



Mr Kim Stapleton
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Dear Mr Stapleton

**Application for Variation of Extended Trading Authorisation
The Pub – Taminda**

I am writing to you regarding an application (Application) made by Ms Tierzah Renai Douglas (Applicant), which was received by the Independent Liquor and Gaming Authority on 3 June 2014.

The Application seeks to vary an existing extended trading authorisation that currently attaches to the hotel licensed premises located at 99 Gunnedah Road, Taminda NSW 2340, known as "The Pub" (Premises), in a manner that would permit extended trading in all areas within the licensed Premises until 3:00am on the morning after Monday through Saturday evening trade, and until 12:00 midnight on Sunday.

Processing of the Application was delayed by reason that the Applicant did not provide a number of documents required for the Application to proceed – including evidence of development consent for the approved use of the Premises, the Certificate of Advertising, and the House Policy/Plan of Management for the Premises – until 3 February 2015.

The Authority considered the matter at its meeting on 30 April 2015, and after careful consideration of the information provided as part of the Application and the submissions made in relation to the Application, decided under section 51(9)(b) of the *Liquor Act 2007* to *refuse* the Application.

An Authority staff member provided informal advice of the outcome of the Application via email shortly after the meeting. This letter provides the formal decision and reasons.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. The attached statement of reasons has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

If you have any queries, please contact the case manager, Ms Trudy Tafea via email at trudy.tafea@ilga.nsw.gov.au.

Yours faithfully

Micheil Brodie
Chief Executive

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STATEMENT OF REASONS

INTRODUCTION

1. On 3 June 2014, the Independent Liquor and Gaming Authority (Authority) received an application (Application) made by Ms Tierzah Renai Douglas (Applicant), the licensee of the hotel licensed premises located at 99 Gunnedah Road, Taminda NSW 2340, known as "The Pub" (Premises).
2. According to licensing records maintained by the Authority, the Premises currently has a "full" hotel licence with an extended trading authorisation that permits the sale or supply of liquor during the following hours in the following areas of the Premises:

Public bar and lounge:

Monday to Saturday 5:00am to 3:00am
Sunday 10:00am to 12:00 midnight

Beer garden, function room, gaming lounge, verandah and pergola:

Monday to Saturday 5:00am to 12:00 midnight
Sunday 10:00am to 12:00 midnight

Other areas within the licensed Premises:

Monday to Saturday 5:00am to 12:00 midnight
Sunday 10:00am to 10:00pm

Takeaway sales:

Monday to Saturday 5:00am to 10:00pm
Sunday 10:00am to 10:00pm.

3. The Application seeks to vary an existing extended trading authorisation that attaches to the Premises, hotel liquor licence number LIQH400120990, in a manner that would permit further extended trading in *all areas within the licensed Premises* until 3:00am on the morning following Monday through Saturday evening trade, and until 12:00 midnight on Sunday.
4. Processing of the Application was delayed by reason that the Applicant did not provide a number of documents required for the Application to proceed – including evidence of development consent for the approved use of the Premises, the Certificate of Advertising, and the House Policy/Plan of Management for the Premises – until 3 February 2015.

MATERIAL BEFORE THE AUTHORITY

The Authority had before it the Application, the accompanying Category B community impact statement (CIS), and further submissions and other relevant material, comprising:

5. Application Form dated 26 May 2014.
6. CIS document dated 2 June 2014.
7. Community Impact Assessment prepared by John Coady Consulting Pty Limited dated 22 April 2014.
8. The Pub Group *House Policy on the Responsible Service of Alcohol* dated 17 February 2003 and updated 1 May 2014 (RSA Policy). This Policy specifies that its objectives are to prevent underage drinking, to prevent or manage intoxication and

intoxicated behaviour and violent or disruptive behaviour, and to prevent drink driving. The RSA Policy states that misuse of alcohol is a public health and safety issue which staff should be prudent to mitigate through responsible service of alcohol. The RSA Policy also specifies that a cautious approach should be taken to ensuring that minors are not sold or supplied with alcohol.

9. The RSA Policy lists signs of intoxication including slurred speech, unsteadiness and bloodshot eyes, and quotes by way of guidance the description of a state of intoxication in a decision of a Licensing Magistrate in a matter before the former NSW Licensing Court on 18 March 1992. The RSA Policy specifies that all staff must survey the Premises, report any suspicious behaviour to a manager, speak with the friends of an intoxicated person to seek their assistance in courteously showing the person out of the Premises, ensure that patrons are not disruptive in the street outside the Premises, and promote food sales and water to prevent intoxication. The RSA Policy states that staff should "use common sense", be polite at all times, avoid arguments, and call the Police if a patron refuses to leave.
10. The Pub Group *House Policy on the Sale of Alcohol to Minors* dated 15 December 2014 (House Policy). This Policy states that all persons who appear to be under the age of 25 are to have their identification checked prior to being sold or supplied with alcohol, or being allowed to enter or remain on the Premises. The House Policy states that staff should be aware of legal penalties for supplying minors with alcohol, including on the spot fines of \$1,100. The House Policy states that staff should check a valid form of identification (a current NSW photo card, driver's licence, passport or valid proof of age card) within sight of surveillance cameras, ensure that the identification has not been tampered with, and "quiz" the person on the details of the identification if in doubt.
11. Plan of the Premises, being a diagram outlining the licensed area of the Premises, the areas which currently enjoy extended trading hours and the areas that are proposed to have extended trading should the Application be granted. The areas which are the subject of this Application comprise the beer garden, function room, gaming lounge, verandah and pergola, and in total these areas are approximately twice the size of the area of the Premises which is currently authorised for extending trading hours (being the public bar and lounge bar areas).
12. Liquor licence record provided by the Applicant dated 15 April 2015, as maintained by the Authority on the *OneGov* database. This record indicates, *inter alia*, the conditions to which the licence is subject; that the business owner and the premises owner of the hotel is a corporation, Douglas Consolidated Enterprises Pty Limited; that the gaming machine threshold for the Premises is 28, and that the gaming machine shutdown period is from between 4:00am and 10:00am Monday through Sunday and on public holidays.
13. Certificate of Advertising Application dated 12 November 2014 certifying consultation with certain stakeholders.
14. Development Consent No. DA0663/2005 (DA) issued by Tamworth Regional Council (Council) dated 1 June 2005. This document records the granting of consent for *additions of storeroom, gaming lounge and offices and verandah to existing hotel* in respect of the Premises. Relevantly, paragraph 9 states that "...the current trading hours of "The Pub" on Sunday from 10:00am to 10:00pm are to be extended so that the new hours of operations are from 10:00am to 12:00 midnight". The DA also specifies conditions in relation to *inter alia*, inspections, construction and fire safety.
15. The DA contains no other conditions that regulate the hotel's hours of trading for planning purposes.

16. Development Consent No. 165/01 issued by Council dated 7 December 2000. This document records the granting of consent for *additions to an existing Hotel (beer garden extension) and erection of two (2) illuminated flush wall signs and neon strip lighting*.
17. Development Consent No. 93/98 issued by Council dated 9 June 1998. This document records the granting of consent for *alterations to existing hotel on Lot 10 DP 771176*.
18. Report to the Authority from a delegate (Delegate) of the (then) Secretary of NSW Trade and Investment (Secretary) via the Compliance and Enforcement Division of the Office of Liquor, Gaming and Racing (OLGR) dated 16 October 2014 (OLGR Report). The OLGR Report states that OLGR does not object to the Application being granted, provided that a condition is placed upon the venue's licence prohibiting the use of speakers and amplified music of any kind in any outdoor areas of the Premises during the extended trading period. The OLGR Report states that while the rate of alcohol related assaults and disorderly conduct offences for the Tamworth Regional local government area (LGA) are above the State average, the Premises itself does not appear to be problematic on the basis of its relatively clean compliance and incident history. The OLGR Report notes that while the Premises is located directly opposite a strip of residential properties, the Premises is in a relatively isolated area away from the centre of Tamworth and therefore it is unlikely that granting the Application would result in a significant increase in noise/disturbance issues. The OLGR Report notes that the Tamworth Regional Licensed Premises Reference Group objected to the Application.
19. However, the location of the Premises is assessed by OLGR as "high risk". The OLGR Report notes that data published by the NSW Bureau of Crime Statistics and Research (BOCSAR) for the period from July 2013 to June 2014 indicates that the rates of *alcohol related assaults* (domestic and non-domestic) and *alcohol related disorderly conduct* offences in the Tamworth Regional LGA are above the rates of those offences for the whole of NSW. The OLGR Report states that this "indicates that the Tamworth Regional area does appear to have a significant concentration of alcohol related anti-social behaviour".
20. The OLGR Report notes that a review of the Compliance and Enforcement Division records did not disclose any adverse information in respect of either the venue or Ms Tierzah Renai Douglas, the current licensee of the Premises. The OLGR Report also notes that the Premises received a warning in 2009 in relation to a gaming machine administration matter, but that no other issues with respect to the Premises have since been detected.
21. Letter from Tamworth Regional Council to Mr John Coady (the Applicant's consultant) on behalf of the Applicant dated 5 March 2014. This letter states that the Tamworth Regional Licensed Premises Reference Group (TRLPRG) met on Friday 21 February 2014 to consider this request for extended trading and "...determined not to support the application based on information provided by the Liquor Licensing Sergeant". The letter further states that "...TRLPRG determined that the added hours provided an increased opportunity for people to take part in gaming in a low socio-economic area".
22. Letter from NSW Roads and Maritime Services (RMS) to Mr John Coady on behalf of the Applicant dated 21 March 2014. RMS states that its concern is drink driving and it provides a table showing the rate of casualty crashes in the Tamworth Regional LGA from 2004 to 2013 in which alcohol was recorded as a factor. Based on this table, RMS submits that "...on average 8.1 per cent of casualty crashes" that occurred in the Tamworth Regional LGA over this period were recorded as *alcohol related* which was "...more than that for the State (5.2 per cent)". RMS states that in total there were 108 alcohol related casualty crashes in this LGA between 2004 and 2013.

23. RMS requests that if the Application is approved, the licensee be required to "...order and use merchandise from the State Government drink driving campaign Plan B" which:
 - (a) aims to assist patrons make a positive choice about getting home safely
 - (b) provides alternative transport options to and from the venue
 - (c) draws staff attention to the RMS brochure titled *Drinking and Driving: The Facts*.
24. Letter from the NSW Department of Family and Community Services (FACS) to JDK Legal (the Applicant's legal representative) on behalf of the Applicant dated 23 June 2014. In this letter, FACS state that "...we are unable to determine that this particular proposal would adversely affect the local community above and beyond the usual social impacts of increased alcohol consumption in a community and therefore have no legitimate grounds for concern".
25. Letter from the Tamworth Local Aboriginal Land Council (LALC) to JDK Legal on behalf of the Applicant dated 24 June 2014. In this letter, LALC objects to the Application "...because of the impact on our community and neighbourhood" if the Application were granted, including the impact on "...quality of life and social wellbeing of the family and household". LALC states that "alcohol related issues" are prevalent within the Aboriginal community and that granting extended trading hours at this Premises "...would increase the misuse and abuse of alcohol in our community".
26. Email from JDK Legal on behalf of the Applicant to the Authority dated 3 February 2015. This email states that the Applicant accepts the imposition upon the licence of the standard conditions as to social impact and participation by the licensee or its representative in the local liquor accord, as previously notified by Authority staff, should the Application be granted.
27. Authority licensing records listing nine (9) licensed premises that are located within 2 kilometres of the Premises. They comprise:
 - (a) two packaged liquor licences (*Carlo's IGA Tamworth* and *The Westdale Mini Market*)
 - (b) four on-premises licences (*Golf Links Motel*, *Central Chinese*, *BAE Systems Flight Training (Australia) Centre* and *Tamworth Jockey Club*)
 - (c) three club licences (*West Tamworth League Club Limited*, *Tamworth Golf Club Limited* and *West Tamworth Sports & Bowling Club Limited*).
28. Authority licensing data indicating that liquor licence density per 100,000 persons of population within the postcode 2340 (which covers the suburb of Tamworth and other neighbouring suburbs within the Tamworth Regional LGA) is **17.49** for full hotel licences, which is on par with the rate for the LGA (at **17.75**) but below the licence density of full hotel licences across NSW, which is at **30.36** per 100,000 persons of population.
29. Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS) indicating that the State suburb of Taminda ranked in only the first decile for suburbs within the State on the Index of Economic Resources and in the third decile on the Index of Education and Occupation (with a decile ranking of 10 being the most advantaged). For both of these Indexes, the postcode 2340 ranked in the fourth decile and the Tamworth Regional LGA ranked in the fifth decile for all LGAs within the State.
30. BOCSAR crime mapping data for October 2013 to September 2014. This data reveals that the Premises is located near a low density hotspot for the concentration of *domestic assault* incidents and within a medium density hotspot for the concentration of *malicious damage to property* incidents.
31. BOCSAR *Report on Crime by LGA and Alcohol Related Status*. The latest published 2014 report records rates of alcohol related offences for each LGA and across NSW

during calendar year 2013. The rate per 100,000 persons of *alcohol related domestic assault* incidents in the Tamworth Regional LGA was **281.3** per 100,000 persons compared to the NSW rate of **137.3** per 100,000 persons. The rate of *alcohol related non-domestic assault* incidents in the LGA was **364.3** per 100,000 persons compared to the rate of **181.0** per 100,000 persons across NSW as a whole. The rate of *alcohol related assault Police* incidents in this LGA was **28.8** per 100,000 persons compared to **22.6** per 100,000 persons recorded across NSW as a whole. The rate of *alcohol related offensive behaviour* incidents in this LGA was **360.9** per 100,000 persons compared to **116.0** per 100,000 persons for NSW as a whole.

32. BOCSAR crime data for the Tamworth Regional LGA current as of 13 April 2015. According to this data, the rates of *domestic and non-domestic assault* occurring in this LGA peak between 6:00pm and 12:00 midnight on Friday and Saturday evenings, and are elevated between 12:00 midnight and 6:00am on Saturday and Sunday mornings. The rates of *malicious damage to property* offences occurring in this LGA are elevated between 6:00pm and 12:00 midnight every night of the week, and peak between 12:00 midnight and 6:00am on Saturday and Sunday mornings. This data also indicates that the rates of prescribed concentration of alcohol (PCA) offences in this LGA peak between 6:00pm and 12:00 midnight on Friday and Saturday nights and between 12:00 midnight and 6:00am early on Saturday and Sunday mornings.

STATUTORY OBJECTS AND CONSIDERATIONS

33. In determining the Application, the Authority has considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states as follows:

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.*

34. The power to vary an existing extended trading authorisation is provided by section 51(9)(b) of the Act, which states as follows:

51 *General provisions relating to licence-related authorisations*

(9) *An authorisation:*

- (a) *is subject to 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 Director-General or the Commissioner of Police.*

PUBLIC INTEREST TEST

35. Section 51 does not provide an express list of considerations that the Authority must apply when considering taking action to vary or revoke an existing extended trading authorisation under section 51(9)(b) of the Act. Accordingly, the relevant test is whether granting the Application is in the public interest.
36. The relevant "public interest" is informed by the statutory objects in section 3(1) of the Act and a decision maker must consider those express statutory considerations that are provided by section 3(2) of the Act. The Authority makes the assessment on the basis of the Application and all other relevant material before the Authority.
37. The Applicant has prepared and submitted a CIS document with the Application. As the Application is not of a type for which the production of a CIS is mandatory pursuant to section 48(2) of the Act, the Applicant is not required to satisfy the "overall social impact" test pursuant to section 48(5) of the Act. Nevertheless, the CIS document includes useful information about the Premises and its environment that is relevant to the Authority's assessment of whether granting the Application is in the public interest.

APPLICANT'S SUBMISSIONS

38. In the Application Form, the Applicant submits that the purpose of seeking an extension of the ETA is to "...achieve uniformity in the hotel's trading hours" by permitting trade in all areas of the Premises until 3:00am on the mornings following Monday through Saturday evening trade.
39. The Applicant submits that there are no restrictions on any development consent relating to the hotel's trading hours.
40. The Applicant contends that staff at the Premises will serve patrons in a responsible, friendly and professional manner, by ensuring that the service and consumption of alcohol occurs in compliance with RSA principles.
41. In Annexure A to the Application Form, the Applicant outlines the steps that will be taken to ensure that the Application (if approved) will not result in "...frequent undue disturbance of the quiet and good order of the neighbourhood".
42. The Applicant contends that the primary exposure of the Premises is to industrial and commercial properties located on the northern side of Oxley Highway, and the Premises is also well segregated from the residential development located to its south.
43. The Applicant contends that in the 22 years of operating with the benefit of an extended trading authorisation (first granted in 1992), the hotel has never received a complaint from either a resident, the Council or the Police relating to its operation during the extended trading period.
44. The Applicant submits that it has been the only operator of the hotel since it commenced trading in 1989 and that it will maintain all existing management practices if the Application is granted, which have proved so successful to date.
45. The Applicant submits that the hotel currently operates during extended trading hours without frequently and unduly disturbing the quiet and good order of the neighbourhood.
46. In the assessment prepared by Mr John Coady of John Coady Consulting Pty Limited (Consultant) that accompanies the CIS Form (CIS Assessment), it is submitted that the Application does not seek to extend the overall trading hours of the hotel but rather to

extend those trading hours to part of the hotel so that all areas are subject to the same trading hours.

47. The Consultant contends that granting the Application would therefore not create new opportunities for the consumption of alcohol, but would eliminate the need for the hotel's patrons to move from one part of the hotel to another to comply with the hotel's liquor licence.
48. The Consultant submits that the adjoining land and all land in the immediate vicinity of the Premises is industrial and commercial and therefore is unaffected by the Application.
49. The Consultant submits that these circumstances minimise the potential for the operation of the Premises to affect the amenity of residential premises in the area and that a nearby school, Peel Technology High School, would be unaffected by the Application as it relates to late night trading only.
50. The Consultant refers to the suburbs of Taminda, Westdale and West Tamworth to the west of the railway line and a substantial amount of South Tamworth as the suburbs comprising the local community; while the Tamworth Regional LGA is the broader community for the purposes of the Application.
51. In relation to the submission from Council that granting the Application would provide an increased opportunity for gaming in a low socio-economic area, the Consultant states that this concern is "recognised" but that it is "...not considered to represent a significant, detrimental effect on the wellbeing of the local or broader community" by reason that the extended licensed trading period for the Premises "...does not coincide with peak patron accumulations" which tend to occur earlier in the evening.
52. The Consultant contends that it is not anticipated that all areas of the hotel, including the gaming area, would trade all of the time during the extended trading hours and that there are numerous opportunities for people wishing to gamble to do so at other clubs and hotels in the area.
53. The Consultant provides a list of 11 other clubs and hotels in the suburb of Tamworth, one hotel in the suburb of South Tamworth and one club in the suburb of Tamworth West which are identified as having extended trading authorisations and where persons who wish to gamble could do so in any event. The Consultant submits that one potential consequence of refusing the Application would be the migration of patrons from The Pub hotel to those other venues.
54. The Consultant notes that Police were notified of the Application by letter and by a face-to-face meeting; however Police have made no submissions in relation to the Application.
55. In relation to the submission from RMS, the Consultant states that "...the Applicant agrees to order and use merchandise from the State Government Drink Driving Campaign Plan B" and that the Applicant currently provides an alternative transport option for patrons travelling to and from the Premises, being a mini-bus. The Consultant submits that the Applicant will retain that service.
56. The Consultant contends that granting the Application can be expected to have the positive social impact of serving the legitimate demand for outlets which sell and supply alcohol for consumption on the premises as a lawful, socially acceptable, recreational activity.

57. The Consultant contends that the different trading hours for different areas within the Premises has resulted in confusion and resentment from some hotel patrons when they are required to relocate to another part of the hotel which has authorised extended trading hours. The Consultant contends that while it is not anticipated that all parts of the hotel would trade during the extended trading hours all of the time, uniformity in extended trading hours throughout the Premises is required to optimise the operational performance of the hotel and the level of amenity it is able to provide to its patrons.
58. The Consultant submits that granting the Application would not affect the existing outlet density in the local and broader communities, and is therefore not a relevant issue with respect to the Application.
59. The Consultant provides a "Demographic Profile Table" based on ABS 2011 Census data which, it is submitted, indicates that a number of at-risk groups are over-represented in the local and broader communities compared to NSW State averages.
60. According to the data provided by the Consultant, these at-risk groups include people who identify as being of Aboriginal and Torres Strait Islander descent, who make up **14.3%** of the local community and **8.3%** of the broader community, compared with 2.5% of the population of Greater Sydney and NSW.
61. This data reveals that **6.5%** of the population of the local community are unemployed, compared with 5.8% of the broader community and 5.9% of NSW as a whole, and that **9.9%** of the local community lives in public housing, compared with 4.4% of the population of NSW as a whole.
62. The Consultant submits that the purpose of the Application is to achieve uniformity of trading hours throughout the hotel and contends that this diminishes the potential for the Application, if granted, to cause alcohol-related harm to those at-risk groups.
63. The Consultant includes a table of BOCSAR data for the period between October 2012 and September 2013 and states that this data reveals that alcohol-related crime is not a significant issue in the suburb of Westdale or in the Tamworth LGA, given that the rates of certain offences in those areas are lower than the rates per 100,000 persons of population in NSW as a whole.
64. In response to the adverse submission provided by the TRLPRG, which was based on information provided by the Liquor Licensing Sergeant, the Consultant submits that contact was subsequently made with Local Licensing Police who indicated that they did not attend the meeting of the TRLPRG on 21 February 2014.
65. The Consultant submits that the source and nature of the information on which the TRLPRG submission was made is unclear and it is unlikely that that information is directly related to the Application.
66. The Consultant notes that no occupiers of neighbouring premises have made any submissions in relation to the Application at the time of the preparation of the CIS Assessment and submits that this suggests that the Application is not controversial or problematic to the occupiers of those neighbouring premises.
67. The Consultant submits that it is appropriate that the positive social impact potential of the Application to encourage the responsible consumption of alcohol as a lawful, socially acceptable, recreational activity be included in the process of determining the community impact of the Application.

68. Copies of stakeholder notices are attached to the CIS Assessment, as well as copies of the submissions from Tamworth Regional Council, FACS and RMS; a table of alcohol related casualty crash statistics 2004-2013; and photographs of Plan B Resources including stickers for beer cartons, coasters/mini coasters and posters.

DECISION AND REASONS

69. The Authority has critically examined the Application for the variation of the extended trading authorisation in respect of the Premises and all of the material before it.
70. While section 51(9) of the Act does not provide an express legal test to be applied when considering the power to vary an extended trading authorisation, the Authority will consider whether the proposed variation of the authorisation is in the public interest – a matter that will be informed by the statutory objects provided by section 3(1) of the Act and the broad considerations which all decision makers must apply under section 3(2) of the Act.
71. While the Authority is not, in this case, applying the overall social impact test under section 48(5) of the Act to the local or broader community. The Authority has nevertheless considered the public interest in right of the *relevant* community that is likely to patronise and be impacted by the operation of the Premises in question.
72. The Authority has taken into account the submissions in the CIS Assessment as to what the Consultant describes as the "local community" or the trade catchment area of the hotel.
73. In the absence of any patron survey identifying the postcode of actual patrons of the hotel, the Authority considers that the *relevant* community likely to be serviced and impacted by this local hotel will most likely comprise the community within the State suburb of Taminda in which the Premises is located, but also include the catchment area identified by the Applicant's Consultant – that is, neighbouring areas outside of Taminda but within the Tamworth LGA.
74. The Authority notes that Police do not oppose the Application. The Authority also notes that the Applicant has consented to the imposition of two conditions upon the licence requiring that the hotel business on the Premises 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 provided in the Application; and that the licensee of the Premises must join and be an active participant in the local liquor accord.
75. The Authority notes that the local consent authority, Tamworth Regional Council, which is a representative body for the community impacted by the Premises, has made a submission stating that the TRLPRG (a local liquor consultative group in which Council participates) has "determined not to support" the Application on the basis that extending the scope of operations during late trading hours may contribute to late night gaming within a socioeconomically disadvantaged community within the Tamworth regional area.
76. In a submission that was put to the Applicant for comment, OLGR does not oppose the Application but have assessed the location of the Premises as high risk. OLGR also refers to BOCSAR data that indicates a significant concentration of alcohol-related anti-social behaviour within this LGA.
77. With regard to the relevant published BOCSAR data for the Tamworth LGA, the 2014 BOCSAR *Report on Crime by LGA and Alcohol Related Status* satisfies the Authority that during calendar year 2013, the rate of *alcohol related domestic assault* incidents in

the Tamworth Regional LGA was **281.3** per 100,000 persons, well above the NSW rate of **137.3** per 100,000 persons.

78. The rate of *alcohol related non-domestic assault* incidents in the Tamworth Regional LGA was **364.3** per 100,000 persons, which is also well above the rate of **181.0** per 100,000 persons across NSW as a whole.
79. The rate of *alcohol related assault Police* incidents in this LGA was **28.8** per 100,000 persons, which is significantly higher than the rate of **22.6** per 100,000 persons recorded across NSW as a whole.
80. The rate of *alcohol related offensive behaviour* incidents in this LGA was **360.9** per 100,000 persons, which is well above the rate of **116.0** per 100,000 persons for NSW as a whole.
81. With regard to BOCSAR crime mapping data for the Tamworth LGA for the period between October 2013 to September 2014 and with particular regard to the location of the Premises, the Authority is satisfied that the Premises is located close to a low density hotspot for the concentration of *domestic assault* incidents and is located within a medium density hotspot (and in close proximity to a high density hotspot) for the concentration of *malicious damage to property* incidents.
82. The Authority is satisfied, on the basis of this crime data, that in the context of relatively higher rates of crime encountered by the Tamworth LGA overall, there are concentrations of crime close to and within the suburb of Taminda where the Premises is located and in immediately surrounding areas.
83. The Authority is satisfied, on the basis of the ABS SEIFA data before the Authority, that the state suburb of Taminda is very socio-economically disadvantaged, ranking within the 1st decile on the SEIFA Index of Economic Resources (the lowest ranking on this Index), and in the 3rd decile on the SEIFA Index of Education and Occupation.
84. This SEIFA data for the state suburb of Taminda lends some objective support to Council's concerns that any increase in gaming activity at the hotel during late hours will occur within the context of what is a relatively disadvantaged community.
85. The Authority is satisfied that should the Application be granted, in a spatial sense, there will be a considerable expansion of those areas of the Premises that will have the capacity to engage in licensed trading until 3:00am six nights per week. The Applicant has made no commitment, let alone proposal of a licence condition, that the gaming areas of the hotel will not be opened during those late hours. That is one source of adverse social impact that has not been adequately addressed by the Applicant.
86. Apart from this, the Authority is satisfied that expanding the areas of the hotel which will be open until 3:00am will more likely than not expand the overall late night patron capacity of *this* hotel and greatly expand the scope for *this* hotel to encourage those members of the local community who experience socio-economic hardship to spend more time and money utilising the liquor and gaming facilities of this venue during late hours. This is a negative incident of the Application.
87. The prevailing relative disadvantage in the suburb of Taminda also increases the Authority's concern as to the scope for increased trading capacity at this licensed premises to contribute to adverse social outcomes in a local community that is already vulnerable from relative socio-economic disadvantage.

88. Furthermore, the Authority is satisfied, on the basis of ABS 2011 Census statistics provided in the CIS Assessment, that there is a relatively high population of people of Aboriginal and Torres Strait Islander (**ATSI**) descent in the community likely to be serviced and impacted by the operation of the hotel.
89. The Authority is satisfied that, according to ABS data, the ATSI population comprises approximately 8.3% of the Tamworth Regional LGA. By comparison, the ATSI population comprises 2.5% of the population of New South Wales as a whole.
90. The CIS Assessment submits that the "local community" (as identified by the Applicant's Consultant) comprises the suburb of Taminda, the suburb of Westdale, that part of West Tamworth (Coledale) that is situated west of the railway line and that part of South Tamworth situated west of South Tamworth Public School.
91. The Consultant submits that around 14% of that purported local community is of ATSI background. The Consultant further acknowledges that this purported local community exhibits other socio-demographic traits that are associated with adverse alcohol related impacts, including the rate of unemployment and the rate of persons living in public housing facilities.
92. The Authority is satisfied that a higher ATSI representation in a given community is relevant to the assessment of the public interest in respect of granting a liquor application. The Applicant has addressed socio demographic traits and the ATSI community by reason that the research (including research noted in Authority *Guideline 6: Consideration of Social Impact*) indicates that while persons within the ATSI community report higher rates of abstinence than the non-ATSI community, the ATSI community also typically reports higher rates of drinking to risky levels than in the non-ATSI community.
93. In light of the relatively high representation of persons of ATSI background within the State suburb of Taminda, the 2340 postcode and the Tamworth Regional LGA, the Authority gives weight to the local knowledge and concerns expressed by the ATSI group, LALC – who contend that alcohol related issues are already high among the Aboriginal community in Tamworth.
94. The Authority accepts the Applicant's submission that there are other late trading premises that also provide both liquor and gaming services in Taminda and neighbouring areas within the LGA. The availability of other late trading hotels and clubs within the Tamworth Regional LGA is established by the Authority's licensing data. While this data shows only one other venue with extended trading hours within the suburb of Taminda itself (*Tamworth Jockey Club*, which has an on-premises licence), the Authority accepts that the other late trading premises referred to by the Applicant are within other parts of the LGA that the Applicant describes as the hotel's trade area.
95. Nevertheless, the Authority must consider the public interest in expanding the late night licensed capacity of *this* licensed business to the extent proposed in this Application.
96. The Authority is satisfied that were the Application to be granted it would expand that part of the Premises that is currently licensed for late trading to approximately three times the current licensed area.
97. The Authority is satisfied that such an expansion of late night operations at *this* venue, to the extent proposed by the Application, will more likely than not enable *this* venue to accommodate considerably more patrons on the Premises during later hours thus extend the scope for *this* venue to contribute to the prevailing adverse alcohol related adverse impacts in the relevant community – particularly the community located within the state

suburb of Taminda, but also the community in close neighbouring areas within the Tamworth Regional LGA that the Applicant accepts form part of the trade catchment area of this business.

98. Section 3(1)(a) states that one object of the Act is 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.
99. The Authority notes the submission from the Applicant that granting the Application to expand the area of the Premises subject to the extended trading authorisation to 3:00am on the mornings following Monday through Saturday evening trade would achieve uniformity in the hotel's extended trading hours. The Authority accepts this submission and is satisfied that this may cause some very modest improvement in the convenience of those patrons on the Premises at 12:00 midnight who will not need to move from some areas of the Premises that are open with standard trading hours to the current areas that also have extended trading hours.
100. The Authority has also considered the further submission from the Applicant's Consultant that a potential consequence of *refusing* the Application is that patron migration from the Premises to other venues "...will continue to occur during the late night/early morning period". The Authority does not have any information before it as to how many patrons currently leave the Premises at 12:00 midnight, rather than stay on the Premises until 3:00am. The Applicant does not explain why patrons leaving the Premises *later in the morning* would reduce the scope for adverse amenity impacts upon the relevant community than patrons leaving the Premises at midnight, as is currently occurring. This potential public interest benefit has not been substantiated to an extent that would enable the authority to give much weight to it.
101. Nevertheless, the Authority is satisfied, on the basis of the available licensing data, that late night patron migration between licensed premises is an option that is already open to the relevant community. It is made possible by the number and range of licensed premises that have standard trading hours and late trading hours that are accessible to the relevant community.
102. The logical inference drawn by the Authority from the proposed considerable expansion of late night operation of the hotel is to accommodate greater numbers of patrons during late trading hours than is currently the case. It is more likely than not to be a rational commercial object of the Applicant to attract more patrons to the Premises during late hours as well to satisfy that increased capacity.
103. While the Authority accepts that some modest customer convenience will flow to some patrons of this hotel in not having to move from one part of the hotel to another as the venue transitions to late trading, and extending the licensed area of the hotel operating during late hours will provide a commercial benefit to the *business*, (with some increased staffing levels during late hours), the Applicant has not provided a particularly persuasive case demonstrating the extent to which expanding the late operations of this business will further the statutory object of advancing the expectations needs and aspirations of the relevant *community* within the meaning of section 3(1)(a) of the Act. The submissions from the TRLPRG and the LALC provide evidence from these representative groups that the proposed expanded late night operation of the Premises is contrary to expectations at the community wide level.
104. The Authority has considered whether granting the Application would facilitate the balanced development, in the public interest, of the liquor industry. While the Authority accepts the Applicant's submission that the Application, if granted, would not increase

the licensed outlet density in the local or broader community, the object of section 3(1)(b) of the Act is the *balanced* development of the liquor industry.

105. This hotel already accommodates extended trading in part of the Premises for six days per week until 3:00am with some extended trading until 12:00 midnight on a Sunday. It is not apparent from the Application material what services this venue will be providing during late hours that are not otherwise available at clubs or hotels in the local or broader community.
106. The degree to which extending the scope of the extended trading authorisation of this business will advance the *balanced* development of the industry is limited by those prevailing circumstances. The Authority is satisfied that a decision to maintain the current availability of extended trading presents a more balanced approach to liquor regulation of the industry in the communities, particularly in light of the location of this licensed Premises.
107. In applying the statutory consideration under section 3(2)(a) of the Act – the need to minimise harm associated with the misuse and abuse of alcohol – the Authority has considered the Applicant’s consultant submissions on the incidence of alcohol related crime in the LGA and in the suburb of Westdale and the contention that alcohol related crime is not a significant issue in the suburb of Westdale or in the Tamworth LGA.
108. However, the Authority notes that the BOCSAR data provided by the Applicant indicates that the rates of each category of alcohol related crime per 100,000 persons of population across the Tamworth Regional LGA are higher than the rates for NSW as a whole.
109. However, the Authority notes and gives some weight to the assessment by OLGR of the location of the Premises as high risk. This opinion is reinforced by BOCSAR data that indicates a relatively high rate of alcohol related crime occurs in the Tamworth Regional LGA, with some concentration of relevant offences occurring in the area where the Premises is located.
110. The BOCSAR data indicates an elevation of the rate of alcohol related assaults across this LGA between the hours of 12:00 midnight and 6:00am on Saturdays and Sundays, during which period the Applicant seeks to expand its patron capacity. Notwithstanding the Applicant’s evidence of its harm mitigation measures that the Authority accepts are in place on the Premises, the Authority does not consider it to be in the public interest to substantially expand, in this environment, the operation of this hotel during higher risk times of the early morning six nights per week.
111. While LALC contend that granting the Application would increase the misuse and abuse of alcohol in our community, the Authority does not have sufficient evidence or data to determine whether extending the late trading capacity of this Premises would increase liquor consumption or abuse at the level of the relevant community. NSW does not mandate the collection of liquor sales data that has been used by researchers in other jurisdiction to track the association between liquor volumes sold and assault rates in a given local government area.
112. Nevertheless, extending the late night capacity of this licensed premises is considered by the Authority to be more likely enable *this* hotel to contribute, along with the other incumbent licensees, to liquor abuse in the community served by the hotel than should the venue retain its current more limited late night trading capacity.
113. On the basis of this material, and in light of the SEIFA data indicating demographic traits of the relevant community that are associated with relative vulnerability to alcohol related

impacts (including low socioeconomic status and a higher proportion of ATSI persons), the Authority is not satisfied that granting this Application would be consistent with better advancing the need to minimise harm associated with the misuse and abuse of alcohol in the community that this hotel serves.

114. The Authority has also given weight to the statutory consideration under section 3(2)(c) – the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life. The Authority has balanced the submissions made by the Applicant (including its RSA planning and policies) in support of the Application with the submissions of other stakeholders and the BOCSAR and SEIFA statistics, and has decided that on balance, refusing the Application is more likely to ensure that the alcohol related impacts of this hotel contribute to, and do not detract from, the amenity of community life in this area.
115. The Applicant has not persuaded the Authority how granting the Application will reduce impacts upon community life by reducing patron migration. An extended capacity may both encourage patrons to remain on the premises and also encourage late night patronage, which the Authority infers to be a rational commercial object of this proposal.
116. The Authority has also considered the Applicant's submission that granting the Application is unlikely to impact local amenity because of the venue's location in a mostly industrial area, however the Authority is not satisfied, on balance, that this sufficiently mitigates the potential for harm given the crime data and socio demographic data pertaining to the community likely to patronise and be impacted by the operation of this hotel.
117. The Authority gives some weight to the local knowledge and concerns raised by the representative bodies TPLPRG and LALC as to alcohol related impacts within the local ATSI community. The public interest concerns are elevated by reason of the BOCSAR data indicating elevated alcohol related crime during late hours on weekends and the ABS socio-demographic profile of the community indicating socio economic disadvantage. The Authority is satisfied that a substantial expansion of the late night operation of this hotel until 3:00am over six nights of the week is more likely than not to contribute to an adverse impact on the amenity of community life over time and be contrary to the public interest, notwithstanding the Applicant's desire to develop *this* business and further meet the expectations of *this* hotel's patrons.

CONCLUSION

118. The Authority is *not* satisfied, on the basis of the material before it that the proposed variation of the extended trading authorisation that is already in effect for a licensed venue of this *type*, *scale* and *location* will be in the public interest. As a result, the Authority has refused the Application under section 51(9)(b) of the Act.
119. In making this decision, the Authority has had regard to all of the objects and considerations prescribed by section 3 of the Act, but has given weight to section 3(2)(a) – the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and section 3(2)(c) – the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.



Michell Brodie
Chief Executive

DATED 15/9 / 2015