



Mr Morgan Lewis
findingfillmores@gmail.com

8 August 2022

Dear Mr Lewis

Application No.	APP-0009287787
Applicant	Mr Morgan William Lewis
Application for Licence name	On-premises liquor licence with primary service authorisation Fillmore's
Trading hours	Monday to Saturday 10:00 AM – 10:00 PM Sunday 10:00 AM – 8:00 PM
Premises	38-40 Manning Street KIAMA NSW 2533
Legislation	Sections 3, 11A, 12, 21 – 28, 40, 44, 45, 48 and 51 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority
Application for an on-premises liquor licence with primary service authorisation –
Fillmore's**

The Independent Liquor & Gaming Authority considered the application above, and decided on 13 April 2022 to **approve** the application under sections 24(3) and 45 of the *Liquor Act 2007*, subject to imposing conditions as set out in Schedule 1.

Statement of reasons

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

If you have any questions, please contact the case manager, Leonie Jennings, at leonie.jennings@liquorandgaming.nsw.gov.au.

Yours faithfully

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

STATEMENT OF REASONS

DECISION

1. On 13 October 2021, Mr Morgan William Lewis (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application (“Application”) for an on-premises liquor licence with primary service authorisation (“Licence”) for the premises at 38-40 Manning Street, KIAMA NSW 2533 (“Premises”).
2. The Authority considered the Application at its meeting on 13 April 2022 and decided to grant the Licence under sections 24(3) and 45 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the Act and the Liquor Regulation 2018.
4. A preliminary notification of this decision was sent to the Applicant on 27 April 2022, together with the licence document for the Premises.

MATERIAL CONSIDERED BY THE AUTHORITY

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

LEGISLATIVE FRAMEWORK

9. The Authority has considered the Application in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018:
 - a) Section 3: Statutory objects of the Act and relevant considerations.
 - b) Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.
 - c) Sections 21-28: Specific provisions in respect of an on-premises liquor licence.
 - d) Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
 - e) Section 44: Submissions to Authority in relation to licence applications.
 - f) Section 45: Criteria for granting a liquor licence.
 - g) Section 48: Requirements in respect of a CIS, including a requirement that the Authority must not approve the Application unless it is satisfied, having regard to the CIS and other available information, that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community.
 - h) Section 51: General provisions relating to licence-related authorisations.
10. An extract of these sections is set out in Schedule 3.
11. The Authority has also had regard to its Guideline 6 in considering the overall social impact of approving the Application pursuant to section 48 of the Act.

KEY FINDINGS

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

Validity, procedural and trading hour requirements

13. The Authority is satisfied on the material before it that:

- a) the Application has been validly made and meets the procedural requirements under sections 40 and 51 of the Act, and
- b) the proposed trading hours for the Premises meet the requirements under sections 11A, 12 and 25 of the Act in respect of trading and 6-hour closure periods.

14. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements.

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

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

- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- b) practices would be in place from the commencement of licensed trading at the Premises to facilitate the responsible serving of alcohol, having regard to the plan of management documentation for the Premises and the conditions to be imposed on the licence, and
- c) the requisite development consent is in force, based on the Complying Development Certificate ("CDC") 210400/01 in respect of the Premises, issued by Bacchus Partners on 8 October 2021.

Community impact

Local and broader communities

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

Licence density

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

- a) Kiama and Kiama LGA have a **higher** and **lower** saturation, respectively, of on-premises liquor licences with a primary service authorisation
- b) clustering rates for on-premises liquor licences with a primary service authorisation for Kiama and Kiama LGA were not calculated.

Crime data

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

- a) the Premises was located near a hotspot for malicious damage to property.
- b) Kiama recorded **lower** rates for all offence types normally considered by the Authority, compared to the NSW state average.
- c) Kiama LGA recorded **lower** rates for all offence types normally considered by the Authority, compared to the NSW state average.

Alcohol-related health data

19. The most recent HealthStats NSW data available at the time of the Authority's decision indicates that Kiama LGA recorded a **higher** than average level of alcohol-attributable deaths for the period 2018/2019, and a **lower** than average level of alcohol-attributable hospitalisations for the period 2018/2019-2019/2020.

SEIFA

20. The Authority notes that ABS Socio-Economic Index for Areas (“SEIFA”) data as at 2016 indicates that Kiama and Kiama LGA were relatively advantaged and advantaged compared to other suburbs and LGAs in NSW.

Business model

21. The Applicant contends that the Premises features local artists and live music performances. It offers locally sourced food and drink, including a range of alcoholic products from local breweries. . The Applicant contends that, by being granted the license sought, patrons could enjoy an alcoholic beverage while meeting in a comfortable environment that is child friendly, community focused, and features arts, music and culture.

22. The Premises has capacity for 50 patrons and the Authority notes the Premises has already been trading with an on-premises liquor licence with catering class and sale on other premises authorisation (“SOOPA”), with this licence being used 26 times out of the last 52 weekends.

Purported benefits

23. The Authority has had regard to the Applicant’s purported benefits, including that the Premises will support independent arts and music culture, which is relevant to the promotion of creative arts in the Kiama area. .

Stakeholder submissions

24. The Authority has had regard to the submissions from:

- a) **NSW Police Force (two submissions)**, neither of which raise any objections to the Application and noted investigations into the potential of the Premises to cause noise disturbance to nearby residential premises, resulting in Police finding the Premises does not impact residential units and the provision of additional toilet amenities at the Premises.
- b) **L&GNSW Compliance**, which notes no adverse findings were identified for the Applicant but noted that a complaint regarding the Premises supplying liquor without a licence, requests an updated plan of management including RSA management measures and recommends the imposition of a CCTV and plan of management condition.
- c) **Kiama Municipal Council**, which notes no objection to the Application, that Council supports the Application by way of resolution at its meeting on 15 February 2022 and that Council will work with the Applicant to ensure compliance with the requirements of any approval of the Authority.
- d) **Members of the public (12 objections)**, consisting of seven residents from the residential unit complex across the laneway from the Premises and submissions made by JDK Legal on behalf of an undisclosed number of residents. The objections noted:
 - i. noise and disruption caused from live music, patrons urinating in the laneway due to insufficient toilet facilities;
 - ii. objections to 200 patrons at the Premises at any one time; and
 - iii. historic non-compliance with use until certified for use as a café, and even now it is being used primarily for the provision of entertainment and not as a café

it is not in the public interest to grant the Licence and that residents were not notified of the Application.

- e) **Members of the public (six submissions in support)**, consisting mostly of residents, local musicians and the local Member, along with a petition with 427 signatures supporting the Premises. The submissions in support noted:
- i. the Premises supports the independent arts and music culture of Kiama;
 - ii. patrons are well behaved and there is a good atmosphere;
 - iii. soundproofing the Premises for three hours of live music a week would excessively and drastically change the nature of the open-air, unique Premises;
 - iv. a local charity owner stated the Premises has facilitated a safe space for members of the community and youth centre to come together and connect; and
 - v. Gareth Ward MP submits the Premises is a unique space, contributes to the development of arts and culture in Kiama and that the Premises has successfully worked with local charities for fundraisers.

25. The Authority has also had regard to the Applicant's submission in response, which notes:

- a) Police have spoken with the Applicant to address any concerns and further explain the Premises' business model;
- b) Council's support of the Application, in particular the contribution the Premises adds to the community of Kiama by way of arts, culture and music;
- c) the Applicant has incorporated practical alcohol management measures in the plan of management and consents to the conditions proposed by L&GNSW compliance;
- d) the Applicant submits the following regarding the objections:
 - i. there is a group of neighbours that are lodging vexatious complaints
 - ii. the Premises has been operating prior to the residential apartments being built
 - iii. the Premises' current on-premises licence (catering class) with SOOPA will not operate at the venue should the Licence be granted and at no time has the Premises operated illegally or in contravention of RSA
 - iv. the Premises has received Council support and notes that tourists and locals require a venue to enjoy the atmosphere created by the Premises' activity
 - v. the neighbours were notified of the Application when the Applicant lodged it
 - vi. the Applicant responded to the acoustic report included in the JDK submission; and
- e) regarding the submissions in support, the Applicant notes there were many other letters of support that were not supplied as they were provided to Council in response to a noise complaint raised by a resident in the nearby apartment complex.

Findings of concern

26. Having regard to the relevant statistics and the submissions received, including the Applicant's reply submissions, the Authority finds that:

- a) there are a number of objections to the Application regarding live music and anti-social behaviour from residents within a neighbouring apartment complex;
- b) the Premises is in a high-density crime hotspot for malicious damage to property;
- c) there is a higher rate of alcohol-related deaths in Kiama LGA compared to the NSW average; and
- d) there is a higher saturation of on-premises licences with primary service authorisations in the suburb and there are high saturation rates of other licence types, compared to NSW rates.

27. The Authority considers that, if the Licence is granted, there is a risk that the liquor sold at the Premises would exacerbate the existing alcohol-related problems in the community and, over

time, contribute to an increase in alcohol-related crime, health and other social and amenity issues in the local and broader communities.

Mitigating factors

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

- a) reduced trading hours;
- b) relatively small size of the area in which liquor will be sold or supplied;
- c) six submissions of support and a signed petition with 427 signatures;
- d) not located in a crime density hotspot for three out of four offence types normally considered;
- e) low crime rates in Kiama and Kiama LGA compared to NSW rates;
- f) low clustering rates;
- g) Kiama and Kiama LGA have an above average level of socioeconomic advantage;
- h) lower rate of alcohol-related hospitalisations in Kiama LGA compared to NSW rates;
- i) If granted, the Licence will reduce the trading hours of the licence previously used by the Applicant;
- j) the maximum patron capacity of the Premises is capped at 50 patrons under consent;
- k) live entertainment will occur approximately twice a week and will cease at 10pm to align with the Premises operating hours;
- l) the plan of management details noise mitigation measures and complaint handling procedures relating to live entertainment;
- m) promotes arts and culture in the Kiama community, with a niche business model; and
- n) the Applicant is an active member of the community who has utilised the Premises in the past to raise money for local charitable organisations and promotes a safe space for youth groups to connect and convene.

CONCLUSION

29. Having considered the positive and negative social impacts that are likely to flow from granting the Licence, the Authority is satisfied that the overall social impact of granting the Licence would not be detrimental to the well-being of the local and broader communities.

30. The Authority is also satisfied that the other legislative criteria for the granting of the Licence have been met.

31. Accordingly, the Authority has decided to grant the Licence under section 24(3) and 45 of the Act.



Philip Crawford

Chairperson

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

Important Information:

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

An application to NCAT must be made within 28 days of notice of this decision being published on the [Liquor & Gaming NSW website](#) and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The [NCAT website](#).

Schedule 1 – Licence conditions to be imposed Fillmore’s

1. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 4:00 AM and 10:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. Consumption on premises
 - Good Friday 12:00 noon – 10:00 PM
 - Christmas Day 12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area.
 - December 31st Normal opening time until normal closing time or 2:00 AM on New Year’s Day, whichever is the later.

Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.
3. 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 this licence.
4. The premises is to be operated at all times in accordance with the Plan of Management dated March 2022 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. Incident register
 1. The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:
 - (a) any incident involving violence or anti-social behaviour occurring on the premises,
 - (b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
 - (c) any incident that results in a person being turned out of the premises under section 77 of the Act,
 - (d) any incident that results in a patron of the premises requiring medical assistance.
 2. The licensee must, if requested to do so by a police officer or inspector:
 - (a) make any such incident register immediately available for inspection by a police officer or inspector, and
 - (b) allow a police officer or inspector to take copies of the register or to remove the register from the premises.
 3. The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.
7. Crime scene preservation

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

 - 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,

- 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,
- 3) make direct and personal contact with NSW Police to advise it of the incident, and
- 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.

In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (e.g. crowd controller or bouncer) on or about the premises.

8. Closed-circuit television system

- 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
 - (b) recordings must be in digital format and at a minimum of ten (10) frames per second,
 - (c) any recorded image must specify the time and date of the recorded image,
 - (d) the system's cameras must cover the following areas:
 - (i) all entry and exit points on the premises,
 - (ii) the footpath immediately adjacent to the premises, and
 - (iii) all publicly accessible areas (other than toilets) within the premises.
- 2) The licensee must also:
 - (a) keep all recordings made by the CCTV system for at least 30 days,
 - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
 - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

9. Patron capacity

The maximum number of patrons permitted on the premises at any one time should not exceed 50 persons.

10. Public holiday trading hours

The licensed premises must cease to trade by 8:00 PM, on public holidays.

Schedule 2 – Material considered by the Authority Fillmore’s

Application material

1. Completed application dated 13 October 2021.
2. Completed Category A Community Impact Statement dated 12 November 2021.
3. Completed certification of advertising dated 13 October 2021.
4. Plan of Management documents for the Premises, titled Liquor Plan of Management and dated March 2022.
5. Floor plan for the Premises, indicating where the proposed licensed premises and primary service authorisation area will apply.

Development consent

6. Notice of determination issued by Bacchus Partners on 8 October 2021, approving a Complying Development Certificate 210400/01 for the Premises.

Liquor & Gaming LiveData Report

7. L&GNSW Liquor & Gaming LiveData Report for the suburb of Kiama, generated on 17 March 2022, which sets out that:

Outlet diversification

- a. There are **30** authorised liquor licenses in Kiama. Of these, 7 are authorised to sell packaged liquor. This includes 2 packaged liquor stores, 2 registered club licences and 3 hotel licences.

Outlet density (annual rate per 100,000 residents)

- b. saturation of on-premises licences with a primary service authorisation in Kiama (**43.6**) is **higher** compared to Kiama LGA (**18.63**), and **higher** compared to NSW (**22.06**)
- c. clustering of on-premises licences with a primary service authorisation was not calculated for Kiama or Kiama LGA

Offence data (annual rate per 100,000 residents)

In the year to September 2021:

- d. alcohol-related domestic assault in Kiama (**53.1**) was higher compared to the Kiama LGA (**51.3**), and lower compared to all NSW (**227.8**)
- e. alcohol-related non-domestic assault in Kiama (**106.1**) was higher compared to the Kiama LGA (**51.3**), and lower compared to all NSW (**176.5**)
- f. alcohol-related non-domestic serious assault in Kiama (**13.3**) was higher compared to the Kiama LGA (**12.8**), and lower compared to all NSW (**65.9**)
- g. alcohol-related offensive conduct in Kiama (**0**) was the same as the Kiama LGA (**0**), and lower compared to all NSW (**45.7**)
- h. malicious damage to property in Kiama (**702.9**) was higher compared to the Kiama LGA (**423.8**), and lower compared to all NSW (**1247.8**)

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

- i. In the period 2018/2019 the alcohol-attributable death rate in Kiama LGA (**22.3**) was higher compared to the average across all of NSW (**19.7**)
- j. In the period 2018/2019-2019/2020 the alcohol-attributable hospitalisation rate in Kiama LGA (**437.1**) was lower compared to the NSW average (**513.2**)

SEIFA

- k. According to the SEIFA Index of Relative Economic Advantage & Disadvantage, households in Kiama and Kiama LGA are socio-economically advantaged and

advantaged respectively (**Top 32%** and **Top 18%** of NSW households, in terms of household income and residents in skilled occupations).

Stakeholder submissions

8. Submission from a member of the public dated 10 October 2021.
9. Submission from a member of the public dated 17 October 2021.
10. Submission from a member of the public dated 21 October 2021.
11. Six submissions from a member of the public (including a letter from JDK Legal enclosing an acoustic report) dated 21 October 2021, 28 October 2021, 3 February 2022, 22 February 2022 and 22 March 2022.
12. Submission from a member of the public dated 24 October 2021.
13. Submission from a member of the public dated 29 October 2021.
14. Submission from JDK Legal on behalf of a member of the public dated 22 November 2021.
15. Submission from L&GNSW Compliance dated 7 December 2021.
16. Submission from the Member for Kiama dated 14 January 2022.
17. Submission from NSW Police dated 15 March 2022.
18. Submission from Kiama Municipal Council dated 17 March 2022.
19. Six submissions from members of the public including a petition signed by 427 signatures, which are all undated.

Other relevant information

20. National Police Certificate for the Applicant dated 13 October 2021 and identification documents for the Applicant.
21. Correspondence between L&GNSW staff and the Applicant between 26 October 2021 and 28 March 2022 in relation to the assessment of the Application.
22. Correspondence between L&GNSW staff and Bacchus Partners regarding what was granted when the CDC was issued, between 24 February 2022 and 11 March 2022.
23. Correspondence between L&GNSW regarding escalation of the Application, between 11 February 2022 and 14 February 2022.
24. Liquor licence extract for The Split Screen Coffee Company extracted on 21 March 2022.
25. A document detailing three tables relating to "Producer Wholesaler with drink on premises saturation".
26. SIX Maps and Google Map images extracted from the Google website, showing the location and photos of the Premises in map view and earth view.

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

Fillmore's

3 Objects of Act

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

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

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

12 Standard trading period for certain licensed premises

- (1) For the purposes of this Act, the **standard trading period** means—
 - (a) for any day of the week other than a Sunday—
 - (i) the period from 5 am to midnight, or
 - (ii) if the regulations prescribe a shorter period—the period as so prescribed, and

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

Note—

Small bars are subject to the 6-hour closure period under section 11A.

- (1B) Despite subsection (1)(b), the **standard trading period** for premises to which this subsection applies ends at midnight on a Sunday that falls on 24 or 31 December.
- (1C) Subsection (1B) applies to the following premises or part of premises—
 - (a) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is the sale or supply of liquor for consumption away from the licensed premises—the licensed premises,
 - (b) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is not the sale or supply of liquor for consumption away from the licensed premises—the part of the premises that is a liquor sales area (within the meaning of section 30) of the licensed premises,
 - (c) if a hotel licence, club licence, on-premises licence or producer/wholesaler licence authorises the licensee to sell liquor for consumption away from the licensed premises—any part of the licensed premises to the extent that it is used for that purpose.
- (2) Any regulation that prescribes a shorter period for the purposes of subsection (1) may—
 - (a) apply to a specified class of licensed premises, and
 - (b) apply in relation to a specified day or days, and
 - (c) in the case of licensed premises on which liquor may be sold or supplied for consumption on the premises as well as for consumption away from the premises—specify different periods for the sale or supply of liquor for consumption on the premises and for the sale or supply of liquor for consumption away from the premises.
- (3) Without limiting subsection (2)(a), a class of licensed premises may be specified by reference to licensed premises that are located in a particular area (however described).

21 Certain kinds of premises not to be licensed

- (1) An on-premises licence must not be granted in respect of any premises if the premises—
 - (a) are used primarily for the purposes of carrying out a business or activity, or
 - (b) are of a kind of premises,
 prescribed by the regulations for the purposes of this section.
- (2) The authorisation conferred by an on-premises licence does not apply if the licensed premises—
 - (a) are used primarily for the purposes of carrying out any such business or activity prescribed by the regulations,
 - or
 - (b) are premises of any such kind prescribed by the regulations.

22 Primary purpose test

- (1) An on-premises licence must not be granted in respect of any premises if the primary purpose of the business or activity carried out on the premises is the sale or supply of liquor.
- (2) The authorisation conferred by an on-premises licence does not apply if the primary purpose of the business or activity carried out on the licensed premises at any time is the sale or supply of liquor.
- (2A) To remove any doubt, subsection (2) applies in relation to—
 - (a) an on-premises licence that specifies the kind of business or activity carried out on the licensed premises, and
 - (b) an on-premises licence that specifies the kind of licensed premises to which the licence relates.
- (3) Subsections (1) and (2) do not apply if the premises to which the licence or proposed licence relates—
 - (a) are part of an airport, or
 - (b) are located on land occupied by a tertiary institution and cater for students of that institution.
- (4) Subsections (1) and (2) are also subject to such exceptions as may be prescribed by the regulations.

23 On-premises licence must specify business/activity or kind of licensed premises

- (1) An on-premises licence must specify the kind of business or activity carried out on the licensed premises or the kind of licensed premises to which the licence relates.
- (2) Without limiting the kinds of businesses or activities (or the kinds of premises) in respect of which on-premises licences may be granted, an on-premises licence may be granted in respect of a public entertainment venue.
- (3) More than one kind of business or activity or kind of premises may be specified in an on-premises licence. However, a separate on-premises licence is, except in the circumstances referred to in section 25(6), required for each set of premises.
- (4) The licensed premises to which an on-premises licence relates may be described by reference to the kind of business or activity carried out on the premises or the kind of premises concerned.

Note—

For example, the terms “licensed restaurant” and “licensed public entertainment venue” are used in this Act to refer to premises in respect of which an on-premises licence relating to a restaurant or public entertainment venue, respectively, is granted.

- (5) The business or activity, or the kind of premises, specified in an on-premises licence may, on application by the licensee, be varied by the Authority. Any such variation may include the addition of a specified business or activity, or a specified kind of premises, in respect of the licence.
- (6) The authorisation conferred by an on-premises licence does not apply if—
 - (a) the business or activity carried out on the licensed premises is not the business or activity specified for the time being in the licence, or
 - (b) the licensed premises at any time do not comprise premises of the kind specified for the time being in the licence.
- (7) The regulations may provide for requirements in relation to the business or activity carried out on licensed premises that are a licensed restaurant.

24 On-premises licence – sale or supply of liquor must be with or ancillary to other product or service

- (1) An on-premises licence authorises the sale or supply of liquor only if the liquor is sold or supplied for consumption on the licensed premises with, or ancillary to, another product or service that is sold, supplied or provided to people on the licensed premises.
- (2) **Regulations may limit products or services provided on licensed premises** A product or service is not to be considered a product or service for the purposes of subsection (1) if it is, or is of a class, specified by the regulations for the purposes of this subsection.
- (3) **Authorisation to sell or supply liquor without other product or service** Despite subsection (1), the Authority may, on application by the holder of an on-premises licence, endorse the licence with an authorisation that allows liquor to be sold or supplied for consumption on the licensed premises otherwise than with, or ancillary to, the other product or service referred to in that subsection.

Note— Section 51 applies to any such authorisation.

- (3A) However, the other product or service must be available on the licensed premises at all times while the authorisation operates to allow liquor to be sold or supplied otherwise than with, or ancillary to, the product or service.
- (4) Subsection (1) does not apply if the premises to which the licence relates—
 - (a) are part of an airport, or
 - (b) are located on land occupied by a tertiary institution and cater for students of that institution, or
 - (c) are exempt from the primary purpose test referred to in section 22.

25 Authorisation conferred by on-premises licence (generally)

- (1) An on-premises licence authorises the licensee to sell liquor by retail on the licensed premises for consumption on the premises only.
- (2) **Trading hours for consumption on premises** The times when liquor may be sold for consumption on the licensed premises are during the standard trading period or at such other times as may be authorised by an extended trading authorisation.
- (3) **Restricted trading days** Despite subsection (2), the times when liquor may be sold for consumption on the licensed premises on a restricted trading day are as follows—
 - (a) between midnight and 5 am on that day (but only if authorised by an extended trading authorisation),
 - (b) between 5 am and noon on that day (but only if authorised by an extended trading authorisation and only if the liquor is sold with or ancillary to a meal served in a dining area on the licensed premises),
 - (c) between noon and 10 pm on that day (but only if the liquor is sold with or ancillary to a meal served in a dining area on the licensed premises),
 - (d) between 10 pm and midnight on that day (but only if authorised by an extended trading authorisation and only if the liquor is sold with or ancillary to a meal served in a dining area on the licensed premises).

Note—

Section 49(7) restricts the granting of an extended trading authorisation for licensed public entertainment venues on restricted trading days.

- (4) Subsection (3) does not apply to—
 - (a) licensed premises that are part of an airport, or
 - (b) an on-premises licence that relates to a catering service.
- (5) **Trading on new year's eve** On 31 December in any year, liquor may be sold for consumption on the licensed premises from the start of the standard trading period for that day until 2 am on the next succeeding day. This subsection does not limit the operation of any extended trading authorisation that applies in relation to the licensed premises concerned.
- (6) **Trading on premises other than licensed premises** An on-premises licence also authorises the licensee to sell liquor by retail on such premises and in such circumstances as the Authority may, on application by the licensee, authorise, but only for consumption on those premises and at such times as are specified by the Authority in the licence. Any such premises are, subject to the regulations, taken to be licensed premises for the purposes of this Act.
- (7) The regulations may make provision for or with respect to the granting of an authorisation under subsection (6) (including limiting the circumstances for which such an authorisation may be granted by the Authority).

Note—

Section 51 also applies to an authorisation under subsection (6).

- (8) **Special provisions relating to licensed accommodation premises** An on-premises licence that relates to accommodation premises also authorises the licensee to sell liquor by retail on the licensed premises—
- (a) for consumption on the licensed premises only—at any time on any day (including a restricted trading day) to a resident (or a guest of a resident while in the resident's company) or an employee of the licensee, and
 - (b) to a resident at any time for consumption away from the licensed premises, but only if—
 - (i) the sale is ancillary to the provision of a meal for consumption away from the licensed premises, and
 - (ii) the volume of liquor supplied to any such resident on any one day does not exceed 2 litres.
- (9) **Special provisions relating to licensed vessels** Despite any other provision of this section, an on-premises licence that relates to a vessel authorises the licensee to sell liquor by retail to passengers on board the vessel, for consumption on board the vessel only—
- (a) between the period commencing one hour before the vessel starts any voyage or passage and ending 30 minutes after the voyage or passage is completed, or
 - (b) at such other times, or in such other circumstances, as the Authority may, on application by the licensee, authorise.

Note—

Section 51 applies to an authorisation referred to in paragraph (b).

26 Authorisation to sell liquor for consumption away from licensed premises in special circumstances

- (1) Despite section 25(1), liquor may be sold by retail on the licensed premises to which an on-premises licence relates for consumption away from the licensed premises if the licence is, on application by the licensee, endorsed by the Authority with an authorisation for the purposes of this section.
- (2) An authorisation under this section does not authorise the sale of liquor on a restricted trading day.
- (3) In granting an authorisation under this section, the Authority is to specify the circumstances in which, and the times when, liquor may be sold for consumption away from the licensed premises.
- (3A) An authorisation must not authorise the sale of liquor for consumption away from the licensed premises—
 - (a) on a Sunday that does not fall on 24 or 31 December—after 11 pm, and
 - (b) on any other day—after midnight.
- (4) The regulations may make provision for or with respect to the granting of an authorisation under this section (including limiting the circumstances for which such an authorisation may be granted by the Authority).

Note—

Section 51 applies to an authorisation under this section.

27 Requirement to provide food on licensed premises

- (1) If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises (*the liquor sales area*) that is adequately separated from those parts of the premises in which other activities are carried out.
- (2) The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.

28 Certain licensed premises must be open to general public

- (1) This section applies to an on-premises licence that relates to—
 - (a) a restaurant, or
 - (b) a public entertainment venue.
- (2) The business carried out under an on-premises licence to which this section applies must not be, or include, a business that is limited to the sale or supply of liquor only—
 - (a) to persons who have been invited to use or attend the licensed premises, or
 - (b) to a particular class, or particular classes, of persons using or attending the licensed premises.
- (2A) To avoid doubt, subsection (2)—
 - (a) does not prevent a restaurant or public entertainment venue to which an on-premises licence applies being closed to the general public because it has been booked for a private function including, for example, a wedding or party, but
 - (b) does not allow it to be closed to the general public for use as a members-only premises or club, or for other exclusive use on a recurrent basis.
- (3) Subsection (2) is subject to such exceptions as may be approved by the Authority on a temporary basis in relation to any particular licensed premises or to such other exceptions as may be prescribed by the regulations. Also, subsection (2) does not apply to the extent that is necessary to comply with any other provision of this Act or with any other law.

40 Licence applications

- (1) Licence applications are to be made to the Authority.
- (2) An application for a licence may be made by:
 - (a) an individual, or
 - (b) a corporation, or
 - (c) in the case of a club licence—a club (or a person on behalf of a club) that meets the requirements specified in section 10 (1) of the Registered Clubs Act 1976.

- (3) An application for a licence may not be made by:
 - (a) an individual who is under the age of 18 years, or
 - (b) a person who is disqualified from holding a licence or who holds a suspended licence, or
 - (c) an individual who is a controlled member of a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012.

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

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

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

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

44 Submissions to Authority in relation to licence applications

- (1) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application for a licence.
- (2) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to grant the licence.

45 Decision of Authority in relation to licence applications

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

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

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

- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.
- (7) In deciding whether or not to grant a licence, the Authority must consider whether, if the licence were granted, it would provide employment in, or other opportunities for, any of the following—
 - (a) the live music industry,
 - (b) the arts sector,
 - (c) the tourism sector,
 - (d) the community or cultural sector.

48 Community impact

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
 - (a) the views of the local community, and
 - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
 - (c) whether the granting of the application would provide employment in, or other opportunities for, any of the following—
 - (i) the live music industry,
 - (ii) the arts sector,
 - (iii) the tourism sector,
 - (iv) community or cultural sector.
- (2) In this section:

relevant application means any of the following:

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

but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).

- (3) A relevant application must be accompanied by a community impact statement.
- (3A) However, a small bar application is not required to be accompanied by a community impact statement if:
 - (a) development consent is required under the Environmental Planning and Assessment Act 1979 to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
 - (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.
- (3B) For the purposes of subsection (3A), a **small bar application** means any of the following:
 - (a) an application for a small bar licence,
 - (b) an application for approval to remove a small bar licence to other premises,
 - (c) an application for an extended trading authorisation for a small bar,
 - (d) an application to vary an extended trading authorisation for a small bar.
- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:
 - (a) the application relates to the same premises as the premises to which a general bar licence relates, and
 - (b) development consent has been obtained under the Environmental Planning and Assessment Act 1979 to sell liquor during the times to which the application relates and those times are specified in the development consent.
- (3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:

- (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
 - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the Registered Clubs Act 1976.
- (4) The community impact statement must:
- (a) be prepared in accordance with the regulations and any requirements of the Authority, and
 - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
- (a) the community impact statement provided with the application, and
 - (a1) any published cumulative impact assessment that applies to the area in which the premises the subject of the application are located, and
 - (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),
- that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.
- (6) The regulations may make provision for or with respect to the following:
- (a) the requirements that must be satisfied in relation to the preparation of a community impact statement (including consultation requirements),
 - (b) the matters to be addressed by a community impact statement,
 - (c) the information to be provided in a community impact statement,
 - (d) the criteria for determining the local and broader community for the purposes of a relevant application,
 - (e) any other matter relating to the preparation and content of a community impact statement.
- (7) Without limiting subsection (6), the regulations may provide that the matters to be addressed by a community impact statement are, in the case of an application for an extended trading authorisation in relation to a hotel licence, to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.

51 General provisions relating to licence-related authorisations

- (1) This section applies to the following authorisations granted by the Authority under this Act—
- (a) an extended trading authorisation,
 - (b) a drink on-premises authorisation,
 - (c) any other authorisation that may be granted by the Authority under Part 3 (other than a licence),
 - (d) a minors area authorisation,
 - (e) a minors functions authorisation,
 - (f) a minors authorisation.
- (2) An application for an authorisation to which this section applies must—
- (a) be in the form and manner approved by the Authority (or, in the case of an application for an extended trading authorisation for a small bar, by the Secretary), and
 - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
 - (c) if required by the regulations to be advertised—be advertised in accordance with the regulations, and
 - (d) comply with such other requirements as may be approved by the Authority (or, in the case of an application for an extended trading authorisation for a small bar, by the Secretary) or prescribed by the regulations.
- (3) In determining an application for an authorisation, the Authority has the same powers in relation to the application as the Authority has in relation to an application for a licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (4) If, before an application for an authorisation is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including information provided under this subsection), the applicant must immediately notify the Authority of the particulars of the change.
- (5) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application for an authorisation.
- (6) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to grant the authorisation.
- (7) The regulations may prescribe, or provide for the determination of, a fee in respect of the granting of an authorisation. If any such fee is prescribed or determined, the authorisation does not take effect unless the fee has been paid.
- (8) The Authority may, in granting an authorisation, specify requirements that are to be complied with before the authorisation takes effect. The authorisation does not take effect until such time as any such requirements have been complied with.
- (9) An authorisation—

- (a) is subject to such conditions—
 - (i) as are imposed by the Authority (whether at the time the authorisation is granted or at a later time), or
 - (ii) as are imposed by or under this Act or as are prescribed by the regulations, and
 - (b) may be varied or revoked by the Authority on the Authority's own initiative or on application by the licensee, the Secretary or the Commissioner of Police.
- (10) Any such application by a licensee to vary or revoke an authorisation (including any conditions to which the authorisation is subject that have been imposed by the Authority) must be accompanied by the fee prescribed by the regulations.
- (11) For the purposes of this Act, any condition to which an authorisation is subject is taken to be a condition of the licence to which the authorisation relates.
- (12) An authorisation has effect only while all the conditions to which it is subject are being complied with.
- (13) The Authority must not impose a condition on an authorisation, or revoke or vary an authorisation, other than a variation made on application by a licensee, unless the Authority has—
- (a) given the licensee to whom the authorisation relates a reasonable opportunity to make submissions in relation to the proposed decision, and
 - (b) taken any such submissions into consideration before making the decision.
- (14) This section does not authorise the revocation or variation of a condition to which an authorisation is subject if the condition is imposed by this Act or is prescribed by the regulations.