicant in their 3 May 2019 submission concluded that based on the “favourable demographic profile” of Elermore Vale it can be “reasonably inferred” that an even lower proportion (<0.5% or less than 27 people) of the local community are problem gamblers, if any at all.
50. The Authority accepts that increasing the number of hours that patrons of this hotel may gamble may potentially have an adverse social impact upon problem gamblers within the community.
51. If, as proposed, this venue will have a post 1:00 am limitation on patron numbers to 60 persons, this calls into question what services the proposed 4:00 am trading across the week will actually be delivering to the community. It calls into question whether the focus of late trading will be gambling and whether granting these hours will contribute to the “responsible” development of this related (gambling) industry for the purposes of section 3(1)(c) of the Act.
52. While this decision has turned upon the Authority’s consideration of local amenity the uncertainty surrounding the nature and scope of positive benefits that are likely to be utilised when trading in this mode until 4:00 am across the week calls into question the scope for increased positive benefits from granting the Application.

#### *Drink driving, patron migration and local amenity impacts*

53. Police and a number of residents of the neighbourhood express concerns about the scope for the proposed very late trading hours to increase drink driving, patron migration and adverse local amenity impacts. The Authority finds these concerns to be rational and credible, particularly given the location of the venue in relation to residential premises and the inferences that may be drawn from the hotel’s recent trading history.



54. Police contend, and the Authority accepts, that there will be “limited public transport” available during the proposed additional trading hours and as a result some patrons may well drive or walk from the hotel.
55. Police report and the Authority accepts, that the venue had 8 persons detected driving away from the hotel under the influence of alcohol since 2014. The Authority also accepts that Police are concerned with the potential late-night disturbance to local residents if patrons have to walk home through neighbouring streets.
56. Police are also concerned that patrons of earlier closing hotels will migrate to this hotel if this ETA was granted as a result of this hotel being permitted to trade later than hotels in Newcastle and Hamilton Central Business District, the “less evasive” drink restrictions adopted by this hotel (commencing at 12:00 am compared to the Newcastle and Hamilton conditions which commence at 10:00 pm) and the lack of a lockout. The Authority finds that there is considerably greater scope for these types of migration impacts should the Application be granted than not.
57. One page submissions were received in similar terms from local residents who live in close proximity to the Hotel, including a submission from Mr and Mrs Hill of Croudace Road dated 29 December 2018 (within 100 metres of the Premises); a submission from Mr Berriman of Croudace Road dated 29 December 2018 (within 100 metres of the Premises) a submission from Mrs Sims of Croudace Road dated 28 December 2018 (distance from the Premises not specified) and another undated submission from a resident who wishes to remain anonymous stated to live within 100 metres of the Premises.
58. These residents contend that: the suburb is a residential suburb with no local industry that involves shift workers; they have witnessed “many incidents regarding drunken patrons behaviour when they leave the hotel at midnight closings”; they have “picked up innumerable alcohol bottles” which are a risk to children; the hotel is approximately 100 metres away from a child minding centre; the skateboard bowl in the park behind the shopping centre and hotel “often is strewn with broken beer bottles and empty cartons”; people have “drinking sessions”, sit on the side of the bowl and throw the empty bottles into the bowl; the plastic “wiz bins” near the bowl “have been set on fire and the police called”; “[d]runks have also been found to drive onto the South Wallsend soccer fields, behind the hotel and destroy the grassed surface”; there are 60 NSW Department of Housing homes within 200 metres of the venue, accommodating a “disadvantaged lower socio-economical community” with many having “mental disorders”; there was an altercation “last November” with “6 Koori men yelling threats, several had sticks but one had a knife”; they call police “every 6 weeks concerning inebriated people being extremely loud and causing trouble as they leave the hotel and try to walk home”.
59. In two one-page submissions dated 10 December 2018 and 7 February 2019 local resident, Mrs Dingwall of Croudace Road contends that in this residential area there have been incidents from patrons departing the hotel during the current trading hours which would increase with the proposed increased licensed hours.
60. In another one-page undated submission the writer identified as “H Locke” (address not specified) contends that the extended hours will “impact negatively” on the standard of living enjoyed by residents; that 4:00 am closing is not conducive to family life; that there is a potential for the hotel to “detract from the high level of family focused activity

and positive atmosphere enjoyed at present”; that there will be a possible increase in anti-social behaviour, traffic and noise; that there will be an added impact upon the “already vulnerable” persons in the community including “elderly, low socio-economic areas and public housing”; that there is a potential to increase alcohol abuse and associated family violence in the community, combined with possible drug use; and that there is the possibility of property damage given there is “already evidence” of anti-social activity relating to the venue under its current trading hours, with a possible added impact upon problem gambling.

61. In a one half-page submission dated 18 December 2018 another local resident, Ms Moon of Croudace Road, contends that the area is residential with families and children less than 50 metres away; that they currently can “clearly hear noise” emanating from the hotel of a night time which becomes “especially loud” on Friday and Saturday nights and that they “often find empty bottles on the[ir] front lawn on the weekend...”.
62. In a two-page submission dated 27 February 2019, a local resident who wishes to remain anonymous but states they live within 100 metres of the Premises, opposes the Application contending that they have “endured late night disturbance (including; loud music, fights, brawls, verbal arguments, screaming and abuse)” from the venue, the western car park and “adjacent areas”; that they are exposed to noise from “cars screeching off and people talking and yelling in the western car park as they leave either on foot or by car” and “people talking and yelling in the undercover outdoor area”; that there are “often beer bottles and or glasses smashed on the road or footpath or just left on front lawns or in the gardens of houses along Croudace Road, on the nearby soccer fields to the south west and in the children's playground to the south”; and that the hotel generates “loud” music which “continues well after the Tavern closes as patrons hang around and continue talking or yelling in the car park”.
63. The writer more broadly contends that extending the licensed hours will reduce the safety of this residential area and undermine amenity. The writer submits that the research is clear that alcohol related incidents increase with the availability of alcohol and that problem gambling is a “serious social issue”. The writer contends that granting the application will lead to increased detrimental impacts on surrounding residents and the community, creating the potential for a number of patrons being attracted from “town” (Newcastle) since there is no lockout in place at this suburb - relocating violence and alcohol related anti-social behaviour to the suburbs and extending the time periods in which that conduct can occur.
64. In one half-page undated submission, an anonymous submitter opposes the Application contending that the community is residential in nature; the hotel is adjacent to a childcare centre and a community centre; that previous incidents involving “unsavoury people” driving their cars on the South Wallsend soccer fields have occurred; that the skateboard bowl “regularly” has beer bottles thrown into it; that the existing level of disruption from the hotel on weekends occurs after midnight when “drunks leave the hotel and make their way home”; that there is the potential for fights to break out and Police have been called on “many occasions”; that there have been frequent instances of local rubbish bins being set alight at the back of the shopping centre and that there will be an impact on the “lower socio-economic community”.
65. In a six-paragraph submission dated 21 March 2019 local resident, Ms Baird of Croudace Road (within 50 metres of the Premises), raised concerns about her safety

and safety of her property by reason of what she contends are “consistent” fights that have “extended out in the street late at night with police presence on numerous occasions”, that there is existing loud noise due to music at the venue on weekends, that the Hotel is “known” to have “drug people & users” frequenting it and that previously on several occasions at night the writer has had non-residents walking up the driveway. The resident contends that at “no time” have they seen a security guard present on the doors or outside the venue and that this hotel is situated near a Department of Housing complex where “numerous issues already occur”.

66. In a two-sentence submission dated 13 December 2018 local resident identified as “Anne” of Croudace Road, makes the brief contention that “[t]his block of residence are all disabled and need no more drunk and noisy neighbours in the area”.
67. In an approximate one-page submission dated 20 March 2019 a local resident, Ms Winterbine of Croudace Road (located within 50 metres of the Premises), opposes the Application contending that there is an existing level of fights occurring, some of which have required police attendance; that the writer has never seen security staff on the door; that there is the potential for increased occurrence of alcohol fuelled incidents; that there is a “poor” responsible service of alcohol at the hotel and the writer has seen and smelt people using “TCH” on the Premises.
68. In a six-page undated submission, an anonymous writer objects to the Application contending that granting it has potential to increase the occurrence of “low level antisocial behaviour” arising from the activities of departing patrons; that the location is in a leafy residential suburb with no local industry and that there are existing issues regarding drunken patrons leaving the venue at midnight.
69. This writer submits that the principle in *Vinson v Randwick City Council* [2005] NSWLEC 142 when considering claimed impacts upon amenity is not an issue in this case since the venue in question is the only hotel in this suburb and the closest drinking establishments are in Wallsend or Cardiff (both with 3:00 am licences). The writer contends that this venue offers incentives to consume alcohol through its loyalty card and happy hour advertising; that security staff move patrons from the hotel to the footpath on Croudace Street; that the writer has telephoned Police “8 times last year” about the venue and there will be noise from music generated from inside the hotel and patrons leaving the Premises (car doors slamming, engines starting and loud conversations). The writer questions what patrons will actually be doing during the extra trading hours and submits that this will primarily be gambling and drinking. The writer raises concerns about the demographic characteristics of the community and problem gambling.
70. The Authority has considered the Applicant’s reply submission dated 14 March 2019 in which the Applicant submits that the Police case “relates to a mere perception or concern” that the ETA will cause an increase in patronage (by way of migration from other venues) and alcohol related assault.
71. The Applicant contends that due to the location of the hotel (which they describe as *not* located in a populated area and *not* within a convenient distance to other venues), it is “highly unlikely” that patrons would migrate from Wallsend (which already provides venues which close at 3:00 am) to Elmore Vale for the sake of 1 hour of trade, less travel time.

72. The Authority further notes the Applicant's contentions in the CIS that resident submissions appear to be based on a "mere concern or perception as to how people conduct themselves away from hotels generally, and that the proposed extended trading hours may contribute towards violence, greater noise pollution, vandalism and litter".
73. The Applicant contends that there is "no evidentiary basis supporting" these claims and none of the submissions are "supported with a corresponding record of complaint to authorities such as Police or Council".
74. The Applicant refers to *Vinson v Randwick City Council* [2005] NSWLEC 142 in support of the proposition that "generalised anecdotal evidence provided by the public must be considered with great care and given little to no weight as there is no way to ensure its reliability or confirm that the persons involved were in fact patrons of the hotel".
75. The Authority notes that licensing information establishes that the hotel had licensed trading from 5:00 am to 3:00 am from 1995 to 2015. In 2015 the Hotel filed an application to surrender its ETA. The Authority accepts Police information that they have recorded a significant number of adverse incidents linked to the operation of the hotel or the conduct of its patrons from 2014 to 2018.
76. The Authority finds it credible, on the basis of the number of Police reported events and the number, specificity and location of resident submissions for residents to claim that they have experienced a range of adverse amenity impacts associated with alcohol affected patrons. This information is relevant to an assessment of what impact upon amenity may flow from a considerable expansion of licensed trading hours across the week.
77. Police and resident concerns about what impact extending the trading hours will have involve some degree of speculation but the Authority finds that their concerns warrant some weight in this case given the Police records of adverse incidents linked to the venue. The Authority accepts the numerous accounts, by persons living in the neighbourhood, of acts of anti-social conduct linked to the current mode of trading and accepts that expanding late night hours will increase the exposure of the venue to migrating patrons and patrons at greater levels of intoxication.
78. The Authority finds that extending licensed hours from midnight to 4:00 am Monday through Saturday and from 10:00 pm to midnight on Sunday will substantially increase the scope for patrons to create a range of adverse amenity impacts upon persons in the local community, particularly those in the neighbourhood of the venue, as they make noise (affected by alcohol to varying degrees, or not at all) in the vicinity or when migrating to and from the venue on foot if they live locally or when getting into private cars or catching taxi or Uber services from other locations in the local or broader community.
79. The Authority finds it likely that a substantial hotel will attract patrons from other nearby suburbs once the availability of late-night trading is established. Late night amenity impacts become less reasonable the later in the evening that they occur, particularly in a residential location, on weeknights and school nights when residents and families are trying to sleep.
80. In light of the reasonably close proximity of this venue to residential housing, the Police information on adverse events linked to this hotel or its patrons and the limited trading

history since a recent change of ownership, the Authority is not satisfied that granting the Application will not bring with it significant adverse impacts upon local amenity from patron behaviour, whether or not such conduct rises to the level of criminality.

#### *Additional risk reduction measures*

81. The Authority has taken into consideration the Applicant's additional harm minimisation measures proposed in their submissions dated 14 March 2019, 26 April 2019 and 3 May 2019.
82. The Authority accepts that the Applicant has amended its Plan of Management after discussions with Elermore Vale Shopping Centre to address any potential adverse social impacts on the shopping centre, its tenants and customers.
83. The Authority has also taken into consideration the "additional measures" proposed by the Applicant which include: provision of a courtesy bus from 11:00 pm Monday to Saturday; capping patron capacity at 60 (excluding staff) from 1:00 am; engaging licensed security guards at a rate of 1:100 person each day the venue trades beyond midnight; restricting the ingress and egress points of the hotel to the main entrance and gaming room entrance after 1:00 am; not permitting patron entry or re-entry after 3:00 am; no live entertainment after 12:00 midnight; restricting drinks to 2 drinks per person from 10:00 pm; and prohibiting the sale of certain drinks between midnight and 4:00 am.
84. The Authority accepts that implementing measures such as providing a courtesy bus and implementing a lock out after 3:00 am may potentially reduce the scope of risk from drink driving, patron migration and impact upon the local community due to the lack of transport options. However, these measures will not prevent locals from walking home late at night or accessing their own private transport in neighbouring streets if they prefer and engaging in a range of conduct that may not rise to the level of criminality yet create sufficient disturbance to adversely impact the local community.
85. These additional measures are significant but the Authority finds them insufficient in light of the recent adverse history of this venue and the credible accounts from residents and Police of anti-social conduct.

#### Overall social impact

86. Having considered the limited evidence of positive benefits and the scope for increased negative impacts that are likely to flow from granting the Application, the Authority is not satisfied, for 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.
87. In making this decision the Authority has had regard to all of the statutory objects and considerations in section 3 of the Act, but has given weight to section 3(2)(a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and section 3(2)(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.
88. The Application is refused 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

### Material before the Authority

1. Application Form for an extended trading authorisation (“ETA”) for the Shaft Hotel (“Application”) and accompanying Community Impact Statement (“CIS”) lodged by Mr Allan Jackson (the “Applicant”) on 31 January 2019 accompanied by the following documents:
  - (a) Public consultation site notice, police notice and local consent authority notice.
  - (b) A thirteen-page document titled *Part 7 – Your view* providing additional information on the CIS.
  - (c) Plan of Management dated January 2019.
  - (d) Notice of intention to apply for liquor licence or a licence authorisation dated 3 December 2018.
  - (e) Map depicting the properties within 100 metres of the hotel that notification of the Application were distributed.
  - (f) Cover letters dated 3 December 2018 that accompanied the notification that was sent by mail to Waratah Police Station, City of Newcastle Council (“Council”), NSW Roads and Maritime Services, Department of Family and Community Services, Drug and Alcohol Population and Community Programs Centre for Population Health NSW Ministry of Health, Awabakal Aboriginal Land Council, Elmore Vale Public School, Macquarie College, Jojo Public School, Wallsend South Public School, Newcastle Spanish Seventh-day Adventist Church, Wallsend Seventh-day Adventist Church, Hunter Valley Care, United Protestant Association, Uniting Koombahla, Lake Road Medical Centre, Elmore Vale General Practice, Mission Australia (Aboriginal Specific Service), Wesley Mission and Mission Australia – Singleton neighbourhood Centre.
  - (g) Submission from Police advising no comment until a full application is provided [held on the Liquor and Gaming New South Wales (“LGNSW”) file].
  - (h) Australian Bureau of Statistics (“ABS”) 2016 Census Quickstats data on the suburb of Elmore Vale.
  - (i) Submission from Council dated 12 December 2018 advising that development consent is required but not in place.
  - (j) Development approval 08/0059 issued by Council on 16 April 2008 for alterations and addition to hotel.
2. Submissions from the following local residents of Elmore Vale, opposing the Application provided with the CIS that was lodged on 31 January 2018:
  - (a) Ms and Mr Hill of Croudace Street dated 29 December 2018.
  - (b) Mr Berriman of Croudace Street dated 29 December 2018.
  - (c) Resident who wishes to remain anonymous (undated) – within 100 metres of the premises.
  - (d) Mrs Sims of Croudace Street dated 28 December 2018.
  - (e) Mrs Dingwall of Croudace Street dated 10 December 2018.
  - (f) A resident who wishes to remain anonymous (undated) – distance from premises not specified but advises “recently moved to this area”.
  - (g) Ms Moon of Croudace Street dated 18 December 2018.
  - (h) Anne of Croudace Street dated 13 December 2018.
3. One-page submission from Council dated 5 February 2019 advising that development consent is not required to permit the proposed activity.
4. Email correspondence between licensing staff and Council dated 5 February 2019 and 7 March 2019 regarding development consent.
5. Second submission from Mrs Dingwall of Croudace Street, dated 7 February 2019, opposing the Application including a copy of the public consultation site notice.
6. Licence density calculated by licensing staff using 2016 ABS population and LGNSW licensed premises information as at 18 February 2019.
7. LGNSW list of licensed premises in Elmore Vale and Newcastle City Local Government Area (“LGA”) as at 18 February 2019.

8. Six-page submission from Trudi Cupples, Licensing Sergeant, Newcastle City Policing District dated 26 February 2019 opposing the Application and accompanied by:
  - (a) Three street view images from Google maps.
  - (b) A licensed premises evidence matrix summarising thirteen events linked to the hotel between 2014 and 2018.
  - (c) NSW Transport bus timetables for routes 42, 44, 46, 23, 24, 26, 27 and 47.
  - (d) Computerised Operational Policing System (“COPS”) reports for event reference numbers E 57865055; E 57845224; E 59106264; E 58879924; E 61166446; E 60793536; E 61462050; E 64223641; E 63498926; E 69520287; E 68646929; E 68322607; E 70242341.
9. Submission from a resident within 100 metres of the premises who wishes to remain anonymous dated 27 February 2019, opposing the Application.
10. Email from Tony Schwartz of Back Schwartz Vaughan (“BSV”) dated 13 March 2019, on behalf of Tamim CCI Property Pty Limited, the manager of the Elmore Vale Shopping Centre (“Tamim”), attaching a submission that was kept on the LGNSW file.
11. Eight-page letter from LAS Lawyers & Consultants (“LAS”) on behalf of the Applicant to licensing staff dated 14 March 2019, responding to submissions, clarifying questions from licensing staff and responding to proposed conditions. The following are attached to this submission:
  - (a) Updated *Plan of Management* dated April 2019.
  - (b) Certificate of advertising signed by the Applicant and dated 18 March 2019.
  - (c) Plan/diagram of the premises highlighting the current licensed boundary in red, the proposed ETA in green and the current minors area authorisation in blue.
  - (d) 20 completed patron profile survey forms.
12. Submission from Ms Winterbine of Croudace Street, dated 20 March 2019, raising concerns about the Application.
13. Submission from Ms Baird of Croudace Street, dated 21 March 2019, raising concerns about the Application.
14. Six-page submission letter from a person who wishes to remain anonymous dated 21 March 2019, objecting to the Application. [The Authority notes advice from licensing staff that this submission was lodged by the same person twice – a resident of Croudace Street Elmore Vale]. This submission is accompanied by:
  - (a) NSW Land and Environment Court decisions in *Vinson v Randwick Council* [2005] NSWLEC 142 and *Randall Pty Ltd v Leichhardt Council* [2004] NSWLEC 277.
  - (b) Three Google aerial view maps annotated to depict various locations including the hotel, pubs and clubs and the department of housing homes.
15. One-page email from BSV dated 28 March 2019 regarding a future submission on behalf of their client Tamim.
16. Bureau of Crime Statistics and Research (“BOCSAR”) hotspot maps regarding the suburb from January 2018 to December 2018 for alcohol related assault, domestic assault, non-domestic assault and malicious damage to property, sourced by licensing staff on 9 April 2019.
17. Google geographical maps and street view image of the premises, sourced by licensing staff on 9 April 2019.
18. BOCSAR Crime data sourced by licensing staff on 9 April 2019, regarding:
  - (a) Count and rate per 100,000 persons for alcohol related domestic assault, alcohol related non-domestic assault, malicious damage and alcohol related disorderly conduct (offensive conduct) for NSW, Elmore Vale and the LGA between January 2017 and December 2018.



- (b) Number and proportion of selected offences flagged as alcohol related by NSW Police for the LGA and NSW from 2018.
  - (c) Number of incidents by offence type, day and week and time of day for NSW and the LGA for 2018.
19. ABS Socio-Economic Indexes For Areas data based on the 2016 Census for Elernmore Vale and the LGA, sourced by licensing staff on 9 April 2019.
  20. NSW *Healthstats* data on alcohol attributable deaths in the LGA between 2001 and 2016 and alcohol attributable hospitalisations in the LGA between 2001 and 2017, sourced by licensing staff on 9 April 2019.
  21. Onegov key liquor licence details report for the Shaft Tavern as at 16 April 2019, sourced by licensing staff.
  22. Official LGNSW submission form, sent via email from BSV on 26 April 2019, on behalf of Tamim, dated 18 April 2019 advising that the Applicant has agreed to amend the plan of management (a copy of which accompanied the submission – dated April 2019) after discussions with Tamim.
  23. Email from LAS to licensing staff dated 26 April 2019 responding to the submission by Tamim.
  24. LGNSW Licence Details report for the hotel between 1 July 2008 and 16 April 2019, sourced on 16 April 2019.
  25. Email from LGNSW compliance dated 2 May 2019 advising they do not intend to make a formal submission and outlining details of one complaint regarding the premises since 2010 – being an allegation of permitting intoxication and violent conduct, regarding six intoxicated patrons from a football team attacking an unrelated patron. LGNSW Compliance advise that the complaint was dealt with remedially through an educational letter and no breach was substantiated.
  26. Email from LAS to licensing staff dated 3 May 2019 responding to a public submission dated 21 March 2019.
  27. Undated submission from a resident who “received a notice”, opposing the Application.

## Schedule 2

### Relevant extracts from the *Liquor Act 2007 (NSW)*

#### 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).

## 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:
  - (a) a specified period between 5 am and 10 am on a Sunday,
  - (b) (Repealed)
- (5) **Nature of extended trading authorisation**  
An extended trading authorisation operates to authorise the sale or supply of liquor on the licensed premises:
  - (a) on a regular basis (until such time as the authorisation is varied or revoked by the Authority), or
  - (b) if the authorisation so provides—on a special occasion that takes place on a specified date, or
  - (c) if the authorisation so provides—on up to 12 separate occasions in any period of 12 months.
- (5A) Despite subsection (2) (a), the Authority may, in the case of a hotel licence, authorise the licensee, on application by the licensee, to sell or supply liquor for consumption on the licensed premises during a specified period between midnight on a Sunday and 5 am on a Monday, but only on or in connection with a special occasion that takes place on a specified date.
- (6) **Extended trading period to be specified**  
In granting an extended trading authorisation, the Authority is to specify:
  - (a) the extended trading hours during which the licensee is authorised to sell or supply liquor, and
  - (b) the part or parts of the licensed premises to which the authorisation applies.
- (7) **Extended trading not permitted on or in relation to restricted trading days—hotels and licensed public entertainment venues**  
Despite any other provision of this section, an extended trading authorisation cannot, in the case of a hotel licence or an on-premises licence that relates to a public entertainment venue (other than a cinema or a theatre), be granted to authorise the sale or supply of liquor for consumption on the licensed premises during any of the following periods:
  - (a) between 5 am and noon on a restricted trading day,
  - (b) between 10 pm and midnight on a restricted trading day,
  - (c) between midnight and 5 am on any day immediately following a restricted trading day.
- (8) **Restrictions on granting extended trading authorisation**The Authority must not grant an extended trading authorisation in respect of licensed premises unless the Authority is satisfied that:

- (a) practices are in place, and will remain in place, at the licensed premises that ensure as far as reasonably practicable that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and
  - (b) the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.
- (9) For the purposes of this section, a ***special occasion*** means the occasion of a unique or infrequent event of local, State or national significance that persons independent of the licensee (and of the owner or occupier of the premises) desire to celebrate or mark on the licensed premises concerned.

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

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



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