

Ms Jade Hall  
Liquor and Gaming Solutions  
[REDACTED]

30 March 2023

Dear Ms Hall

<b>Application No.</b>	APP-0009539215
<b>Applicant</b>	1883 Spirit Pty Ltd
<b>Application for</b>	Producer/ wholesaler licence with drink on premises authorisation
<b>Licence name</b>	Earp Distilling Co.
<b>Trading hours</b>	<u>Drinks on premises (Distillery):</u> Monday 12:00 PM – 10:00 PM Tuesday to Saturday 10:30 AM – 10:00 PM Sunday 12:00 PM – 10:00 PM <u>Drinks on premises (Bar, Restaurant, Tasting room &amp; Multipurpose Area):</u> Monday 12:00 PM – 10:00 PM Tuesday to Saturday 10:30 AM – 11:30 PM Sunday 12:00 PM – 10:00 PM <u>Retail, Takeaway sales &amp; Distillery:</u> Monday to Sunday 10:00 AM – 10:00 PM
<b>Premises</b>	41 Darling Street, Carrington NSW 2294
<b>Legislation</b>	Sections 3, 11A, 12, 33, 40, 44, 45, 48 and 50 of the <i>Liquor Act 2007</i>

### **Decision of the Independent Liquor & Gaming Authority**

#### **Application for a producer/ wholesaler licence with drink on premises authorisation – Earp Distilling Co**

The Independent Liquor & Gaming Authority considered the application above and decided on 13 April 2022 to **approve** the application under section 45 of the *Liquor Act 2007*, subject to imposing conditions as set out in Schedule 1.

#### **Statement of reasons**

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

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

Yours faithfully



Murray Smith

**Deputy Chairperson**

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

## STATEMENT OF REASONS

### DECISION

1. On 12 January 2022, 1883 Spirit Pty Ltd (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application (“Application”) for a producer wholesaler licence (“Licence”) with a drink on premises authorisation (DOPA) for the premises at 41 Darling Street Carrington NSW 2294 (“Premises”).
2. The Authority considered the Application at its meeting on 13 April 2022 and decided to grant the Licence and DOPA under section 45 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the Act and the Liquor Regulation 2018.
4. A preliminary notification of this decision was sent to the Applicant on 2 May 2022, together with the licence document for the Premises.

### MATERIAL CONSIDERED BY THE AUTHORITY

5. The Authority has considered the Application and all submissions received in relation to the Application.
6. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
7. In accordance with its *Guideline 6*, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
8. A list of the material considered by the Authority is set out in Schedule 2.

### LEGISLATIVE FRAMEWORK

9. An extract of these sections is set out in Schedule 3.
10. The Authority has also had regard to its Guideline 6 in considering the overall social impact of approving the application pursuant to section 48 of the Act.

### KEY FINDINGS

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

#### **Validity, procedural and trading hour requirements**

12. The Authority is satisfied on the material before it that:
  - a) the Application has been validly made and meets the procedural requirements under sections 33, 40, 44, 45 and 50 of the Act, and
  - b) the proposed trading hours for the Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods.
13. Pursuant to section 48 of the Act, the Authority is satisfied that the overall social impact of granting the licence will not be detrimental to the well-being of the local or broader community.

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

14. Pursuant to section 45 of the Act, the Authority is also satisfied that:

- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- b) practices would be in place from the commencement of licensed trading at the Premises to facilitate the responsible serving of alcohol, having regard to the plan of management documentation for the Premises and the conditions to be imposed on the licence, and
- c) the requisite development consent is in force, based on the development application DA2020/01536 in respect of the Premises, issued by the City of Newcastle on 6 September 2021.

## **Community impact**

### ***Local and broader communities***

15. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Carrington, and the relevant "broader community" comprises the Local Government Area ("LGA") of Newcastle.

### ***Licence density***

16. The Authority notes that, compared to the NSW state average:

- a) Carrington and Newcastle LGA have a **higher** saturation of liquor licences
- b) Carrington and Newcastle LGA have a **higher** saturation of liquor licences authorised to sell packaged liquor, this includes packaged liquor, club and hotel licences
- c) Carrington and Newcastle LGA have a **lower** clustering of liquor licences
- d) Carrington and Newcastle LGA have a **lower** clustering of liquor licences authorised to sell packaged liquor, this includes packaged liquor, club and hotel licences.

### ***Crime data***

17. The Authority notes the Bureau of Crime Statistics and Research (BOCSAR) does not calculate rates of crime per 100,000 people for suburbs and LGAs that have populations less than 2,000 and 3,000 people, respectively.

18. The relevant BOCSAR data indicates that, in the year to September 2021:

- a) the Premises was not located within hotspots for incidents of alcohol-related assault, domestic and non-domestic assault, alcohol-related offensive conduct and malicious damage to property.
- b) Newcastle LGA recorded **higher** rates of alcohol-related non-domestic assault and **lower** rates of alcohol-related assault, alcohol-related offensive conduct and malicious damage to property compared to the NSW state average.

### ***Alcohol-related health data***

19. The most recent HealthStats NSW data available at the time of the Authority's decision indicates that Newcastle recorded a **higher** than average level of alcohol-attributable deaths for the period 2016-2019, and a **lower** than average level of alcohol-attributable hospitalisations for the period 2016-2020.

## **SEIFA**

20. The Authority notes that ABS Socio-Economic Index for Areas ("SEIFA") data as at 2016 indicates that Carrington and Newcastle were relatively disadvantaged and advantaged respectively compared to other suburbs and LGAs in NSW.

## **Business model**

21. The Authority notes that the proposed business model involves the operation of a local small scale distillery producing gin, rum, whisky, vodka, liqueurs, and brandy. The business will provide tours of the distillery and offer tastings to customers to supplement direct retail sales to the public as well as wholesale transactions.
22. Packaged liquor will be sold direct to the public, by website, and via phone, fax and email orders. A producer wholesaler licence permits a licensee to sell their own products by wholesale or by retail to the public, while a drink on premises authorisation (DOPA) permits consumption of alcohol on the premises (not restricted to the licensee's product).

## **Purported benefits**

23. The Authority has had regard to the Applicant's purported benefits, including that:
- a) Earp is currently 100% family-owned and operated; the grant of this liquor licence will allow the Earp family to become bespoke producers of their own products
  - b) the distillery has introduced a new style of distilling with a focus on energy efficiency compared to traditional styles of distillation, with stills designed to be run in two modes, meaning they can produce any type of spirits
  - c) this new business model will cater to local residents and tourists and will offer the spirit curious customers an opportunity to sample and learn about the inhouse production of gin, rum, whisky, vodka, liqueurs and brandy. This offering will be supported by guided tastings and educational distillery tours
  - d) the applicant contends the DOPA will be utilised to offer patrons the opportunity to celebrate special occasions and private tastings on the mezzanine floor and hosted dinners and seasonal events in the barrel and distillery rooms, and
  - e) the business will not only offer retail sales direct to the public but will also sell to other licensees and business via a wholesale market with online sales.

The Authority considers the proposed benefits above to be somewhat limited by the absence of any substantive evidence of community support for the Application, noting that there was also no objection from any members of the community.

## **Stakeholder submissions**

24. The Authority has had regard to the submissions from -
- a) **NSW Police Force**, which notes –
    - i. there is no objection to the producer wholesaler liquor licence application, however, do object to the size of proposed DOPA licensed area contending the premises borders onto residential properties, some within 7 meters from venue.
    - ii. Police cite there have been previous inspections at the premises and identified in 2021 that business was operating without an approved manager.

- iii. Police note the previous applications to amend the licensed area boundaries and have referenced the approved premises plans in their submission. They submit the proposed increase in size to the licensed area may increase alcohol related harm and increased noise at premises.
- iv. Police queried where live music acts will perform at the venue and what the purpose of the business will be if not the production of liquor as per the current licence type; they submit the applicant has failed to sufficiently provide mitigation measures to reduce noise, if live music is performed at venue, and has therefore requested associated conditions be imposed on the licence.

- b) **Local Council**, which notes no objections to the grant of the liquor licence and contend the approved distillery hours also apply to the retail hours.
- c) **L&GNSW Compliance**, which notes no objections to the grant of the liquor licence nor are there any adverse findings in relation to the proposed Applicant or approved manager.

25. The Authority has also had regard to the Applicant's submission in response contending the Police comments detailed in the submission refer to the current micro-brewery liquor licence, which will be surrendered upon the grant of this application and cite the business has outgrown the current licence area.

The Applicant further submits the current development application at the premises details the warehouse which will form part of the new distillery and note the proposed licenced area does not include the carpark.

The applicant contends live entertainment will be provided in the main-bar area at the premises and submits the suburb of Carrington is an industrial precinct with numerous heavy machinery and industrial workshops operating near the premises, contributing to the noise in the area. The Applicant submits the background noise of heavy industry outweighs any noise that is proposed to be generated from the venue and cites the plan of management has been updated at paragraph 5 detailing noise mitigation measures.

The Applicant has not consented to the imposition of any of the recommended Police conditions relating to access, closure of doors and windows, and noise. The Authority has considered the Applicant's history, reduced operating hours, submissions regarding its location and business model and imposed conditions it considers appropriate.

### ***Findings of concern***

26. The Authority notes that there may be a risk that if the Licence were to be granted, liquor sold at the Premises will, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues in the local and broader communities, and in other areas of the State.

### ***Mitigating factors***

27. The Authority is nevertheless satisfied that the risk is sufficiently mitigated by the following:

- a) no objections were received from other agencies or members of the public
- b) the premises is not located in a crime-density hotspot across any category the Authority normally considers

- c) there are lower crime rates in the Newcastle LGA for three out of four categories compared to NSW, including alcohol-related domestic assault
- d) alcohol-attributable hospitalisations in the Newcastle LGA are lower than the NSW rate
- e) average levels of socio-economic advantage and disadvantage in both the Carrington suburb and the Newcastle LGA
- f) the existing producer/ wholesaler licence with micro-brewery authorisation at the premises (LIQW880015181) will be surrendered upon the grant of this licence
- g) the proposed premises is located outside of the Newcastle CBD
- h) the live music acts to be promoted (soloists or duos) will only be on Thursday, Friday, and Saturdays, and finishing no later than 10:00 PM, and
- i)

the harm minimisation measures set out in the plan of management and licence conditions as set out in Schedule 1.

## CONCLUSION

- 28. Having considered the positive and negative social impacts that are likely to flow from granting the Licence and DOPA, the Authority is satisfied that the overall social impact of granting the two applications would not be detrimental to the well-being of the local and broader communities.
- 29. The Authority is also satisfied that the other legislative criteria for the granting of the Licence and DOPA have been met.
- 30. Accordingly, the Authority has decided to grant the Licence and DOPA under section 45 of the Act.

Yours faithfully



Murray Smith  
Deputy Chairperson  
For and on behalf of the **Independent Liquor & Gaming Authority**

### Important Information:

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

An application to NCAT must be made within 28 days of notice of this decision being published on the Liquor & Gaming NSW website <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations. For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

**Schedule 1 – Licence conditions to be imposed  
Earp Distilling Co.**

**1. 6-hour closure period**

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 4:00 AM and 10:00 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.

**2. Restricted trading and NYE (std)**

Retail Sales

Good Friday      Normal trading

December 24<sup>th</sup>    Normal trading Monday to Saturday 10:00 AM to 12 midnight Sunday

Christmas Day    Normal trading

December 31<sup>st</sup>    Normal trading Monday to Saturday 10:00 AM to 12 midnight Sunday

**3. Restricted trading & NYE - Drink on-premises authorisation**

Retail Sales

Good Friday      12:00 noon–10:00 PM

Christmas Day    12:00 noon–10:00 PM

December 31<sup>st</sup>    Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

**4. Plan of Management**

The premises is to be operated at all times in accordance with the Plan of Management dated February 2022 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.

**5. Liquor accord**

The licensee or its representative must join and be an active participant in the local liquor accord.

**6. CCTV**

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 ten (10) 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,

(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 sub-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.

## **7. 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.

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 (e.g., crowd controller or bouncer) on or about the premises.



## Schedule 2 – Material considered by the Authority Earp Distilling Co.

### Application material

1. Completed application generated on 12 January 2022.
2. Completed certification of advertising dated 2 March 2022.
3. Plan of Management documents for the Premises, titled Earp Distilling Co. Plan of Management and dated February 2022.
4. ASIC business records in relation to the Applicant and 1883 SPIRIT PTY LTD.
5. Floor plan for the Premises, compiled on 20 March 2022, indicating the proposed producer/wholesaler licensed area and area to which the DOPA will apply.

### Development consent

6. Notice of determination issued by City of Newcastle Council on 6 September 2021, approving the development application DA2020/01536 for the Premises.

### Liquor & Gaming LiveData Report

7. L&GNSW Liquor & Gaming LiveData Report for the suburb of Carrington, generated on 23 February 2022, which sets out that:

#### Outlet diversification

- a. There are **7** authorised liquor licenses in Carrington. Of these, 4 are authorised to sell packaged liquor. This includes 1 packaged liquor licence, 1 registered club licence and 2 hotel licences, 1 producer/ wholesaler licence, 1 on-premises licence and 1 general bar licence.

#### Outlet density (annual rate per 100,000 residents)

- b. saturation of producer/wholesaler with DOPA licences in Carrington (**51.8**) is **higher** compared to Newcastle LGA (**2.57**), and **higher** compared to NSW (**4.09**)
- c. saturation of licences authorised to sell packaged liquor in Carrington (**259.2**) is **higher** compared to Newcastle LGA (**104.9**), and **higher** compared to NSW (**75.8**)
- d. clustering of licences authorised to sell packaged liquor in Carrington (**2.2**) is **lower** compared to Newcastle LGA (**4.9**), and **lower** compared to NSW (**7**).

#### Offence data (annual rate per 100,000 residents)

Bureau of Crime Statistics and Research (BOCSAR) does not calculate rates of crime per 100,000 people for suburbs and LGAs that have populations less than 2,000 and 3,000 people, respectively.

In the year to September 2021:

- e. alcohol-related domestic assault in the Newcastle LGA (**101.5**) is lower compared to all NSW (**227.8**)
- f. alcohol-related non-domestic assault in Newcastle LGA (**206.6**) is higher compared to all NSW (**176.5**)
- g. alcohol-related offensive conduct in Newcastle LGA (**42.3**) is lower compared to all NSW (**45.7**)
- h. malicious damage to property in Newcastle LGA (**1153**) is lower compared to all NSW (**1247.8**)

Alcohol-attributable hospitalisations & deaths (per 100,000 residents)

- i. In the period 2016-2019 the alcohol-attributable death rate in Newcastle LGA (**25.2**) was higher compared to the average across all of NSW (**19.7**)
- j. In the period 2016-2020 the alcohol-attributable hospitalisation rate in Newcastle LGA (**445.8**) was lower compared to the NSW average (**513.2**).

SEIFA

- k. According to the SEIFA Index of Relative Economic Advantage & Disadvantage, households in Carrington and Newcastle are socio-economically disadvantaged and advantaged respectively (**Bottom 48%** and **Top 27%** of NSW households, in terms of household income and residents in skilled occupations).

**Stakeholder submissions**

- 8. Submission from L&GNSW Compliance submission, dated 7 February 2022.
- 9. Submission from NSW Police, dated 8 February 2022.
- 10. Submission from the City of Newcastle Council, dated 21 February 2022.

**Other relevant information**

- 11. Food menu as mentioned in plan of management dated February 2022.
- 12. Correspondence between L&GNSW staff and the Applicant between 3 February 2022 and 24 March 2022 in relation to the assessment of the Application.
- 13. Key liquor licence details for Earp Distilling Co. recorded as at 3 February 2022.
- 14. Producer Wholesaler with drink on premises saturation report dated 17 March 2022.
- 15. Google map images extracted from the Google website compiled on 22 March 2022, showing the location and photos of the Premises in map view.
- 16. Proposed conditions and hours schedule compiled 24 March 2022.

## **Schedule 3 – Relevant extracts from the *Liquor Act 2007***

### **Earp Distilling Co.**

#### **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.
  - (d) the need to support employment and other opportunities in the—
    - (i) live music industry, and
    - (ii) arts, tourism, community and cultural sectors.

#### **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)(b), the **standard trading period** for premises to which this subsection applies ends at midnight on a Sunday that falls on 24 or 31 December.
- (1C) Subsection (1B) applies to the following premises or part of premises—
  - (a) if the primary purpose of the business carried 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 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).

### **33 Producers—authorisation conferred by licence**

- (1) A producer/wholesaler licence authorises the licensee, if the licensee carries on business as a wine producer, as a producer of cider, perry or mead or as a producer of beer or spirits—
- (a) to sell the licensee's product by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and
  - (b) to sell the licensee's product by retail on the licensed premises, for consumption away from the licensed premises only and only if it is supplied in sealed containers, on any day of the week during the standard trading period for that day or during such other period as may be authorised by an extended trading authorisation, and
  - (c) to sell or supply the licensee's product, at any time on the licensed premises, to customers or intending customers for consumption while on the licensed premises, but only for the purposes of tasting, and
  - (d) to sell or supply the licensee's product at an industry show, but only if the local police and the Authority have been notified, in accordance with the regulations, about the industry show by the organiser of the show at least 7 days before it is held, and
  - (e) to sell or supply the licensee's product at a producers' market or fair, but only if the local police and the Authority have been notified, in accordance with the regulations, about the market or fair by the organiser of the market or fair at least 7 days before it is held, and
  - (f) to sell or supply the licensee's product at any time on the licensed premises to the employees of the licensee or of a related corporation of the licensee, and
  - (g) to sell or supply liquor in accordance with a drink on-premises authorisation.

Note—

See section 50(2) for trading hours in relation to drink on-premises authorisations.

- (2) The authorisation conferred by subsection (1) does not apply unless the primary purpose of the business or activity carried out on the licensed premises is the sale or supply of wine, or the sale or supply of cider, perry or mead, or the sale or supply of beer or spirits, that is the licensee's product.
- (3) For the purposes of this section, a product is the licensee's product if—
- a) in the case of wine or cider, perry or mead—it has been produced on the licensed premises (or a vineyard related to the licensed premises) from fruit grown or honey produced on the licensed premises or vineyard, or
  - b) in the case only of wine—it is uniquely the licensee's (or a related corporation of the licensee's) own product, but only if that product contains not less than a percentage of wine, as prescribed by the regulations, that has been produced—

- (i) by or under the direction of the licensee (or a related corporation of the licensee) on the licensed premises or a vineyard related to the licensed premises, or
    - (ii) on the licensee's behalf from fruit grown on the licensed premises or a vineyard related to the licensed premises, or
  - c) in the case only of cider, perry or mead—it is uniquely the licensee's (or a related corporation of the licensee's) own product that has been produced—
    - (i) by or under the direction of the licensee (or a related corporation of the licensee) on the licensed premises, or
    - (ii) on the licensee's behalf from fruit grown or honey produced by the licensee, or
  - d) in the case of beer or spirits—it has been produced on the licensed premises and is uniquely the licensee's (or a related corporation of the licensee's) own product.
- (4) For the purposes of subsection (3), a vineyard is related to licensed premises if it—
- a) is operated by the licensee (or a related corporation of the licensee), and
  - b) is within 500 metres of the licensed premises.
- (5) In this section—
- industry show means a wine, beer, spirits or other liquor show at which liquor products are promoted and that is held by an industry association.
- producers' market or fair means a market or fair—
- c) at which farmers or primary producers display and sell their products directly to the public, and
  - d) that is conducted in accordance with such requirements as may be prescribed by the regulations (including requirements relating to the number of stalls at the market or fair).

#### 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.

#### **44 Submissions to Authority in relation to licence applications**

- (1) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application for a licence.
- (2) 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 licence.

#### **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.
- (7) In deciding whether or not to grant a licence, the Authority must consider whether, if the licence were granted, it
  - would provide employment in, or other opportunities for, any of the following—
  - (a) the live music industry,
  - (b) the arts sector,
  - (c) the tourism sector,
  - (d) the community or cultural sector.

#### **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.
  - (c) whether the granting of the application would provide employment in, or other opportunities for, any of the following—
    - (i) the live music industry,
    - (ii) the arts sector,
    - (iii) the tourism sector,
    - (iv) community or cultural sector.
- (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
  - (a1) any published cumulative impact assessment that applies to the area in which the premises the subject of the application are located, 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.

## **50 Drink on-premises authorisation**

- (1) The Authority may, on application by the holder of a producer/wholesaler licence, endorse the licence with an authorisation (referred to as a drink on-premises authorisation) relating to the sale, supply and consumption of liquor on the licensed premises.
- (2) A drink on-premises authorisation authorises the licensee to sell liquor by retail on the licensed premises, for consumption on the licensed premises only—
  - (a) on any day of the week (except a restricted trading day)—during the standard trading period for that day or during such other period as may be authorised by an extended trading authorisation, and
  - (b) on 31 December in any year—from the start of the standard trading period for that day until 2 am on the next succeeding day, and
  - (c) on a restricted trading day—from noon to 10 pm.