

Ms Angela Frost
Solicitor
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29 March 2018

Dear Ms Frost,

Application File No

1-6321710673; 1-6330613006; 1-6321710678; 1-6488638463

Application for

Removal of a full hotel Licence
Grant of extended trading authorisation
Grant of minors area authorisation
Approval of gaming machine threshold increase
Approval of transfer of gaming machine entitlements

Trading hours

Consumption on premises – Lounge/dining, gaming area, function rooms

Monday to Saturday 10:00AM – 12:00 Midnight

Sunday 10:00AM – 10:00PM

Consumption on premises – Outdoor lounge, pool area and alfresco dining

Monday to Sunday 10:00AM – 10:00PM

Take Away Sales

Monday to Sunday 10:00am – 10:00PM

Licence name

Copper City Hotel

Applicant

Mr Scott Smith

Current Premises

1 Marshall Street, Cobar (previously known as “New Occidental Hotel”)

Proposed Premises

40 Lewis Street, Cobar

Issues

Whether to grant an application to remove a hotel licence.

Whether to approve extended trading and minors area authorisations.

Whether to increase the gaming machine threshold on the Proposed Premises from 0 to 6 and transfer 6 gaming machine entitlements from the Current to the Proposed Premises.

Legislation

Sections 3, 14, 15, 15A, 17, 40, 45, 48, 49, 51, 59 and 121 of the *Liquor Act 2007*

Sections 3, 11, 16, 19, 20, 21, 32, 33, 34, 35, 37B, 39, 40 of the *Gaming Machines Act 2001*

**Decisions of the Independent Liquor and Gaming Authority on
Application for removal of a hotel licence and related applications – Copper City
Hotel, Cobar**

The Independent Liquor and Gaming Authority (“Authority”) considered application number 1-6321710673, seeking the removal of a full hotel licence (“Removal Application”) and has decided, pursuant to section 59 of the *Liquor Act 2007* (“Liquor Act”), to **grant** the Removal 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 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 & NYE**

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 normal closing time or 2:00 AM on New Year's Day, whichever is the later

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. **Restricted trading & NYE**

Takeaway sales

Good Friday Not permitted

Christmas Day Not permitted

December 31st Normal trading

4. 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 be reasonably expected from the information contained in the community impact statement, application and other information submitted in the process of obtaining this licence and extended trading authorisation.

5. The licensed business conducted on the premises must at all times be operated in accordance with the updated Plan of Management dated 6 March 2017 that was submitted on 19 March 2018, as may be varied from time to time after consultation with the Local Area Commander of NSW Police.

6. The licensee will not utilise nor permit entry by patrons to any exterior area of the Premises (including the pool area, outdoor lounge and alfresco dining area) after 10:00pm.

7. **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,
- b) recordings must be in digital format and at a minimum of six 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) on the premises.

2) The licensee must also:

- a) keep all recordings made by the CCTV system for at least 30 days,

- b) ensure that at least one member of staff is on the premises at all times the system is operating who is 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.

Notwithstanding this approval, the licence is not to be exercised at 40 Lewis Street, Cobar unless and until the Authority has been provided with evidence that the premises is complete and ready to trade. The liquor licence remains at 1 Marshall Street, Cobar subject to the same conditions and trading hours that were immediately in force before this approval was granted until such time as the Authority is notified that the licence has been moved.

The Authority has also decided to take the following action with respect to related liquor and gaming machine applications:

- **Grant** the application for a Minors Area Authorisation pursuant to section 121 of the Liquor Act.
- **Refuse** the application for an Extended Trading Authorisation pursuant to section 49(2) of the Liquor Act.
- **Approve** the application under section 34(4) of the *Gaming Machines Act 2001* ("Gaming Machines Act") to increase the gaming machine threshold of the Proposed Premises from 0 to 6.
- **Approve** the application to transfer 6 gaming machine entitlements from the Current Premises to the Proposed Premises under section 19(2) of the Gaming Machines Act.

The enclosed statement of reasons has been prepared for the purposes of section 36C of the *Gaming and Liquor Administration Act 2007* in respect of the Authority's decisions to grant the Removal Application and refuse the Extended Trading Authorisation.

Section 36C does not require the production of reasons in respect of decisions to grant a Minors Area Authorisation or the approval of the Gaming Machine Threshold increase (where no local impact assessment is required) and the transfer of entitlements. The Authority is satisfied that those applications meet the relevant statutory requirements and provides a short record only of its decision to grant those related applications.

The enclosed statement of reasons does not restate every submission or contention made by the Applicant and interested parties. What follows has been prepared in the context of a high-volume liquor and gaming jurisdiction that requires the publication of statements of reasons, as soon as practicable.

If you have any enquiries about this letter, please contact the case manager via email to charles.rivers@liquorandgaming.nsw.gov.au

Yours faithfully



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

Statement of reasons

Decision

1. On 30 August 2017 the Independent Liquor & Gaming Authority (“the Authority”) received an application (“Removal Application”) dated 30 August 2017 under section 59 of the *Liquor Act 2007* (“Liquor Act”) from Mr Scott Smith (“Applicant”), to remove a hotel licence number LIQH400110782 currently attaching to premises at 1 Marshall Street, Cobar (“Current Premises”) to new premises at 40 Lewis Street, Cobar (“Proposed Premises”) for the purposes of operating a hotel to be known as “Copper City Hotel”.
2. On 30 August 2017 the Authority received an associated application (“Extended Trading Application”) dated 30 August 2017 from Mr Smith, seeking the grant of an extended trading authorisation pursuant to section 49(2) of the Liquor Act. If granted, this authorisation (“ETA”) would enable the licence, once removed to the Proposed Premises, to trade beyond the standard trading hours prescribed for a hotel by section 12 of the Liquor Act in the lounge/dining, gaming area and function rooms of the Proposed Premises, from midnight until 2:00 am on Monday through Saturday evenings and from 10:00 pm until midnight on Sunday evenings.
3. On 30 August 2017 the Authority received another application from Mr Smith under section 121 of the Liquor Act (“Minors Area Application”) dated 28 August 2017 seeking to designate a specified part of the Proposed Premises as an area that may be used by minors if accompanied by a responsible adult. This authorisation (“MAA”) would apply to the lounge/dining, function rooms, alfresco dining, outdoor lounge and pool areas of the Proposed Premises.
4. On 30 August 2017 the Authority received an application under section 34 of the *Gaming Machines Act 2001* (“Gaming Machines Act”) from Mr Smith dated 28 August 2017 seeking to increase the gaming machine threshold in respect of the Proposed Premises from 0 to 6 (“GMT Application”).
5. The gaming machine threshold is the maximum number of gaming machines that may potentially be kept at a venue that is permitted to keep gaming machines. By reason that this application was made in association with the proposed transfer of gaming machine entitlements between two hotels situated within the same local government area (“LGA”), the Gaming Machines Act does not require this application to comply with the local impact assessment (“LIA”) requirements of the gaming machine legislation. The more limited legislative requirements required to be satisfied by such an application are discussed below.
6. Also on 28 August 2017, the Authority received a letter from the Applicant’s legal representative, Ms Frost requesting that the 6 gaming machine entitlements be transferred, under section 19 of the Gaming Machines Act, from the Current Premises to the Proposed Premises.
7. Having considered together the positive benefits and negative impacts that the Authority considers likely to flow from granting the Removal Application, the Authority *is* satisfied, for the purposes of section 48(5) of the Liquor Act, that the overall social impact of granting the application would *not* be detrimental to the well-being of the local and broader communities. The Removal Application is granted pursuant to section 59(1) of the Liquor Act.
8. The Extended Trading Application is *refused* pursuant to section 49(2) of the Liquor Act by reason that the Community Impact Statement (“CIS”) accompanying that application does

not comply with the requirements of clause 10A of the *Liquor Regulation 2008* (“Liquor Regulation”).

9. The Authority is satisfied that it is in the public interest to grant the Minors Area Application in respect of the lounge/dining, function rooms, alfresco dining, outdoor lounge and pool area. This authorisation is granted pursuant to section 121 of the Liquor Act.
10. The Authority is satisfied that the legislative requirements in the Gaming Machines Act and *Gaming Machines Regulation 2010* (“Gaming Machines Regulation”) in respect of the proposed increase in the gaming machine threshold from 0 to 6 have been satisfied. This application is approved pursuant to section 34 of the Gaming Machines Act.
11. The Authority is also satisfied that the requirements of the Gaming Machines Act and Gaming Machines Regulation have been satisfied in respect of the proposed transfer of 6 gaming machine entitlements from the Current Premises to the Proposed Premises. The application is approved pursuant to section 19(2) of the Gaming Machines Act.
12. In making decisions on the liquor-related applications, the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Liquor Act and all of the considerations to which it must have regard under section 3(2) of that Act.
13. In making decisions on the gaming-related applications, the Authority has had regard to all of the statutory objects prescribed by section 3 of the Gaming Machines Act.

Material considered by the Authority

14. The Authority has considered the applications, the CIS, and all submissions received in relation to the applications.
15. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decisions, as all parties required to be notified were provided with a reasonable opportunity to make submissions.
16. In accordance with the Authority's *Guideline 6*, the Authority has also had regard to relevant Liquor and Gaming New South Wales (“LGNSW”) liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data and Australian Bureau of Statistics (“ABS”) socio-demographic data, sourced by LGNSW from publicly available sources.
17. The list of material considered by the Authority is set out in the Schedule.

Legislative framework

18. The Authority has considered the applications in the context of the following legislative provisions.

Objects of the Liquor Act

19. The objects of the Liquor Act, as set out in section 3(1), are 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; facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimum formality and technicality and contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
20. In the pursuit of these objectives, section 3(2) of the Liquor Act requires the Authority, when determining a liquor related application, to have due regard to the need to minimise harm associated with the misuse and abuse of liquor (including harm from violence and

anti-social behaviour); the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor and the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Trading hours and 6-hour closure period

21. Section 12 of the Liquor Act prescribes the standard trading period for liquor licences. Additionally, section 11A imposes a condition upon all licences that fall within the scope of that section, prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

Minimum procedural requirements

22. Section 40 of the Liquor Act and relevant provisions in the Liquor Regulation prescribe the minimum procedural requirements for the making of a liquor licence application to be validly made to the Authority.

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

23. Section 45(3) of the Liquor Act provides that the Authority may only grant a licence if it is satisfied that:
- a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
 - b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - c) the applicable development consent required for use of the premises for the proposed business is in force.

Community impact statement

24. Sections 48(2) and (3) of the Liquor Act require that certain “relevant applications” (including an application to remove a hotel licence and an application for an extended trading authorisation in respect of a hotel) must be accompanied by a CIS that is prepared in accordance with the relevant requirements specified in the Liquor Act and Liquor Regulation.
25. Section 48(5) of the Liquor Act provides that the Authority may only grant an application to which section 48 applies if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter before it.

Provisions specific to a hotel licence

26. Further legislative provisions that are specific to a hotel licence are set out in sections 14 to 17 of the Liquor Act and in the Liquor Regulation.

Provisions specific to the removal of a liquor licence

27. Section 59 of the Liquor Act provides the minimum legal requirements regarding the removal of a liquor licence to other premises.
28. Pursuant to section 59(3) of the Liquor Act, when determining an application for approval to remove a licence to other premises, the Authority is to deal with and determine the application as if it were an application for the granting of a licence in respect of those other

premises. The Authority has the same powers in relation to such applications as it does in relation to an application for a new licence.

29. Section 59(5) of the Liquor Act provides that the Authority must refuse an application for approval to remove a licence unless the Authority is satisfied that:
- practices will, as soon as the removal of the licence takes effect, be in place at the premises to which the licence is proposed to be removed to ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on those premises and that all reasonable steps are taken to prevent intoxication on those premises, and
 - those practices will remain in place.

Provisions specific to extended trading authorisations

30. The legal requirements for making a valid application for an extended trading authorisation are provided by section 51 of the Liquor Act and the Liquor Regulation. Section 51(3) provides that when determining an application for a licence related authorisation, the Authority has the same powers in relation to the application as it has in relation to an application for a licence.
31. The power to grant an extended trading authorisation is provided by section 49(2) of the Liquor Act. Section 49(8) of the Liquor Act provides that the Authority must not grant an extended trading authorisation in respect of licensed premises unless the Authority is satisfied that:
- 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
 - 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.
32. Relevantly to this matter, clause 10A of the Liquor Regulation 2008 requires that, in the case of an application for an extended trading authorisation in relation to a hotel licence, the matters to be addressed by a CIS are to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.

Provisions specific to minors area authorisations

33. Section 121 of the Liquor Act provides that the Authority may, on application by a hotelier, grant an authorisation to enable the use by a minor of a specific part of the hotel while in the company of a responsible adult.
34. The legal requirements for a valid application for a minors area authorisation are provided by section 51 of the Liquor Act and the Liquor Regulation. Section 51(3) of the Liquor Act provides that when determining an application for a licence related authorisation, the Authority has the same powers in relation to the application as it has in relation to an application for a licence.

Objects of the Gaming Machines Act

35. The objects of the Gaming Machines Act, as set out in section 3(1), are to minimise harm associated with the misuse and abuse of gambling activities, foster responsible conduct in

relation to gambling, facilitate the balanced development, in the public interest, of the gaming industry, ensure the integrity of the gaming industry and provide for an ongoing reduction in the number of gaming machines in the State by means of the tradeable gaming machine entitlement scheme.

36. Section 3(2) of the Gaming Machines Act provides that the Authority, Minister, Secretary and Commissioner of Police and all other persons having functions under the Gaming Machines Act are required to have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under the Gaming Machines Act. Section 3(3) of that Act provides that in particular, due regard is to be had to the need for gambling harm minimisation when considering, for the purposes of this Act, what is or is not in the public interest.

Minimum procedural requirements for the transfer of gaming machine entitlements

37. Section 19(1) of the Gaming Machines Act provides that gaming machine entitlements held in respect of a hotel or club licence are transferable, while section 19(2) provides that such transfer does not have effect unless it is approved by the Authority and complies with any requirements in respect of such applications, specified by Division 2 of Part 3 of the Gaming Machines Act and the Gaming Machines Regulation.
38. Section 19(3) of the Gaming Machines Act requires that an application to transfer gaming machine entitlements must be accompanied by the relevant fee prescribed by the regulations, provide such particulars as the Authority may require in relation to the proposed transfer, and (in the case of a hotel) demonstrate that the proposed transfer is supported by each person who has a financial interest in the licence. The application must be in the manner and form approved by the Authority from time to time.

Minimum procedural requirements for gaming machine threshold applications

39. Section 34(3) of the Gaming Machines Act requires that an application to increase a gaming machine threshold for a hotel or club may only be approved if the requirements of Division 1 of Part 4 of the Gaming Machines Act and the Gaming Machines Regulation have been complied with in relation to the application.
40. Sections 35 (1) and (2) of the Gaming Machines Act provide that a threshold increase application is *not* required to be accompanied by a LIA if the application is made together with an application to transfer gaming machine entitlements and (relevantly) the relevant venue and the hotel or club from which entitlements or permits are proposed to be transferred are situated in the same LGA.

Restrictions upon gaming machine threshold applications

41. Section 37B of the Gaming Machines Act provides that the gaming machine threshold of a hotel or club cannot be increased if the hotel or premises is part of a retail shopping centre or a proposed retail shopping centre.
42. Clause 36(1) of the Gaming Machines Regulation requires that a threshold application must specify the internal floor space of the venue and, in the case of a new hotel, provide a map of the venue in relation to any school, place or public worship or hospital within 200 metres. Clause 36(2) of the Regulation provides that the gaming machine threshold of a venue cannot be increased if the premises are situated in the “immediate vicinity” of a school, place of public worship or hospital.

43. Clause 43 of the Gaming Machines Regulation prescribes certain restrictions on the number of threshold increase that may be granted with respect to venues with an internal floor space of less than 400 square metres.

Key findings on the Removal Application

Validity, procedural and other requirements

44. The Authority is satisfied that the Removal Application and accompanying CIS was validly made in that it meets the minimum content and consultation requirements of sections 40 and 59 of the Liquor Act and clauses 6 through 12 of the Liquor Regulation.
45. This finding is made on the basis of the information provided in the Removal Application form, the CIS form and a Certificate of Advertising dated 20 October 2017 in relation to the Removal Application.
46. The Authority is also satisfied, for the purposes of sections 51(2) and 40 of the Liquor Act that the Minors Area Application was validly made. These findings are made on the basis of the Minors Area Application form.

Issue surrounding the use of the Outdoor Lounge after 10:00pm

47. In the Removal Application form the Applicant specified licensed trading hours between 10:00am and 10:00pm Monday through Sunday in respect of the "Outdoor Lounge" area of the Proposed Premises. The Authority notes that the Site Notice, Notices to Police and Notice to the Local Consent Authority in relation to the Removal Application also indicate that the trading hours sought for the Outdoor Lounge area are between 10:00am and 10:00pm Monday through Sunday only.
48. The Authority is not satisfied that the Applicant has adequately consulted with the community and stakeholders in respect to any proposed use of outdoor areas of the Premises, whether as a smoking area or otherwise after 10:00 pm. The Authority notes that in a letter from the Applicant's legal representative dated 20 October 2017, the Applicant advised that the licensed trading hours for the Outdoor Lounge area are between 10:00am and 10:00pm Monday through Sunday. In a further email dated 13 December 2017 the Applicant amended the Removal Application to no longer seek any post 10:00 pm licensed trading on a Sunday in the Outdoor Lounge Area.
49. The Authority finds that the community and relevant stakeholders were not on notice of any proposed use of the exterior areas of the Premises outside of the period between 10:00am and 10:00pm Monday through Sunday. Accordingly, while the Authority has granted licensed trading hours for the rest of the Premises during the standard trading period, use of the exterior areas will be confined to between 10:00am and 10:00pm Monday through Sunday.

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

50. Pursuant to section 45(3)(a) of the Liquor Act, the Authority is satisfied that the Applicant is a fit and proper person to carry on the business to which the proposed licence relates.
51. This finding is made on the basis that no concerns regarding Mr Smith's probity were raised upon consultation with relevant law enforcement agencies, including NSW Police ("Police") and the Compliance section of LGNSW.
52. Pursuant to sections 45(3)(b) and 59(5) of the Liquor Act, the Authority is satisfied that practices will be in place from the commencement of licensed trading at the Proposed Premises to ensure the responsible serving of alcohol and prevention of intoxication. This

finding is made on the basis of the updated version of the Applicant's Plan of Management that is dated 6 March 2017 but submitted on 19 March 2018 and the conditions consented to by the Applicant in submissions dated 20 October 2017 and 28 November 2017. The Authority notes that the Plan makes reference to certain use of exterior areas of the Proposed Premises after 10:00 pm. This will require amendment, as no use of those areas by hotel patrons will be permitted after 10:00 pm as a consequence of this decision.

53. Pursuant to section 45(3)(c) of the Liquor Act, the Authority is satisfied that any development consent required for the conduct of the business or activity to which the licence relates (a hotel business) is in force with respect to the Proposed Premises. This finding is made on the basis of the Notice of Determination of development approval 2017/LD-00016 ("DA") determined by Cobar Shire Council ("Council") dated 10 August 2017. The DA expressly permits, for the purposes of the *Environmental Planning and Assessment Act 1979*, alterations and additions to existing motel accommodation and alterations and additions to existing restaurant including change of use to a "pub". Although the DA is silent as to any restrictions on trading hours, Council sent an email to the Applicant's legal representative dated 17 October 2017 advising that the hours of use of the Proposed Premises (for planning purposes) are:
- Lounge and gaming area: Monday to Saturday 10am to 3am and 10am to midnight on Sunday.
 - Outdoor lounge: Monday to Saturday 10am to 3am (no alcohol to be consumed in this area after 10pm) and 10am to 10pm Sunday.
 - Dining and function rooms: Monday to Sunday 6am to 2am (no alcohol to be sold before 10am).
 - Pool area: Monday to Sunday 10am to 10pm.
 - Alfresco dining: Monday to Sunday 6am to 10pm (no alcohol to be sold before 10am).

Community impact statement

54. The Applicant is required to submit a CIS by reason that the Removal Application and the Extended Trading Application are "relevant applications" under section 48(2) of the Liquor Act.
55. Consistent with *Authority Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the State suburb of Cobar, while the relevant "broader community" comprises the Cobar local government area ("Cobar LGA").

Positive social impacts from granting the Removal Application

56. The Authority is satisfied on the basis of the Removal Application and the CIS material that granting the removal of the licence some 110 metres within the same State suburb of Cobar will provide the benefit of choice and convenience to members of the local community who seek licensed entertainment services typically offered by a full hotel licensed premises operating "resort style facilities" on this new site.
57. The Authority is satisfied that no objections were received from the relevant communities and that the nature and scope of licensed entertainment on offer will be broadly consistent with the "expectations needs and aspirations of the community" in respect of the sale, supply and consumption of liquor in the local and broader communities, in furtherance of the statutory object in section 3(1)(a) of the Liquor Act.

58. Taking into account the location, availability and density of the incumbent licensed venues in Cobar, the Authority is satisfied that removing the licence from the Current Premises to the Proposed Premises will also facilitate the *balanced* development, in the public interest, of the liquor industry serving the relevant communities advancing the statutory object in section 3(1)(b) of the Liquor Act.
59. The Authority is satisfied, on the basis of the information provided in response to Part 7 of the CIS form, that the hotel will provide a modern meeting place where the business community can hold meetings, functions, presentations and workshops. The Authority accepts as credible the Applicant's contention that the function rooms apparent from the CIS and diagram of the Premises will enable the hotel business to cater for a range of private social functions, from weddings to wakes.
60. The Applicant further contends that the hotel's conference facilities will be developed to provide occupational health and safety training, technology updates and other services to support the local mining industry and the capacity to serve local health industry conferences (since Cobar is a central local facility for the Far West Health District) and programmes run by the local Aboriginal Murdi Paaki Regional Enterprise Corporation.
61. While the Applicant has not provided any specific evidence of arrangements for those enterprises to use the hotel's facilities, the Authority finds it generally credible that the function rooms will be available for a range of public sector, non-profit and corporate uses and in this sense will expand the facilities available for this remote area. The Authority accepts that the licensed entertainment facilities and the function and accommodation areas are also likely to service individuals working in the mining industry which contributes to a significant transient population in Cobar.
62. The Authority is also satisfied, on the basis of the information provided in Part 7 of the CIS, that the Proposed Premises will also offer 32 self-contained accommodation units that shall operate in association with the licence. Although the accommodation facilities are not included as part of the proposed licensed area of the Premises, the Authority has taken these services into account as an associated or indirect community benefit from the operation of the hotel business.
63. The Authority accepts the information specified in Part 7 of the CIS form that live entertainment (DJ/bands) or amplified music will be offered "occasionally" in the dining/lounge area and will not go past midnight. Live entertainment will also be offered during private functions held in the function rooms. In this sense, removing the licence to a location where it will be utilised will also contribute to the *responsible* development of *related* industries serving the relevant communities – including the live music, entertainment, tourism and hospitality industries - advancing the statutory object in section 3(1)(c) of the Liquor Act.
64. The Authority has considered the Applicant's intention to employ 10 local people and train staff for work in the hospitality industry. The weight that can be given to this purported benefit has been reduced by the absence of any supporting evidence such as hiring policies directed towards the local or broader community but given the remote location of the venue the Authority accepts that locally sourced employment is likely to occur.

Negative social impacts from granting the Removal Application

65. The Authority considers that over time there is a risk that liquor sold from this hotel 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 patrons who abuse liquor and engage in alcohol related misconduct.

66. Having regard to the usual social impact risk factors identified in Authority Guideline 6, the Authority notes that the licence *type* in question is a “full” hotel licence, as distinct from a general bar category of hotel. Pursuant to section 14 of the Liquor Act, the licensee will have the authorisation to sell liquor by retail for consumption on and off the Proposed Premises. Section 15(1)(a) of the Liquor Act provides that the primary purpose of any hotel licensed business must, save for the exception provided by section 15A of the Liquor Act, be the sale of liquor by retail.
67. By reason of these factors, a full hotel licence poses a relatively higher level of adverse social impact for the communities that it serves.
68. As for the *scale* of the venue, the proposed hotel is in relative terms, a medium scale operation with a licensed area of some 1,267 square metres and a patron capacity of 371 (excluding guests in the associated motel accommodation rooms).
69. The scale of the venue will pose a further moderate risk factor when assessing the capacity for the hotel to attract, accommodate and generate patrons who may contribute to alcohol related crime, anti-social conduct or otherwise exact adverse impacts upon local amenity.
70. With respect to the proposed *licensed trading hours*, the Applicant has sought to operate quite extensive hours across the course of the week, consuming the bulk of trading hours available during the standard trading period. Upon removing the licence, the hotel will be permitted to trade at the Proposed Premises in the lounge/dining, gaming area and function rooms between the hours of 10:00 am to 12:00 midnight Monday to Saturday and between 10:00 am to 10:00 pm Sunday and in the Outdoor Lounge, Pool Area and Alfresco Dining area between the hours of 10:00 am and 10:00 pm Monday through Sunday. The Removal Application will not enable the venue to trade during late night hours.
71. The Authority notes that the hotel does not propose to operate a devoted bottle shop, although takeaway sales of liquor will be available over the bar from 10:00 am to 10:00 pm Monday to Sunday. Through the operation of clause 70AB of the Liquor Regulation, the hotel will effectively be able to sell takeaway liquor until 11:00 pm, Monday through Saturday.
72. With respect to the suitability of the *location* from a social impact perspective, licensed premises information for the Cobar LGA and the Cobar suburb sourced by licensing staff on 28 August 2017 indicates that there are currently **7** hotel licences in the LGA and **4** in the suburb.
73. Licence density calculations performed by licensing staff on the basis of LGNSW records as at 28 August 2017 and population data from the 2016 ABS Census indicate that the rate of hotel licences in the Cobar LGA is **150.6** per 100,000 persons while the rate for the Cobar suburb is **100.3** per 100,000 persons.
74. Both of these rates are well above the rate of hotel licences for New South Wales as a whole at **28.3** per 100,000 persons. The Authority is mindful that the quite low population of Cobar LGA (**4,647**) and the suburb of Cobar (**3,990**) may skew this rate and since this matter concerns the removal of a licence, granting the Removal Application will not increase licence density in either community, but instead enable the operation of a licence

that has been dormant since August 2014. The communities are exposed to high licence density although somewhat unusual given their isolation, with a high level of transient workers servicing the mining industry.

75. As for the suitability of the *location* by reference to prevailing alcohol related crime and other anti-social conduct, BOCSAR crime data for the period from July 2015 to June 2017 indicates that during the twelve months ending June 2017 Cobar and Cobar LGA recorded higher than State wide rates per 100,000 persons for incidents of *alcohol related domestic assault* (**172.8** for Cobar, **321.6** for Cobar LGA and **116.2** for NSW), *alcohol related non-domestic assault* (**296.2** for Cobar, **261.3** for Cobar LGA and **134.3** for NSW) and *malicious damage to property* (**1777.3** for Cobar, **1909.5** for Cobar LGA and **817.3** for NSW).
76. Some reassurance is provided by BOCSAR hotspot crime maps sourced by licensing staff for the suburb of Cobar between July 2016 and June 2017 indicating no localised concentrations of crime where the hotel will operate. The Proposed Premises is not located *within* any hotspots for incidents of *alcohol related assault*, *domestic assault*, *non-domestic assault* and *malicious damage to property*. The Authority notes however, that the Proposed Premises is adjacent to a low/medium/high density hotspot for the occurrence of malicious damage to property.
77. Authority Guideline 6 notes that the Authority will consider relevant socio demographic data for the relevant communities. Socio-economic index for areas ("SEIFA") data from the 2016 Census is not available at the time of this decision. However, data from the 2011 Census in respect of the Index of Relative Socio-Economic Advantage and Disadvantage indicates that:
 - The suburb of Cobar ranked (in comparison to other state suburbs within NSW) in the **3rd** decile.
 - The Cobar LGA ranked (in comparison to other LGAs within NSW) in the **4th** decile.
78. Noting that the tenth decile is the most socio economically advantaged, this data establishes that the local community of Cobar and the broader community of Cobar LGA are in relative terms only moderately disadvantaged.
79. The Authority finds some cause for concern arising from data on alcohol related deaths and hospitalisations within the Cobar LGA. NSW Healthstats data for the period between 2012 and 2013 indicates that the Cobar LGA has a standardised alcohol mortality ratio of **116.70** with the NSW level fixed at 100. Data for the period between 2013 to 2015 records a smoothed *alcohol related hospital separation* ratio of **146.30**. The Authority notes however, that no adverse submissions were received from relevant stakeholders including local Police, public health agencies, Council or local residents objecting to removal of the licence.
80. The Authority has also had regard to the conditions to which the licence will be subject (which include CCTV requirements) and the harm minimisation measures set out in the Applicant's Plan of Management dated 6 March 2017 which will be enforceable through the operation of a licence condition. The Plan details measures requiring the use of security officers, surveillance of the Proposed Premises and patrol of the car park, the management of anti-social behaviour, the exclusions of persons from the Proposed Premises, responsible service of alcohol and staff training.

Key findings on the Extended Trading Authorisation

81. Clause 10A of the Liquor Regulation requires a CIS accompanying an extended trading authorisation in respect of a hotel to address matters relating to gambling activities on the licensed premises during the period when the authorisation will be in force.
82. The Authority notes that the Applicant, in the document addressing Part 7 of the CIS form, made very limited reference to any proposed gambling activities. The Applicant briefly notes that 6 gaming machines will operate on the Proposed Premises with those machines accessible to “any adult who wishes to play” during licensed hours. The Applicant briefly contends that the hotel will “minimise harm associated with the misuse and abuse of gambling activities and foster the responsible conduct of gambling”.
83. There is little or no information detailing the nature and scope of late night gambling operations, any planning or training material for Responsible Conduct of Gambling or any other measures to manage adverse gambling related impacts - whether from gaming machines or other gambling services that may be offered by hotels (including TAB wagering and Keno). There is no submission addressing the types of information of which applicants are placed on notice in Annexure B to Authority Guideline 6.
84. On the material before it, the Authority is *not* satisfied that the Applicant has met the minimum content requirements in clause 10A of the Liquor Regulation for the preparation of a CIS in respect of proposed gambling activities during the extended trading period.
85. The Authority finds that the Extended Trading Authorisation does not comply with sections 51(2) and 40(4) of the Liquor Act. Having considered the central importance of the consultation provisions for “relevant applications” and the consequences of a non-compliant application being found invalid, the Authority finds that compliance with clause 10A is a condition to the valid exercise of the power to grant an extended trading authorisation. The Extended Trading Application is invalid.
86. The community and other statutory stakeholders have been deprived of the opportunity to respond to this aspect of the Extended Trading Application. If the Applicant seeks to exercise extended trading hours, a fresh extended trading application is required observing all statutory content, advertising and community consultation requirements, to enable the Authority to consider the overall social impact of granting this authorisation in light of the services to be provided on the Proposes Premises during extended trading hours.
87. The Extended Trading Application is refused pursuant to section 49(2) of the Liquor Act.

Key findings on the Gaming Machine Threshold Application

88. The Authority has determined, on the basis of the map provided by the Applicant (depicting the location of the Proposed Premises in relation to a number of schools, churches and a hospital), that the Proposed Premises is *not* within the “immediate vicinity” of any school, place of public worship or hospital within the meaning of clause 36(2) of the Gaming Machines Regulation.
89. The Authority notes that clause 36(1)(b) of the Gaming Machines Regulation requires a threshold increase application relating to a new hotel to provide a map showing the location of the venue and the location of any school, place of public worship or hospital within 200 metres of the venue. The Applicant has provided a map that indicates that the nearest school, place of public worship or hospital is 950 metres away. The Proposed Premises is not within the “immediate vicinity” of any such venue.

90. The Authority is satisfied that the Proposed Premises is not part of a “retail shopping centre” within the meaning of section 37B of the Gaming Machines Act, there being no evidence capable of reasonably satisfying the Authority that the removal of this hotel, is configured as, promoted as, or identified by the community as a “shopping centre”.
91. Clause 43 of the Gaming Machines Regulation prescribes certain restrictions on the number of threshold increase that may be granted with respect to venues with an internal floor space of less than 400 square metres. The Authority is satisfied, on the information provided in Part 7 of the CIS, that the internal floor space of the venue is 730.08 square metres, well above an internal floor space of 400 square metres.

Overall social impact

92. Having considered the positive and negative impacts that are likely to flow from granting the removal of the licence, the Authority is satisfied, for the purposes of section 48(5) of the Liquor Act, that the overall social impact of granting the Removal Application will not be detrimental to the well-being of the local or broader communities.
93. The Removal Application is granted pursuant to section 59 of the Liquor Act.
94. The Extended Trading Application is refused pursuant to section 49(2) of the Liquor Act.
95. The Minors Area Application is granted pursuant to section 121 of the Liquor Act.
96. The Authority has determined, pursuant to section 34(4) of the Gaming Machines Act, to increase the gaming machine threshold of the Proposed Premises from 0 to 6. The Authority has also determined, pursuant to section 19(2) of the Gaming Machines Act, to approve the transfer of 6 gaming machine entitlements from the Current Premises to the Proposed Premises.



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

Material before the Authority

1. SEIFA data on the basis of the 2011 ABS Census data, sourced by licensing staff.
2. NSW Department of Health *Healthstats* data for the Cobar LGA for alcohol attributable deaths (between 2012 and 2013) and hospitalisations (between 2013 and 2015).
3. BOCSAR crime data for July 2015 to June 2017 for incidents of alcohol related domestic assault, alcohol related non-domestic assault and malicious damage to property in Cobar, Cobar LGA and NSW.
4. BOCSAR hotspot crime maps for the community of Cobar between July 2016 and June 2017 recording concentrations of alcohol related assault, domestic assault, non-domestic assault and malicious damage to property events.
5. BOCSAR crime data for calendar year 2016 for the proportion of incidents by offence type, day of week and time of day for the Cobar LGA, sourced by licensing staff.
6. Letter from the Applicant's solicitor Ms Frost to LGNSW dated 28 August 2017 attaching the GMT Application.
7. GMT Application form lodged with the Authority on 30 August 2017 signed and dated by the Applicant on 28 August 2017.
8. Licence density calculations performed by licensing staff for relevant areas on the basis of LGNSW licensed premises information as at 28 August 2017 and population data from the ABS 2016 Census.
9. LGNSW licensed premises records for the suburb of Cobar and the Cobar LGA sourced by licensing staff on 28 August 2017.
10. Removal Application form lodged by the Applicant on 30 August 2017, signed and dated 30 August 2017 and accompanied by the Site Notice, Consent Authority Notice and Notice to Police.
11. Extended Trading Application form lodged by the Applicant on 30 August 2017, signed and dated 30 August 2018 [which the Authority assumes should be 2017] and accompanied by a Site Notice, Consent Authority Notice and Notice to Police.
12. Minors Area Application form lodged by the Applicant on 30 August 2017 signed and dated 28 August 2017 accompanied by the Consent Authority Notice and Notice to Police.
13. CIS lodged by the Applicant on 30 August 2017 signed and dated 30 August 2017 accompanied by the following documents:
 - (a) a 15-page document responding to Part 7 of the CIS form discussing *inter alia* the application, removal of the licence, the current site, the existing motel at the proposed site, operations of the Copper City Hotel (including purpose, primary purpose test, patron numbers, trading hours, entertainment, noise management, clientele, security, CCTV), the local and broader community (including Cobar and the demographic characteristics of the area) SEIFA and BOCSAR data, licensed premises, social impact (from gaming and alcohol), the ameliorative measures proposed, characteristics of the Proposed Premises, locational aspects and beneficial impacts.

- (b) a Google geographical map depicting the distance between the Current Premises and Proposed Premises
 - (c) a map depicting the location of the Proposed Premises in relation to a number of schools, churches and a hospital.
 - (d) Plan/diagram of the Proposed Premises highlighting the licensed area and the area to which the Minors Area Application will apply.
 - (e) DA 2017/LD-00016 determined by Council on 10 August 2017.
 - (f) A table outlining the demographics of Cobar LGA, the suburb of Cobar and NSW sourced from the 2011 and 2016 ABS Census data.
 - (g) BOCSAR hotspot crime maps for the suburb of Cobar and the Cobar LGA between April 2016 to March 2017 for incidents of domestic assault, non-domestic assault and malicious damage to property.
 - (h) Plan of Management dated 6 March 2017 attaching a copy of the prevention of intoxication on licensed premises guidelines, intoxication guidelines and liquor promotion guidelines summary July 2013.
14. Email from the Applicant's solicitor dated 20 October 2017 in response to an email from licensing staff dated 16 October 2017. The Applicant attaches the following material:
- (a) A letter to the Authority dated 20 October 2017 responding to the email from licensing staff dated 16 October 2017 and consenting to conditions relating to the 6-hour closure period, the overall level of social impact from operating the business, operating in accordance with the Plan of Management and not permitting entry after midnight.
 - (b) Certificate of Advertising signed by the Applicant dated 20 October 2017 for the Removal Application.
 - (c) Email from Council to the Applicant's legal representative, Ms Frost, dated 17 October 2017 confirming the hours of operating approved by the DA.
 - (d) Letter from Traffic Solutions Pty Ltd to Cobar Shire Council dated 15 June 2017, on behalf of Curtin Raiser Pty Ltd (the premises owner of the Proposed Premises and the business owner of the hotel), assessing traffic and parking implications from modifying the existing motel restaurant/bar on the Proposed Premises.
 - (e) Statement of Environmental Effects for the Proposed Premises prepared by PGH Environmental Planning on behalf of the premises owner of the Proposed Premises, Curtin Raiser Pty Ltd. This document attaches the following material:
 - Plan of Management dated 6 March 2017.
 - Acoustic Report for the Proposed Premises prepared by Rodney Stevens Acoustics on behalf of Curtin Raiser Pty Ltd dated 14 February 2017.
 - Waste Management Plan for the Proposed Premises dated 16 December 2016.
 - National Construction Code Assessment Report for the Proposed Premises prepared by Pro Cert Group Pty Ltd dated 6 March 2017.
 - Proposed development plans including survey plans and architectural plans.

15. Email from the Applicant's solicitor dated 28 November 2017 in response to an email from licensing staff of the same date, consenting to conditions relating to CCTV, operating the Proposed Premises in accordance with the plan of management and no alcohol taken into or consumed in any outdoor area of the hotel after 10:00pm on any evening.
16. Letter from the Applicant's solicitor to LGNSW dated 29 November 2017 confirming that Curtin Raiser Pty Ltd (the premises owner and business owner of the proposed hotel) consents to transfer of the gaming machine entitlements.
17. OneGov liquor licence record as at 29 November 2017 for licence number LIQH400110782 for the Copper City Hotel.
18. Email from the Applicant's legal representative dated 13 December 2017 amending the Application so that the extended trading will not apply to the Outdoor Lounge on Sunday.
19. Plan/diagram of the Proposed Premises highlighting the licensed area and the areas to which the Minors Area Application and the Extended Trading Application apply.