



Ms Melissa Matters  
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1 April 2019

Dear Ms Matters

<b>Application No.</b>	1-6993143717
<b>Applicant</b>	Ms Melissa Gaye Matters
<b>Application for</b>	New hotel (general bar) licence Minors area authorisation Extended trading authorisation
<b>Licence name</b>	The Hill Bar and Kitchen
<b>Trading hours</b>	Monday to Wednesday 7:00 am – 10:00 pm Thursday to Saturday 7:00 am – 11:00 pm Sunday 7:00 am – 10:00 pm
<b>Premises</b>	98 Fern Street GERRINGONG NSW 2534
<b>Legislation</b>	Sections 3, 11A, 12, 14-17, 40, 45, 48, 49, 51 and 121 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority  
Application for a hotel (general bar) licence with minors area and extended trading  
authorisations – The Hill Bar and Kitchen**

The Independent Liquor and Gaming Authority considered, at its meeting on 14 November 2018, the Application above and, pursuant to sections 45, 49 and 121 of the *Liquor Act 2007*, has decided to **grant** the Application subject to the following conditions:

1. 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 1:00 AM and 7:00 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)  
Consumption on premises  
Good Friday 12:00 noon – 10:00 PM  
Christmas Day 12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)  
December 31st Normal opening time until 12:30 AM on New Year's Day  
Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.
3. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4. The premises is to be operated at all times in accordance with the Plan of Management dated 17 September 2018 as may be varied from time to time after consultation with NSW Police. A copy 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. Closed-circuit television system

- 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
  - (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
  - (b) recordings must be in digital format and at a minimum of six (6) frames per second,
  - (c) any recorded image must specify the time and date of the recorded image,
  - (d) the system's cameras must cover the following areas:
    - a. all entry and exit points on the premises,
    - b. the footpath immediately adjacent to the premises, and
    - c. all publicly accessible areas (other than toilets) within the premises.
- 2) The licensee must also:
  - (a) keep all recordings made by the CCTV system for at least 30 days,
  - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
  - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

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

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 (eg. crowd controller or bouncer) on or about the premises.

8. The sale or supply of liquor is not permitted prior to 8:00 AM Monday to Saturday, and 10:00 AM Sundays.
9. The outdoor terrace and balcony must be closed to all patrons from 10.00 PM to 7:00 AM Monday to Sunday.
10. The latest the premises can trade on New Year's Day is 12:30 AM.
11. Minors Area Authorisation: whole of the licensed premises excluding bar area.
12. Extended Trading Authorisation: whole of the licensed premises.

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 at [danielle.hatton@liquorandgaming.nsw.gov.au](mailto:danielle.hatton@liquorandgaming.nsw.gov.au).

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', with a stylized, cursive script.

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

## Statement of reasons

### Decision

1. On 25 October 2018, Ms Melissa Matters (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”), an application (“Application”) for a hotel (general bar) licence (“Licence”) with minors area authorisation (“MAA”) and extended trading authorisation (“ETA”) for the premises at 98 Fern Street, Gerringong (“Premises”).
2. The Authority considered the Application at its meeting on 14 November 2018 and decided to grant the Licence pursuant to sections 45, 49 and 121 of the *Liquor Act 2007* (“Act”).
3. A preliminary notification of this decision was sent to the Applicant on 19 November 2018, together with the licence document for the Premises.
4. 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.

### Material considered by the Authority

5. The Authority has considered the Application, the accompanying community impact statement (“CIS”), 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 1.

### Legislative framework

9. The Authority has considered the Application in the context of the following provisions of the Act:
  - a) Section 3: Statutory objects of the Act and relevant considerations.
  - b) Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6 hour period during which liquor cannot be sold.
  - c) Sections 14-17: Specific provisions in respect of a hotel licence.
  - 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 relating to an extended trading authorisation.
  - h) Section 51: General provisions relating to licence-related authorisations.
  - i) Section 121: Minors in hotels in company of responsible adult.
10. An extract of these sections is set out in Schedule 2.

### 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 notes that the Applicant had lodged a previous application in relation to the premises, which, by reason of the Applicant's non-compliance with clause 29 of the Liquor Regulation 2018 when preparing the previous CIS, the Authority found to be invalid.
13. On the basis of the consultation that had already been undertaken, the Authority approved a shortened pre-application CIS consultation period from 30 days to two working days, and a shortened post-application submission period from 30 days to two working days, for the Application that is the subject of this decision.
14. The Authority is satisfied on the material before it that the Application has been validly made and meets the procedural and trading period requirements under sections 11A, 12 and 40 of the Act.

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

15. 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 and house policy 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 Notice of Determination of Development Application No. 10.2017.165.1 in respect of the Premises, issued by Kiama Municipal Council on 4 December 2017.

### Community impact statement

16. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Premises on the local and broader communities.
17. 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 Gerringong, and the relevant "broader community" comprises the Local Government Area ("LGA") of Kiama.

### Positive social impacts

18. The Authority notes that the proposed business model at the Premises is principally based around the service of meals, with the Applicant proposing to cater to the growing local population, tourists, and families through the provision of food and beverages, live acoustic entertainment and the hosting of functions and gatherings.
19. The Authority accepts that Gerringong, a seaside town located on the NSW south coast, is a popular tourist destination, and the Premises will contribute to the local tourism and hospitality industries.
20. The Authority notes that multiple submissions in support of the liquor licence application (and attesting to the professionalism and good character of the applicant) were received from local residents and businesses, including those located in the immediate vicinity of the proposed premises.
21. The Authority has given weight to the fact that the Application is not opposed by NSW Police, with Kiama Municipal Council and Gerringong Housing Aboriginal Corporation offering their support for the application.

22. The Authority notes that there are presently no small bar or hotel (general bar) licences in Gerringong or Kiama LGA. Further, the density of full hotel licences is below the state average. The granting of the Licence will therefore assist in diversifying and developing the liquor industry in the local and broader communities.
23. Having regard to the information available, the Authority is satisfied that granting the Licence and authorisations would be in line with the expectations, needs and aspirations of the community, and contribute to the balanced and responsible development of the liquor industry and the related live music, entertainment, tourism and hospitality industries.

#### Negative social impact

24. The relevant BOCSAR data indicates that, for the year to June 2018:

- a) the Premises was not located within any hotspots for incidents of alcohol related assault, domestic assault, non-domestic assault or malicious damage to property, and
- b) the rates of alcohol-related domestic and non-domestic assault, malicious damage to property and alcohol-related disorderly conduct (offensive conduct) in Gerringong and Kiama LGA were considerably lower than the NSW state average.

25. However, the Authority notes that BOCSAR data in relation the number and proportion of selected offences flagged as alcohol-related by NSW Police indicates that certain offences in Kiama LGA are more likely to be alcohol-related when compared to the state of NSW, with the data recording that:

- **47.1%** of *domestic violence related assault* is alcohol-related in Kiama LGA, compared to the corresponding NSW figure of **31.2%**.
- **54.8%** of *non-domestic violence related assault* is alcohol-related in Kiama LGA, compared to the corresponding NSW figure of **31.6%**.
- **66.7%** of *offensive conduct* offences are alcohol-related in Kiama LGA, compared to the corresponding NSW figure of **64.8%**.

26. The Authority notes that both Gerringong and Kiama LGA have an overall higher density of liquor licences compared to the NSW average (notwithstanding the lower density of hotel licence types). Although licence density is high, the Authority accepts that this reflects the fact that both Gerringong and Kiama LGA are popular tourist destinations in the NSW south coast, hosting significantly higher populations during the warmer months and school holidays.

27. The Authority notes that Gerringong and Kiama LGA's SEIFA rankings are in the 9<sup>th</sup> deciles on the index of relative socio-economic advantage and disadvantage, indicating that the local and broader communities are relatively advantaged when compared to other suburbs and LGAs in NSW.

28. The Authority also notes that HealthStats NSW data discloses that the LGA recorded a higher level of alcohol-attributable deaths and a lower level of alcohol-attributable hospitalisations compared to the corresponding NSW figures.

29. The Authority considers that over time there is a risk that liquor sold at the Premises will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse liquor and engage in alcohol related misconduct.

30. Whilst, as noted above, there is evidence of alcohol-related harms in the local and broader communities, the Authority is nevertheless satisfied that the risk is sufficiently mitigated by the following:

- a) the Premises is not late trading, trading no later than 11:00 pm on any day;

- b) the relatively small patron capacity, which is restricted to 145 persons, and the relatively small size of the Premises at 350m<sup>2</sup>;
- c) no objection was received from any of the institutional stakeholders consulted, including NSW Police and NSW Health, or any members of the public for the Premises to operate as a small bar;
- d) the Applicant has consented to all of the licence conditions proposed L&GNSW and endorsed by NSW Police, including the maintenance of a CCTV system, ongoing compliance with measures set out in the POM to facilitate the responsible service of liquor and prevention of intoxication at the Premises.

#### Overall social impact

- 31. Having considered the positive and negative social impacts that are likely to flow from granting the Application, the Authority is satisfied that the overall social impact of granting the Application would not be detrimental to the well-being of the local and broader communities.
- 32. The Authority is also satisfied that the other legislative criteria for the granting of the Application have been met.
- 33. Accordingly, the Authority has decided to grant the Licence, extended trading and minors area authorisations under sections 45, 49 and 121 of the Act.



Philip Crawford  
Chairperson

#### **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 and gaming 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

### Material considered by the Authority

1. HealthStats NSW data showing that the Kiama LGA recorded, compared to a state benchmark of 100:
  - a. a standardised alcohol-related hospitalisation ratio of 82.10 in 2011, 82.00 in 2012, 90.20 in 2013, 83.50 in 2014 and 76.60 in 2015; and
  - b. a standardised alcohol-related mortality ratio of 107.30 in 2009, 101.30 in 2010, 108.80 in 2011, 114.80 in 2012, 105.00 in 2013.
2. ABS SEIFA data based on the 2016 Census indicating that, on the Index of Relative Socio-economic Advantage and Disadvantage for NSW on a scale of 1 to 10, with the 10<sup>th</sup> decile being the most advantaged and 1<sup>st</sup> decile the most disadvantaged, both Gerringong and Kiama LGA ranked in the 9<sup>th</sup> deciles.
3. NSW Recorded Crime Statistics 2017 outlining offences by day of week and time of day in Kiama LGA compared to NSW.
4. NSW Recorded Crime Statistics 2017 outlining the number and proportion of selected offences flagged as alcohol-related by NSW Police in Kiama LGA compared to NSW.
5. NSW crime statistics published by BOCSAR indicating that:
  - a. for the year to June 2017, the rates of:
    - i. alcohol-related domestic assault in Kiama LGA and Gerringong were 54.4 and 24.6 respectively, compared to the NSW average of 114.7,
    - ii. alcohol-related non-domestic assault in Kiama LGA and Gerringong were 104.3 and 24.6 respectively, compared to the NSW average of 133.0,
    - iii. malicious damage to property in Kiama LGA and Gerringong were 399.2 and 196.5 respectively, compared to the NSW average of 806.0,
    - iv. alcohol-related offensive conduct in Kiama LGA and Gerringong were 36.3 and 0.0 respectively, compared to the NSW average of 45.3,
  - b. for the year to June 2018, the rates of:
    - i. alcohol-related domestic assault in Kiama LGA and Gerringong were 54.4 and 73.7 respectively, compared to the NSW average of 114.0,
    - ii. alcohol-related non-domestic assault in Kiama LGA and Gerringong were 45.4 and 0.0 respectively, compared to the NSW average of 127.3,
    - iii. malicious damage to property in Kiama LGA and Gerringong were 435.5 and 270.1 respectively, compared to the NSW average of 768.4, and
    - iv. alcohol-related offensive conduct in Kiama LGA and Gerringong were 18.1 and 0.0 respectively, compared to the NSW average of 40.3.
6. Notice of determination issued by Kiama Municipal Council on 4 December 2017, approving the development application 10.2017.165.1 for the Premises.
7. Emails from Kiama Municipal Council to the Applicant on 12 December 2017 and 13 April 2018 in relation to the Application.
8. Submission from Gerringong Housing Aboriginal Corporation on 5 January 2018 in relation to the Application.
9. NSW National Police Certificate in relation to the Applicant dated 2 May 2018.
10. BOCSAR crime hotspot maps for the year to June 2018, indicating the location of the Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
11. Completed application for extended trading authorisation dated 4 July 2018.
12. Completed application for minors area authorisation dated 4 July 2018.
13. Submission from L&GNSW Compliance on 10 September 2018 in relation to the Application.



14. Email from Service NSW to the Applicant on 11 September 2018 advising that the Application had been forwarded to NSW Roads & Maritime Services.
15. Submission from Department of Family and Community Services on 12 September 2018 in relation to the Application.
16. Plan of Management and House Policy for the Premises dated 17 September 2018.
17. Submission from NSW Police on 18 September 2018 in relation to the Application.
18. Correspondence between L&GNSW staff and the Applicant between 19 September 2018 and 15 November 2018 in relation to the assessment of the Application.
19. L&GNSW liquor licensing records as at 25 September 2018 setting out the number and density (in terms of licences per 100,000 persons of the population) of all types of liquor licences in Gerringong, Kiama LGA and NSW. The density of full hotel licences is 26.99 in NSW, 23.99 in Kiama LGA, and 25.21 in Gerringong. There were no general or small bar licenses as at 25 September 2018.
20. L&GNSW liquor licensing records as at 25 September 2018 listing all liquor licences in Gerringong.
21. Google map images extracted from the Google website on 3 October 2018, showing the location and photos of the Premises in map view, earth view and street view.
22. Completed application for hotel licence dated 25 October 2018.
23. Copy of the public consultation site notice, police notice and local consent authority notice dated 25 October 2018.
24. Completed Category B Community Impact Statement dated 25 October 2018.
25. Submission from NSW Roads & Maritime Services on 25 October 2018 in relation to the Application.
26. Completed certification of Advertising dated 30 October 2018.
27. Premises plan for the Premises.
28. ASIC Business Name Details for The Hill Bar & Kitchen.
29. ASIC business records in relation the premises owner.
30. Copy of the Applicant's identification.
31. Photographs of the Premises.
32. Copy of the proposed menu for the Premises.
33. Submissions from 15 members of the public in relation to the Application.

## Schedule 2 – Relevant extracts from the *Liquor Act 2007*

### 3 Objects of Act

- (1) The objects of this Act are as follows:
  - (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
  - (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
  - (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
  - (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
  - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
  - (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

### 11A Special licence condition—6-hour closure period for licensed premises

- (1) This section applies in relation to:
  - (a) any licence granted on or after 30 October 2008, and
  - (b) any licence in force before that date, but only if an extended trading authorisation granted on or after that date is in force in relation to the licensed premises concerned.
- (2) A licence to which this section applies is subject to the condition that liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours (as determined in accordance with this section) during each consecutive period of 24 hours (the 6-hour closure period).
- (3) Except as provided by subsection (4), the 6-hour closure period for any particular licensed premises is the period that is approved for the time being by the Authority.
- (4) In the case of a licence:
  - (a) granted on or after 30 October 2008 but before the date on which this section (as inserted by the *Liquor Legislation Amendment Act 2008*) commenced, or
  - (b) granted by the Local Court (as provided by clause 25 of Schedule 1) at any time after the date on which this section commenced,the 6-hour closure period for the licensed premises is, subject to subsection (5), the period from 4 am to 10 am.
- (5) The Authority may at any time, on application by the licensee or by the Secretary or the Commissioner of Police, or on its own initiative, approve of licensed premises having a different 6-hour closure period than:
  - (a) the period as last approved by the Authority, or
  - (b) the period specified in subsection (4).
- (6) Any such application by the licensee must be accompanied by the fee prescribed by the regulations.
- (7) To avoid doubt, during the 6-hour closure period for any licensed premises:
  - (a) the licensed premises are not authorised to stay open for the retail sale of liquor on the premises, and
  - (b) the licensee is not authorised to sell liquor by retail for consumption away from the licensed premises.
- (8) This section has effect despite any other provision of this Act (in particular, those provisions relating to the standard trading period for licensed premises).
- (9) This section does not, however, apply to the sale or supply of liquor to a resident of licensed premises if the liquor is sold or supplied for consumption in the room in which the resident is residing or staying.
- (10) The regulations may also create exceptions to this section.

### 12 Standard trading period for certain licensed premises

- (1) For the purposes of this Act, the standard trading period means:
  - (a) for any day of the week other than a Sunday:
    - (i) the period from 5 am to midnight, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed, and
  - (b) for a Sunday:
    - (i) the period from 10 am to 10 pm, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed.
- (1A) Despite subsection (1), the **standard trading period** for a small bar is the period from noon to midnight on any day of the week.

**Note.** Small bars are subject to the 6-hour closure period under section 11A.
- (1B) Despite subsection (1) (a), the **standard trading period** for premises to which this subsection applies ends at 10 pm.

- (1C) Subsection (1B) applies to the following premises or part of premises:
- (a) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is the sale or supply of liquor for consumption away from the licensed premises—the licensed premises,
  - (b) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is not the sale or supply of liquor for consumption away from the licensed premises—the part of the premises that is a liquor sales area (within the meaning of section 30) of the licensed premises,
  - (c) if a hotel licence, club licence, on-premises licence or producer/wholesaler licence authorises the licensee to sell liquor for consumption away from the licensed premises—any part of the licensed premises to the extent that it is used for that purpose.
- (2) Any regulation that prescribes a shorter period for the purposes of subsection (1) may:
- (a) apply to a specified class of licensed premises, and
  - (b) apply in relation to a specified day or days, and
  - (c) in the case of licensed premises on which liquor may be sold or supplied for consumption on the premises as well as for consumption away from the premises—specify different periods for the sale or supply of liquor for consumption on the premises and for the sale or supply of liquor for consumption away from the premises.
- (3) Without limiting subsection (2) (a), a class of licensed premises may be specified by reference to licensed premises that are located in a particular area (however described).

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

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

#### **(2) Trading hours for consumption on premises**

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

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

#### **(3) Restricted trading days**

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

- (a) between midnight and 5 am on that day (but only if authorised by an extended trading authorisation),
- (b) between noon and 10 pm on that day.

- (3A) In the case of Christmas Day, liquor must not be sold for consumption on the licensed premises between noon and 10 pm unless it is sold with or ancillary to a meal served in a dining area on the licensed premises.

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

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

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

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

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

#### **(6) Functions on other premises**

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

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

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

- (1) The following provisions apply in relation to a hotel licence (*the hotel primary purpose test*):

- (a) except as provided by section 15A, the primary purpose of the business carried out on the licensed premises must at all times be the sale of liquor by retail,
- (b) the keeping or operation of gaming machines (as authorised under the Gaming Machines Act 2001) on the licensed premises must not detract unduly from the character of the hotel or from the enjoyment of persons using the hotel otherwise than for the purposes of gambling.

- (2) The authorisation conferred by a hotel licence does not apply unless the hotel primary purpose test is complied with in relation to the licensed premises.

- (3) Any premises (other than the actual hotel) that are authorised by the Authority for the sale of liquor under a hotel licence are, for the purposes of this Act, taken to be part of the licensed premises to which the licence relates.

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

### **(1) Extended trading periods**

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

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

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

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

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

but only with the approval of the Authority.

(3) An application for the approval of the Authority under subsection (2) may be made by the hotelier concerned. Any such application must be accompanied by the fee prescribed by the regulations.

(4) The Authority may give its approval only if it is satisfied that:

- (a) the operation of gaming machines on the licensed premises during the period to which the approval relates will not detract unduly from the character of the hotel, and
- (b) gambling activities on the licensed premises will be conducted in a responsible manner.

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

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

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

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

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

(1) The Authority may, in granting a hotel licence, designate the licence as a general bar licence and specify in the licence that it is a general bar licence.

(2) The designation of a hotel licence as a general bar licence cannot be changed.

(3) It is not lawful to keep or operate gaming machines on the premises to which a general bar licence relates.

Accordingly, the keeping or operation of gaming machines on any such premises cannot be authorised under the Gaming Machines Act 2001.

(4) Despite section 14, a general bar licence does not authorise the sale or supply of liquor for consumption away from the licensed premises at any time.

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

### **(1) Cash advances prohibited**

A hotelier must not:

- (a) provide a cash advance in the hotel, or
- (b) permit a cash advance to be provided in the hotel on behalf of the hotelier,

except as a prize or bonus won as a direct or indirect consequence of participating in a form of gambling that may lawfully be conducted on the licensed premises.

(2) Hotels must be open to general public The business carried out under a hotel licence must not be, or include, a business that is limited to the sale or supply of liquor only:

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

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

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

(5) Prohibition on residents and employees drinking liquor in bar area outside trading hours Liquor may not be sold or supplied to, or consumed by, a resident or an employee of the licensee in a bar area of the hotel except at the time when liquor is authorised to be sold or supplied to other persons in that or any other bar area of the hotel. This subsection has effect despite any other provision of this Act, but is subject to subsection (6).

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

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

#### **40 Licence applications**

- (1) Licence applications are to be made to the Authority.
- (2) An application for a licence may be made by:
- (a) an individual, or
  - (b) a corporation, or
  - (c) in the case of a club licence—a club (or a person on behalf of a club) that meets the requirements specified in section 10 (1) of the Registered Clubs Act 1976.
- (3) An application for a licence may not be made by:
- (a) an individual who is under the age of 18 years, or
  - (b) a person who is disqualified from holding a licence or who holds a suspended licence, or
  - (c) an individual who is a controlled member of a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012.

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

- (4) An application for a licence must:
- (a) be in the form and manner approved by the Authority, and
  - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
  - (c) be advertised in accordance with the regulations, and
  - (d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.

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

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

#### **45 Decision of Authority in relation to licence applications**

- (1) The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (2) The Authority may, in such circumstances as the Authority considers appropriate, treat an application for a licence as having been withdrawn.
- (3) The Authority must not grant a licence unless the Authority is satisfied that:
- (a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and
  - (b) practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and
  - (c) if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates—that development consent or approval is in force.

**Note.** Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.

- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.
- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
- (a) that the person:
    - (i) is a member of, or
    - (ii) is a close associate of, or
    - (iii) regularly associates with one or more members of,a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and
  - (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.

- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
  - (a) is of good repute, having regard to character, honesty and integrity, and
  - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.

#### 48 Community impact

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
  - (a) the views of the local community, and
  - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
- (2) In this section:
 

**relevant application** means any of the following:

  - (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
  - (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),
  - (e) an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),
  - (f) any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,
  - (g) any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,

but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).
- (3) A relevant application must be accompanied by a community impact statement.
- (3A) However, a small bar application is not required to be accompanied by a community impact statement if:
  - (a) development consent is required under the Environmental Planning and Assessment Act 1979 to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
  - (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.
- (3B) For the purposes of subsection (3A), a **small bar application** means any of the following:
  - (a) an application for a small bar licence,
  - (b) an application for approval to remove a small bar licence to other premises,
  - (c) an application for an extended trading authorisation for a small bar,
  - (d) an application to vary an extended trading authorisation for a small bar.
- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:
  - (a) the application relates to the same premises as the premises to which a general bar licence relates, and
  - (b) development consent has been obtained under the Environmental Planning and Assessment Act 1979 to sell liquor during the times to which the application relates and those times are specified in the development consent.
- (3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:
  - (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
  - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the Registered Clubs Act 1976.
- (4) The community impact statement must:
  - (a) be prepared in accordance with the regulations and any requirements of the Authority, and
  - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:

- (a) the community impact statement provided with the application, and
- (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),

that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.

- (6) The regulations may make provision for or with respect to the following:
  - (a) the requirements that must be satisfied in relation to the preparation of a community impact statement (including consultation requirements),
  - (b) the matters to be addressed by a community impact statement,
  - (c) the information to be provided in a community impact statement,
  - (d) the criteria for determining the local and broader community for the purposes of a relevant application,
  - (e) any other matter relating to the preparation and content of a community impact statement.
- (7) Without limiting subsection (6), the regulations may provide that the matters to be addressed by a community impact statement are, in the case of an application for an extended trading authorisation in relation to a hotel licence, to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.

#### **49 Extended trading authorisation—general provisions**

##### **(1) Application of section**

This section applies in relation to the following types of licences (referred to in this section as a relevant licence):

- (a) a hotel licence,
- (b) a club licence,
- (c) an on-premises licence (other than an on-premises licence that relates to a vessel),
- (d) a packaged liquor licence,
- (e) a producer/wholesaler licence.

##### **(2) Extended trading authorisation for consumption on premises**

In the case of a relevant licence (other than a packaged liquor licence) that authorises the sale or supply of liquor for consumption on the licensed premises, the Authority may, on application by the licensee, authorise the licensee to sell or supply liquor, for consumption on the licensed premises only, during any of the following periods:

- (a) in the case of a hotel licence—a specified period between midnight (other than midnight on a Sunday) and 5 am on any day of the week (other than a Monday),
- (b) in the case of a relevant licence other than a hotel licence—a specified period between midnight and 5 am on any day of the week,
- (c) in any case—a specified period between 5 am and 10 am on a Sunday,
- (d) in any case—a specified period between 10 pm and midnight on a Sunday.

- (2A) Without limiting subsection (2), the Authority may, in the case of an on-premises licence, authorise the licensee, on application by the licensee, to sell or supply liquor for consumption on the licensed premises during any of the following periods:

- (a) a specified period between 5 am and noon on a restricted trading day,
- (b) a specified period between 10 pm and midnight on a restricted trading day.

Note. The sale of liquor at these times is subject to the requirement that a meal is also served—see section 25 (3).

- (3) Despite subsection (2) (a), the Authority may, in the case of a hotel:

- (a) situated in the area constituting the City of Sydney (as at 1 July 1994), or
- (b) situated in the Kings Cross precinct, or
- (b1) situated in the area including and bounded by the parts of streets specified in Schedule 3 (Oxford Street–Darlinghurst precinct) or that fronts or backs onto, or abuts, any such specified part, or
- (c) situated in the Kosciuszko National Park,

authorise the licensee, on application by the licensee, to sell or supply liquor, for consumption on the licensed premises only, during a specified period between midnight on a Sunday and 5 am on a Monday.

##### **(4) Extended trading authorisation for take-away sales on Sundays**

In the case of a relevant licence (including a packaged liquor licence) that authorises the sale or supply of liquor for consumption away from the licensed premises, the Authority may, on application by the licensee, authorise the licensee to sell or supply liquor, for consumption away from the licensed premises only, during either or both of the following:

- (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.

#### **121 Minors in hotels in company of responsible adult**

- (1) The Authority may, on the application by a hotelier, grant an authorisation (a minors area authorisation) to enable the use by a minor of a specified part of the hotel while in the company of a responsible adult.

**Note.** Section 51 applies to a minors area authorisation.

- (2) The specified part of the hotel to which a minors area authorisation applies may, if the authorisation so provides, comprise the whole of the hotel.