



Our Ref: 1-3253259434 &
1-3253116847
Your Ref:

Mr George Smith
c/o Design Collaborative
Level 3 225 Clarence Street
SYDNEY NSW 2000
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10 June 2016

Dear Mr Smith,

**Application for Extended Trade Authorisation
Riverwood Hotel**

I am writing to you about an application made by your client, Mr Patrick-Alain Kemkemian, to the Independent Liquor and Gaming Authority on 26 May 2015, seeking the grant of an extended trading authorisation (ETA Application) in respect of the Riverwood Hotel located at 26 Josephine Street, Riverwood.

The application was considered by the Authority at its meeting on 11 May 2016. After careful consideration of the application material and all further submissions provided in relation to the application, the Authority decided, pursuant to section 49(2) of the *Liquor Act 2007* to **grant** the Application.

The Authority also approved a related application to vary the usual six-hour closure period prescribed by section 11A of the Act. The Authority's decisions were advised to you shortly thereafter with a follow up email from licensing staff dated 20 May 2016.

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*. This letter attaches the reasons for decision to grant the ETA Application, prepared in the context of a high volume liquor jurisdiction that requires the publication of reasons as soon as practicable.

The detailed conditions subject to which the extended trade authorisation is granted as set out in the OneGov record of the licence was provided separately by licensing staff. Please contact case manager darren.cavanagh@ilga.nsw.gov.au if you have any enquires about this letter.

Yours faithfully

DB Armati
Deputy Chairperson
For and on behalf of the **Independent Liquor and Gaming Authority**

STATEMENT OF REASONS

INTRODUCTION

1. On 26 May 2015, the Independent Liquor and Gaming Authority (**Authority**) received two applications (**Applications**) lodged by Mr Patrick-Alain Kemkemian (**Applicant**).
2. The first application (the **ETA Application**) seeks the grant of an extended trading authorisation, within the meaning of section 49(2) of the *Liquor Act 2007* (**Act**), for the Riverwood Hotel (previously known as “Napoleon’s Hotel”), located at 26 Josephine Street, Riverwood 2210 (**Premises**).
3. The hotel is currently licensed to sell or supply liquor for consumption on the Premises between 5am and 12am Monday to Saturday and between 10am and 10pm on Sunday. The hotel is licensed to sell liquor for consumption off the Premises between 5am and 10pm daily. That is, the hotel is currently licenced for the full extent of standard trading hours provided by section 12 of t Act in respect of a hotel licensed premises.
4. The extended trading authorisation sought by the Applicant would enable the hotel to trade between 9:00am and 2:00am Monday through Saturday and from 10:00 am and 12 midnight on Sunday. The Applicant proposes that the licenced trading hours for takeaway liquor be fixed at between 10am and 10pm daily.
5. The second application (**Closure Period Application**) seeks to vary the six-hour closure period required by section 11A of the Act from the default or usual period fixed by the Authority of between 4:00 am to 10:00 am daily to the alternative closure period of 3:00 to 9:00 am daily.
6. Section 36C of the Gaming and Liquor Administration Act 2007 requires the publication of reasons in respect of the ETA Application, which is a “relevant application” within the meaning of section 48(2) of the Act. This letter provides reasons for the Authority’s decision to grant the ETA Application.
7. Both applications were initially assessed by the Authority during November 2015. However, due to issues relating to the development consent issued in respect of the Premises (in that Canterbury City Council could not locate the original development application for the Premises to confirm that the relevant consent for the activity proposed by the applications was in place), assessment of both matters was delayed until 11 May 2016, by which time concerns regarding the state of the current development consent for the Premises had been clarified.

MATERIAL BEFORE THE AUTHORITY

- 8. Application Forms – Application for Extended Trading Authorisation and Variation of 6-Hour Closure Period, and Community Impact Statement (CIS), filed with the Authority on 26 May 2015:** In the Application Forms, the proposed licensed trading hours and daily closure period are specified as above.
- 9.** In the CIS document, the Applicant contends that the Premises is the only hotel in the suburb of Riverwood and is managed by the Iris Hotel Group which “has over 15 years’ experience in owning and managing hotels”.
- 10.** The Applicant contends that the closest hotels to the Premises are the Peakhurst Inn and the Narwee Hotel, both of which are approximately 1.5 kilometres away; and the Beverly Hills Hotel and Mirage Hotel, both of which are approximately 2.6 kilometres away.
- 11.** The Applicant contends that there are two registered clubs (Club Rivers and the Riverwood Sports and Recreation Club) located in the suburb of Riverwood. The Applicant contends that all of these licenced premises, with the exception of the Riverwood Sports and Recreation Club, trade beyond 12am.
- 12.** On the issue of security provided on the Premises the Applicant contends that the hotel has a CCTV system that covers both the interior and exterior of the Premises. The hotel employs a security guard from 5pm from Wednesday to Saturday (the Applicant does not specify what time the security guard is engaged until on these days). The Applicant contends that the security guard patrols the hotel and car park areas and also collects any litter discarded by patrons.
- 13.** The Applicant contends that there is no record of the hotel having breached or received complaints in “recent years”.
- 14.** The Applicant contends that if the Applications are granted the hotel “is expected” to employ an additional 5 staff members.
- 15.** The Applicant submits on the basis of the 2011 Census from the Australian Bureau of Statistics that the suburb of Riverwood had a population of 10,225 as at 2011. The Applicant contends that there is presently a development underway in Riverwood of 600 dwellings - twenty-five percent of which will be social housing. The Applicant contends that this development will increase the population of the suburb (the Authority notes that the Applicant does not indicate the quantum of that increase).
- 16.** In response to submission from the public relating to noise and litter from patrons leaving the Premises, the Applicant contends that it is willing to accept, should the Applications be granted, the imposition of a licence condition requiring that the gate in the north west of the hotel car park be closed at 10pm.

17. The Applicant contends that everything that is “reasonably possible” will be done to prevent glasses and other containers being removed from the Premises and that signs will be placed at the door way requesting that patrons leave as quietly as possible.
18. The Applicant undertakes that in the event of large numbers of patrons being present after midnight the hotel will have a staff member stationed at each exit to request that patrons leave quietly.
19. The Applicant further contends that surveys of late trading hotels (the Authority notes that the Applicant does not specify nor provide those surveys) indicate that the number of patrons in a hotel decrease by about 50% each hour that a hotel remains open after midnight.
20. The Applicant contends that this would mean that the number of patrons leaving the Premises after midnight would be “small”. Furthermore, the Applicant contends that the majority of patrons attending the Premises after midnight will be “late night gamblers” who “avoid alcohol and generally leave premises quietly”.
21. In relation to the concerns expressed in submissions by residents that the hotel would attract patrons from outside of Riverwood who may cause disturbance, the Applicant contends that there are already a number of licensed premises in Riverwood and nearby suburbs that trade beyond midnight and the likely effect of granting the Applications now before the Authority would be to reduce the need of some residents of Riverwood to travel to those other locations.
22. By reference to ABS data from the 2011 Census for the suburb of Riverwood, the Applicant submits that:
 - only 0.9% of the population of the suburb are persons of Aboriginal and Torres Strait Islander (**ATSI**) descent by comparison to 2.5% in NSW as a whole,
 - 36% of households spoke English only at home compared to 72% in NSW as a whole
 - unemployment was 8.6% compared to 5.9% for NSW as a whole
 - nearly half of the dwellings in were rented
 - median weekly incomes were low and
 - the number of one parent families was high.
23. The Applicant also submits that the suburb of Riverwood was in the lowest decile on the Index of Relative Socio-economic Advantage and Disadvantage and the Index of Disadvantage and Economic Resources but fell within the fourth decile on the Index of Education and Occupation.
24. With regard to Bureau of Crime Statistics and Research (**BOCSAR**), the Applicant contends that BOCSAR crime maps (the Applicant does not state for which year)

indicate that the Premises lies outside of the hotspots for the concentration of incidents of domestic and non-domestic assault but is located within a hotspot for the concentration of incidents of malicious damage to property.

25. With regard to BOCSAR data on non-domestic violence for the suburb of Riverwood and NSW as a whole for January 2010 to December 2014 (the Authority notes that the report from which these statistics are taken is not specified by the Applicant), the Applicant submits that offence rates are “slightly above” those for New South Wales as a whole but have been “virtually the same” as New South Wales for the last two years. The applicant also contends that the rates of alcohol related non-domestic violence for the suburb of Riverwood were “well below” the rate of NSW as a whole
26. In relation to the BOCSAR data on domestic assault for the suburb of Riverwood and NSW as a whole for January 2010 to December 2014, the Applicant submits that in the last two years this rate has decreased from about 60% more than the State wide rate to 30% above the state wide rate.
27. The Applicant further submits that the rates of *alcohol related domestic violence* for the suburb of Riverwood were above the rates for New South Wales as a whole for the past four years. In relation to the BOCSAR data on malicious damage to property, the Applicant contends that the rates for the suburb of Riverwood have varied above and below the rates for New South Wales as a whole over the last five years.
28. The Applicant contends that the incidence of *alcohol-related crime* is low within the suburb of Riverwood with less than one incident per week, on average, over the “last few years”.
29. The Applicant contends that the contribution that granting the Applications would make to crime in the suburb of Riverwood would be “very small” since there are already a number of sources of alcohol available to the community and taking into consideration that the supply of liquor on the Premises has been “well-managed”.
30. With regard to the social impact that granting the Applications will have upon gambling activities on the Premises the Applicant contends that the hotel will do “all that is reasonably possible” to discourage irresponsible gambling by ensuring that the gaming room complies with all of the requirements specified in the legislation and by ensuring that staff are trained and hold appropriate Responsible Conduct of Gambling certification.
31. The Applicant contends that the present “good management” of gambling activities on the hotel premises will continue throughout the period of extended trading should the Applications be granted.
32. The Applicant contends that granting the Applications would provide the following benefits to the community:

- Increased employment
 - Provision of a well-conducted late-trading hotel catering to the needs of residents
 - Justification for the expenditure that is proposed by the business to improve the ambience of the hotel
 - Improved profitability for the business
 - Increased competition.
- 33.** (The Authority notes that the Applicant has not provided detailed submissions explaining the request for the variation of the 6-hour closure period. The Authority is satisfied on the Application and submissions before it that while licenced from 5 am the hotel has actually traded from 9 am for some time and assumes that this request with regard to the closure period has been made in order to accommodate a consistent 9am opening time).
- 34. Plan of the Premises.** This diagram indicates the boundary of the licensed area and minors authorisation area within the Premises.
- 35. Venue Management Plan for Napoleon’s Hotel, dated 11 November 2015.** This is a 19-page internal business planning document in which the hotel business states its commitment to ensuring that the Premises is “run at all times in a way that is consistent with good management, does not disturb the quiet and good order of the neighbourhood, considers the community and meets the requirements and intents of the Liquor Act and the Gaming Machines Act”. The Applicant sets out various aspects of the liquor business including the following subject matters:
- A requirement for staff and management to adhere to the Management Plan.
 - Protecting the amenity of the neighbourhood by taking “all reasonable measures” to ensure that this is not disturbed.
 - Hours of trade.
 - Requirements for the sale of packaged liquor.
 - Signage for the Premises.
 - Maintenance of noise levels.
 - Responsible service of alcohol and responsible conduct of gaming.
 - Prohibition of illegal drugs.
 - Drink spiking.
 - Complaints regarding the Premises.
 - CCTV conditions.
 - Security.
 - Maintenance, deliveries, and waste management.
 - Fire safety.
 - Staff safety.

36. This document includes three appendices; Office of Liquor Gaming and Racing (now Liquor and Gaming NSW) “Liquor Promotion Guidelines”, Liquor and Gaming NSW “Intoxication Guidelines”, and NSW Police “Crime Scene Preservation Guidelines”.
37. **House Policy for *Napoleon’s Hotel* (not dated)**. This document outlines the policies for the conduct of the hotel business with regard to dress standards, conditions of entry, intoxication, behaviour in the hotel, smoking, and minors. The document states that intoxicated persons or those exhibiting bad behaviour will be denied entry to or asked to leave the Premises, while those under the age of 18 will be denied entry if they are not accompanied by an adult.
38. **Development Application number DA-252/2008 (2008 DA) issued by Canterbury City Council (Council) dated 19 November 2008**: This document records that Council granted development consent with respect to the proposed use of the Premises for “Internal and external alterations to the existing hotel, including new signage”.
39. **Development Application s96 modification number DA-252/2008/A issued by Canterbury City Council dated 14 October 2009**: This document records approval by Council for amendment to the DA, including amending “the layout of an approved hotel, including reconfiguration of an outdoor are, changes to the rear façade and alteration of the car parking area”.
40. **Development Application s96 modification number DA-252/2008/B issued by Canterbury City Council dated 22 February 2012**: This document records approval by Council for amendment to the DA including “replacement of car parking lighting as part of the approved alterations to the hotel”.
41. **Advice from Mills Oakley Lawyers regarding DA 58/2947, dated 29 March 2016**. This document provides legal advice to the Applicant relating to the restrictions on trading hours for use of the Premises in the development consent that was issued by Canterbury Council in 1958 (DA 58/2947). The summary of this advice is as follows:
- Nothing in the 1958 development consent documents restrict the trading hours of the hotel to 12am (for planning purposes).
 - No further development consents apply to the Premises that would restrict the hours of use to 12am.
 - The reference in a 1999 Council Assessment Report cannot impose restrictions upon hours of use applicable to the Premises.
 - The development consent cannot legally require the consideration of extraneous material that was not specifically referenced by the development consent, such as the 1999 Assessment Report.
 - There is no legal restriction arising from the planning consent for the Premises that would prevent ILGA approving the extended licensed trading hours sought by the Applicant.

42. Advice from Gadens Lawyers regarding DA 58/2947, dated 21 January 2016.

This submission comprises legal advice to the Applicant regarding the restrictions on trading hours in the development consent issued by Canterbury Council in 1958 (DA 58/2947). The summary of this advice is as follows:

- The development consent does not restrict the hour of operation of the Premises at all.
- Condition 5 of the consent makes an express reference to part of the Acoustic Report only and requires compliance with its recommendations relating to noise levels and constructions methods.
- Condition 5 of the consent cannot be constructed as requiring the Acoustics Report to be incorporated into the consent in its totality. The reference to those parts of the report to be complied with is clear. Any claim that those part of the report govern the hours of operations is tenuous.
- Those conditions which govern noise emissions from the Premises set no specific limits on the hours during which the Premises can operate.

43. Development Application number 58/2947 (1958 DA) issued by Canterbury City Council (Council) dated 15 October 1958. This document records that Council has granted development consent for “a brick Hotel with corrugated fibro and aluminium roof”. The Authority notes that the 1958 DA does not include any express restrictions upon the hours of trade for the Premises.

44. Submission from Campsie Local Area Command (LAC) of NSW Police to the Applicant dated 19 June 2015. This submission does not record any objection to the Applications before the Authority but Police make a number of recommendations in order to minimise the impact of “drunk and disorderly behaviour” from the operation of the Premises:

- The extended trading hours sought by the Applicant are to be reviewed after 12 months.
- No patrons are to be allowed to consume or congregate outside the front of the Premises.
- During the extended trading hours, a uniformed security guard is to patrol the perimeter of the Premises.
- Pedestrian access from the car park to Keats Avenue is to be closed at 10pm.

45. Submission from the then Office of Liquor Gaming and Racing - now Liquor and Gaming NSW (LGNSW) dated 7 August 2015. This report records that LGNSW does not object to the grant of the Applications provided that the conditions recommended by NSW Police are attached to the liquor licence. LGNSW submit that granting the Applications is “unlikely to result in a significant increase in alcohol-related harm”.

46. LGNSW submits that the radial density of licensed premises in the suburb of Riverwood is “well below” the average for New South Wales as a whole.
47. In relation to BOSCAR crime data for the relevant communities, LGNSW submits that the Premises is located within a low density crime hotspot for the concentration of *alcohol related assault* and that the rate of alcohol related assault (domestic and non-domestic) in the suburb of Riverwood from April 2014 to March 2015 was **297** (per 100,000 persons) compared to **301** (per 100,000 persons) for New South Wales as a whole.
48. LGNSW advise that Compliance Branch records do not disclose any adverse information regarding the hotel business that has been conducted on the Premises.
49. **Email from the Applicant dated 27 April 2016.** This email addresses the conditions proposed by LGNSW and NSW Police. The Applicant accepts these conditions, save for the Police proposal that extended trading hours be reviewed after 12 months. The Applicant submits that there is no provision in the Act for such a trial period and that this would require a “repeat” of the application process, which would be needlessly “time consuming”. The Applicant further submits that if the Premises is not being managed appropriately then “there are measures that can be taken to rectify that”.
50. **Submission from Canterbury City Council, dated 24 March 2016.** This submission states that Council records indicate that a DA for the Premises was issued in 1958 but that Council records do not contain a copy of this consent, and the approved trading hours could not be confirmed. Council notes that a 1999 report, assessing proposed alterations to the Premises, indicated the approved trading hours were from 5am to Midnight on Monday to Saturday and 10am to 10pm on Sunday.
51. **Submission from NSW Family and Community Services (FACS) dated 18 March 2015:** This brief letter states that FACS “will not be providing input into the submission”.
52. **Submission from NSW Roads and Maritime Services (RMS) dated 13 March 2015:** This letter presents statistics for the Canterbury LGA indicating that during 2013 there were “4 alcohol-related crashes, resulting in 5 casualties” and in the adjacent Hurstville LGA there were “9 alcohol-related crashes, resulting in 5 casualties”.
53. RMS recommend that during the approval process, measures directed at preventing the “likelihood of alcohol involvement in road crashes in the Riverwood area should be addressed”.
54. RMS recommend if the Application is approved that the licensee maintain awareness of local alcohol-related issues; attend the LGA’s Liquor Accord and that public

education material focusing on drink drive and pedestrian-alcohol issues be supported and displayed within the Premises.

55. RMS requests that the licensee implement the following initiatives:
- Provide access to local public transport information and taxi services.
 - Display public education material focused on drink drive and pedestrian alcohol issues.
 - Install and Australian Standards Approved breath testing device.
 - Physical barriers such as pedestrian fencing should be installed to separate patrons and the roadway should be considered.
 - Improved lighting and the elimination of any potential trip points to improve pedestrian safety should be considered.
56. **Submission from a resident of Josephine Street, Riverwood, dated 7 April 2015.** In this brief one-page submission the writer objects to the Applications, contending that their property is already impacted by the litter and noise of patrons arriving and leaving the Hotel and that granting the Applications may exacerbate this issue. The resident further contends that late trading may attract customers from elsewhere in Sydney who will be “rowdier”.
57. **Submission from the executive committee of a property in Keats Avenue, Riverwood, dated 17 March 2015.** In this brief one-page submission the writer objects to the Applications, contending that granting the Application would generate noise and “loutish” behaviour which would be detrimental to the amenity of the local community and may attract people from outside Riverwood who “could already be in a drunken state, aggressive and unconcerned about local residents”.
58. The executive committee refers to research indicating that extended trading hours will increase violence and traffic accidents (QLD Coalition for Action on Alcohol) and that a study conducted by BOCSAR indicated that the percentage of alcohol related assaults “substantially increased” between the hours of midnight and 3am. (The Authority notes that unfortunately the writer has not provided the names of these research papers or the dates that they were published).
59. **Submission from a resident of Josephine Street, Riverwood, dated 27 March 2015.** In this very brief one paragraph submission the writer objects to the Applications, contending that his property is already impacted by noise and litter from patrons of the Premises and that the extended trading hours would be a “bad idea”.
60. **Submission from a resident of Josephine Street, Riverwood, dated 31 May 2015.** In this very brief half-page submission the writer subjects to the Applications, contending that granting the Applications would exacerbate existing issues of vandalism and noise, as well as having health impacts of alcohol consumption to the patrons of the Premises.

- 61. Submission from a resident of Josephine Street, Riverwood, dated 23 March 2015.** In this two-page submission the writer objects to the Applications. The resident contends that granting the Applications would increase disturbance to nearby residents from traffic, patron and entertainment noise and antisocial behaviour. In particular, the writer notes that there are currently metal plates that cover a drain running across the hotel driveway which create a “loud bang” each time a car uses the rear car park of the hotel.
- 62. Submission from a resident of Josephine Street, Riverwood, dated 28 May 2015.** In this brief half-page submission the writer objects to the Applications, contending that their property is already impacted by the litter and noise of patrons arriving and leaving the Hotel and that granting the Applications may exacerbate this issue.
- 63. Submission a resident of Josephine Street, Riverwood, 2 June 2016.** The writer of this very brief one paragraph submission objects to the Applications, submitting that granting the Application would bring no benefit to the local community and may exacerbate issues with people who “get drunk and wander the street”.
- 64. Submission from a resident of Josephine Street, Riverwood, dated 28 May 2015.** The writer of this brief half-page submission objects to the Applications, submitting that granting the Applications would not be in the “best interest” of nearby residents due to the risk of exacerbating existing issues with litter and noise.
- 65. Licensed Premises Records:** this information, available for purchase from LGNSW records the addresses of other liquor licenced premises located within the suburb of Riverwood. It indicates that there are:
- 1 registered club licenced premises
 - 1 hotel licenced premises
 - 0 packaged liquor licenced premises.
- 66. Liquor licence density data:** This data, obtained by licensing staff from publically available data indicates that the Canterbury LGA as a whole recorded:
- a rate of **9.46** *packaged liquor licences* per 100,000 persons, well below the NSW state wide rate of **32.85**.
 - a rate of **3.64** *registered club licences* per 100,000 persons, well below the NSW state wide rate of **20.48**.
 - a rate of **7.28** *full hotel licences* per 100,000 persons, well below the NSW state wide rate of **30.36**.

- a rate of **8.01** *on-premises licences* per 100,000 persons, well below the NSW state wide rate of **121.31**.

67. Report on *Crime by LGA and Alcohol Related Status* obtained from published BOCSAR sources for calendar year 2013. This data indicates that:

- the rate of *domestic violence related assault* incidents recorded by reporting Police as *alcohol related* across the Canterbury LGA was **65** per 100,000 persons, well below the New South Wales rate of **145** per 100,000 persons.
- the rate of *non-domestic violence related assault* incidents flagged by reporting Police as *alcohol related* in the Canterbury LGA for 2013 was **53**, well below the State wide rate of **191**.
- the rate of *offensive conduct* offences flagged by reporting Police as *alcohol related* across the Canterbury LGA was **3** per 100,000 persons, well below the State wide rate of **83**.
- the rate of *assault police* incidents flagged by reporting Police as alcohol related across the Canterbury LGA was **4**, well below the rate of **24** per 100,000 for New South Wales as a whole.
- the rate of *malicious damage to property* offences flagged by reporting Police as *alcohol related* across the Canterbury LGA was **28** per 100,000 persons, well below the State wide rate of **122**.

68. Publicly available BOCSAR crime mapping data for January 2015 to December 2015. These crimes maps indicate that the Premises is located:

- within a low density hotspot and near a medium density hotspot for the concentration of incidents of *non-domestic assault*;
- within a medium density hotspot and near a high density hotspot for the concentration of incidents of *domestic assault*;
- within a medium density hotspot and near a high density hotspot for the concentration of *malicious damage to property*.

69. Australian Bureau of Statistics (ABS) Socio-economic Indexes for Areas (SEIFA) data: prepared on the basis of the 2011 census, indicates that:

- The Canterbury LGA ranked in the 4th decile, compared to other local government areas in the state on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).

- The state suburb of Riverwood ranked in the 1st decile, compared to other state suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage.

LEGISLATION

70. An application for extended trading authorisation is made under section 49(2) of the Act. Section 49 provides (relevantly for the purposes of the ETA Application)

49 Extended trading authorisation-general provisions

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

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

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

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

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

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

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

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

- (a) situated in the area constituting the City of Sydney (as at 1 July 1994), or
- (b) situated in the Kings Cross precinct, or
- (b1) situated in the area including and bounded by the parts of streets specified in Schedule 3 (Oxford Street-Darlinghurst precinct) or that fronts or backs onto, or abuts, any such specified part, or
- (c) situated in the Kosciuszko National Park,
authorise the licensee, on application by the licensee, to sell or supply liquor, for consumption on the licensed premises only, during a specified period between midnight on a Sunday and 5 am on a Monday.

- (4) *Extended trading authorisation for take-away sales on Sundays* In the case of a relevant licence (including a packaged liquor licence) that authorises the sale or supply of liquor for consumption away from the licensed premises, the Authority may, on application by the licensee, authorise the licensee to sell or supply liquor, for consumption away from the licensed premises only, during either or both of the following:
- (a) a specified period between 5 am and 10 am on a Sunday,
- (5) *Nature of extended trading authorisation* An extended trading authorisation operates to authorise the sale or supply of liquor on the licensed premises:
- (a) on a regular basis (until such time as the authorisation is varied or revoked by the Authority), or
 - (b) if the authorisation so provides-on a special occasion that takes place on a specified date, or
 - (c) if the authorisation so provides-on up to 12 separate occasions in any period of 12 months.
- (5A) *Despite subsection (2) (a), the Authority may, in the case of a hotel licence, authorise the licensee, on application by the licensee, to sell or supply liquor for consumption on the licensed premises during a specified period between midnight on a Sunday and 5 am on a Monday, but only on or in connection with a special occasion that takes place on a specified date.*
- (6) *Extended trading period to be specified* In granting an extended trading authorisation, the Authority is to specify:
- (a) the extended trading hours during which the licensee is authorised to sell or supply liquor, and
 - (b) the part or parts of the licensed premises to which the authorisation applies.
- (7) *Extended trading not permitted on or in relation to restricted trading days-hotels and licensed public entertainment venues* Despite any other provision of this section, an extended trading authorisation cannot, in the case of a hotel licence or an on-premises licence that relates to a public entertainment venue (other than a cinema or a theatre), be granted to authorise the sale or supply of liquor for consumption on the licensed premises during any of the following periods:
- (a) between 5 am and noon on a restricted trading day,
 - (b) between 10 pm and midnight on a restricted trading day,
 - (c) between midnight and 5 am on any day immediately following a restricted trading day.
- (8) *Restrictions on granting extended trading authorisation* The Authority must not grant an extended trading authorisation in respect of licensed premises unless the Authority is satisfied that:
- (a) practices are in place, and will remain in place, at the licensed premises that ensure as far as reasonably practicable that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and
 - (b) the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.
- (9) *For the purposes of this section, a "special occasion" means the occasion of a unique or infrequent event of local, State or national significance that persons independent of the licensee (and of the owner or occupier of the premises) desire to celebrate or mark on the licensed premises concerned.*

71. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

72. Section 48(5) of the Act states:

48 Community impact

(5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:

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

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

73. An application for the grant of an extended trading authorisation is a type of relevant application that is prescribed by section 48(2)(b).

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

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.*

REASONS

75. The Authority is satisfied, on the basis of the Application material before the Authority and the absence of any submissions to the contrary that, for the purposes of section 49 of the Act, the Application has been validly made and minimum procedural requirements for the purposes of section 51(2), with regard to the Application, CIS and community consultation have been satisfied. This finding is made on the basis of the Application and CIS material provided by the Applicant.
76. The Authority is satisfied, for the purposes of section 49(8) of the Act that responsible service practices are in place and that the extended trading period will not result in undue disturbance of the quiet and good order of the neighbourhood. This finding is made on the basis of the *House Policy* and the *Management Plan* provided by the Applicant as well as the conditions accepted by the Applicant to be imposed upon the licence.
77. The Authority notes section 51(3) of the Act which provides that in determining an application for an authorisation, the Authority has the same powers in relation to the application as the Authority has in relation to an application for a licence. To this end the Authority is satisfied, for the purposes of section 45(3)(c) of the Act that the required development consent for the use of the Premises in the manner proposed by the ETA Application is in place, on the basis of DA 58/2947 issued by Council dated 15 October 1958.

Overall Social Impact Test

78. With regard to the overall social impact test prescribed by section 48(5) of the Act, the Authority is satisfied that the relevant local community comprises the state suburb of Riverwood, while the broader community comprises the Canterbury LGA.
79. As noted in *Authority Guideline 6: Consideration of Social Impact*, the Authority will identify the relevant “local” community by reference to the state suburb in which the licensed premises is situated, while the “broader” community will be the local government area in which the licensed premises is located.
80. For the purposes of this Application, the Authority is satisfied that the relevant “local community” comprises the community located within the State suburb of Riverwood while the “broader community” comprises Riverwood LGA.
81. Applying the social impact test requires a degree of speculation, albeit speculation informed by the particular proposal and the prevailing circumstances in the relevant local or broader community.

Positive benefits

82. The Authority is satisfied, on the basis of the Application, CIS and submissions from the Applicant that granting the licence will provide some modest additional benefits to members of the local and broader community who wish to visit a late trading hotel and obtain liquor and gaming services during late trading hours.
83. The nature and extent of this benefit has not been well specified or substantiated by the Applicant, in that the Applicant has not provided any firm evidence of the extent of demand nor an indication of what services or facilities (if any) will be offered by the Riverwood Hotel that would not otherwise be available to members of the local or broader community from other late trading hotels or clubs in the local or broader community. Nevertheless, the Authority accepts that some measure of increased convenience and choice will be provided to the relevant communities by reason of the relatively low density of licensed premises in those communities and the limited number of licensed premises with late trading hours, particularly in the local community, as evident from the available licensing data for the communities.
84. The Authority is satisfied that granting the ETA Application will facilitate, at the level of the local community, the *balanced* development of the local liquor industry which is an object of section 3(1)(b) of the Act.
85. The Authority accepts that granting the ETA Application would also likely provide some benefit to consumers of those services by improving the ambiance of the hotel and improve the profitability of the business. This may benefit the local and broader community by increasing viable competition in these communities. Greater weight would have been given to this positive benefit had the Applicant specified and substantiated the nature and timing of those renovations.
86. The Applicant has also contended that granting the ETA Application will result in an increase in the number of staff employed by the Premises. The Applicant has contended that it will likely employ 5 additional staff, but no clear commitment has been made in respect to the number or communities from which such additional staff will be sourced.
87. While the Authority finds the contention that greater employment and or greater staff hours may be provided on the Premises as it trades during later hours, less weight has been given to this aspect of the Applicant's submissions than may otherwise be the case by reason of the lack of specificity and the equivocal nature of the commitment.

Negative impacts

88. The Authority is satisfied that over time there will more likely than not be some contribution from the liquor sold for consumption on the Premises during extended hours to alcohol related crime, disturbance or impact on local amenity from a minority

of customers who abuse liquor purchased from the Premises. This is by reason that if the ETA Application is granted, patrons will be on the Premises for a longer period of time and migrating to or leaving the Premises during later and more sensitive hours than is presently the case.

- 89.** The Authority notes that the ABS SEIFA data provides a potential compounding factor of concern when assessing overall social impact. Canterbury LGA is ranked in the 4th decile and the suburb of Riverwood is ranked in the 1st decile, compared to other LGA's and state suburbs in the State on the Index of relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).
- 90.** However, the Authority does not consider socio demographic data in isolation and takes comfort from the fact that the alcohol related BOCSAR data on crime by Local Government Area and Alcohol Related Status, specified above, is relatively benign for the broader community as a whole.
- 91.** On the whole, the licensing data as to prevailing licence density in the local and broader communities does not indicate that density is relatively high, diminishing the scope for late night migration between licensed venues.
- 92.** The BOCSAR crime data for the broader community does not indicate a relative problem with crime and alcohol related crime. Some localised concentration of crime is evident by way of crime hotspots in the local community, but those hotspots reflect concentrations of crime derived from relatively low rates across the LGA as a whole compared to State wide rates.
- 93.** The Authority notes that neither NSW Police nor LGNSW raised concerns with prevailing alcohol related misconduct as a basis for opposing the extended trading authorisation in light of the location of the Premises or its mode of operation. The concerns raised by Council have focused on the status of development consent for the trading hours proposed, and that issue has been resolved to the Authority's satisfaction.
- 94.** New South Wales Police have requested the addition of a number of conditions to the licence, designed to mitigate disturbance concerns raised by residents. The Authority also notes that although RMS have provided statistics for motor vehicle injuries in Canterbury LGA during 2013 but RMS do not identify that those occurrences are of relative concern by comparison to state wide rates. The Authority notes that RMS did not provide data indicating the relative exposure of the broader community to alcohol related road incidents against New South Wales as a whole.
- 95.** The Authority notes that granting the Application will allow the Premises to trade until 2.00 am Monday to Saturday and until 12:00 midnight on Sunday. The trading hours proposed will be reasonably extensive across the week but will occur in the context of

a broader community that is considerably less exposed to alcohol related crime rates than rates recorded for New South Wales as a whole.

96. The Authority has taken into account the submissions from residents in the same or nearby streets who have expressed concern as to the potential for extended trading to adversely impact local amenity.
97. The Authority accepts that those concerns are genuine and credible and that patrons moving to or from the hotel during early hours of the morning provide a clear potential to adversely impact the local community, through a range of conduct, whether or not groups of patrons are intoxicated or simply making noise while talking to each other, getting into transport or migrating to or from the venue through neighbouring streets.
98. However, on balance, the objecting submissions before the Authority are for the most part quite brief and do not provide sufficient specificity or substantiation as to the nature, scope and frequency of prevailing issues of patron related disturbance so that the Authority may get a clear sense of the scale of the problem and give greater weight to those submissions.
99. The Authority has taken into account the very good compliance record of the hotel evident from the LGNSW report and the lack of any substantial or detailed Police objection raising localised issues of disturbance.
100. The Authority notes with interest the Applicant's commitment to the use of security staff inside and outside the Premises whose functions will not only be to deter disturbance but also to remove litter from the area of the Premises. Should those measures prove inadequate or late night trading contribute to an increase in noise or litter from the operation of the hotel or the behaviour of departing patrons, it will be open to residents to complain to the Secretary that the hotel is causing undue disturbance to the quiet and good order of the neighbourhood under section 79 of the Act. Should alcohol related litter prove problematic, it would also be open to the Secretary to impose a condition under section 54 of the Act mandating litter collection in a designated relevant area in relation to the hotel.
101. In conclusion, the evidence or material before the Authority from local residents is not, in this case, sufficient to warrant refusal of the Application.
102. The Authority also accepts that the Applicant has consented to a number of conditions proposed by NSW Police and LGNSW which will mitigate some of the impact that the extended trading may have on the local and broader community.
103. The Authority has also considered the operational measures detailed in business planning documents, *House Policy* and the *Management Plan*, which have been provided by the Applicant. The Authority is satisfied on the basis of these documents that the Applicant has implemented comprehensive and well developed harm minimisation measures that work effectively at the Premises.

- 104.** The Authority is further satisfied that the presence the CCTV and licensed security guards are factors that will assist in the mitigation of negative social impacts at least in the vicinity of the Premises.
- 105.** The Authority further notes that the Applicant proposes a licensed opening time of 9:00 am rather than the present 5:00 am that is open to it under standard trading hours.
- 106.** While the Applicant has provided no indication as to the extent to which the hotel is actually trading very early in the morning (and it appears that the business actually trades from 9:00 am), the reduction in licensed opening hours is another (albeit modest) factor that potentially reduces the scope for this venue to contribute to early morning disturbance in the future, including from patrons migrating to and from the venue at those hours.
- 107.** On the material before it, the Authority is satisfied that the overall social impact of granting the Application extending the trading hours of the Premises will not be detrimental to the wellbeing of the local or broader community.

Conditions

- 108.** Pursuant to section 51(9)(a) of the Act, the following conditions have been imposed upon the extended trading authorisation. These conditions have been taken into account when assessing the overall social impact of granting the Application.
- 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 3:00AM and 9:00AM 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.
 - The business authorised by this licence must not operate with a greater overall level of social impact on the well-being 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 the extended trading authorisation.
 - The licensee or its representative must join and be an active participant in the local liquor accord.
 - The premises are to be operated at all times in accordance with the Venue Management Plan and Security Management Plan dated November 2015 as may be varied from time to time after consultation with the Local Area Commander.
 - On any night after 11:00pm, patrons must not use the verandah facing Josephine Street except to enter or leave the hotel.
 - On Monday to Saturday from 12:00 midnight until 2:00am and on Sunday from 10:00pm to 12:00 midnight, a uniformed security guard is to patrol around the perimeter of the premises extending up to the footpath on Josephine Street until the last patron leaves.
 - The gate in the north west of the carpark is to be closed from 10:00pm to prevent pedestrian access to Keats Avenue.

CONCLUSION

- 109.** Considering together the found positive benefits and taking into account the factors which are likely to objectively constrain or minimise the extent of negative impacts arising from the extended operating hours of this business, the Authority is satisfied that the overall social impact of granting this Application for a packaged liquor licence will not be detrimental to the well-being of the local or broader community for the purposes of section 48(5) of the Act.
- 110.** The ETA Application is granted under section 49(2) of the Act.
- 111.** The Authority is also satisfied, on the basis of the submissions and material provided by the Applicant, that it is in the public interest for the Closure Period Application to be granted and for the six-hour daily closure period to be fixed at the alternative time of between 3:00 am and 9:00 am pursuant to section 11A of the Act.
- 112.** In making these decisions the Authority has considered all of the statutory objects provided by section 3(1) of the Act and has had regard to all of the considerations prescribed by section 3(2) of the Act.

DB Armati
Deputy Chairperson
10 June 2016