



Mr Brett Tobin  
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18 March 2022

Dear Mr Tobin

<b>Application No.</b>	1-8033643381
<b>Applicant</b>	North Coast Property Holdings Pty Ltd
<b>Application for</b>	Extended trading authorisation
<b>Licence number</b>	LIQH400123132
<b>Licence name</b>	Toormina Hotel
<b>Premises</b>	1 Minorca Place Toormina NSW 2452
<b>Current trading hours</b>	<u>Consumption on premises and take away sales</u> Monday to Saturday 5:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM
<b>Proposed trading hours</b>	<u>Consumption on premises</u> Monday to Saturday 9:00 AM – 2:00 AM Sunday 10:00 AM – 12:00 midnight  <u>Take away sales</u> Monday to Saturday 9:00 AM – 2:00 AM Sunday 10:00 AM – 11:00 PM
<b>Legislation</b>	Sections 3, 11A, 12, 44, 48, 49 and 51 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority  
Application for an extended trading authorisation – Toormina Hotel**

The Independent Liquor & Gaming Authority considered the application above, and decided on 16 February 2022 to **refuse** the application pursuant to section 49(2) of the *Liquor Act 2007*.

**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, Wendy Yeung Wye Kong, at [wendy.yeung.wye.kong@liquorandgaming.nsw.gov.au](mailto:wendy.yeung.wye.kong@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 1 July 2021, North Coast Property Holdings Pty Ltd (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application (“Application”) for an extended trading authorisation (“ETA”) for the licensed premises at 1 Minorca Place, Toormina NSW (“Premises”), trading as Toormina Hotel.
2. The Authority considered the Application at its meeting on 16 February 2022 and decided to refuse to grant the ETA under section 49(2) 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.

## MATERIAL CONSIDERED BY THE AUTHORITY

4. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
5. 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.
6. In accordance with its *Guideline 6*, the Authority has 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”).
7. In accordance with its *Guideline 16*, the Authority has also had regard to relevant domestic and international research regarding gambling participation, problem gambling prevalence, and demographic indicia that are linked to a population’s relatively higher or lower vulnerability to gambling-related harm; as well as Liquor & Gaming NSW (“L&GNSW”) gaming machine profit data for the venue and comparative ranking data (by SA2 and LGA) for hotels and clubs.
8. A list of the material considered by the Authority is set out in Schedule 1.

## LEGISLATIVE FRAMEWORK

9. The Authority has considered the application in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018 (“Regulation”):
  - 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) Section 44: Submissions to Authority in relation to licence applications.
  - d) 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.
  - e) Section 49: General provisions in respect of ETAs.
  - f) Section 51: General provisions relating to licence-related authorisations.
10. An extract of these sections is set out in Schedule 2.

## KEY FINDINGS

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

## Validity, procedural and trading hour requirements

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

- a) the Application has been validly made and meets the procedural requirements under section 51 of the Act and clauses 20 to 29 of the Regulation,
  - b) the Application meets the trading period requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods, and
  - c) the extended trading periods sought by the Applicant are within the periods which the Authority has the power to grant under section 49(2) of the Act.
13. 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**

14. 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 permitting the operation of a hotel business with the proposed extended trading period is in force, based on Development Approval No. 0598/17DA in respect of the Premises, issued by Coffs Harbour City Council (Council) on 20 March 2017.

### **Community impact**

#### ***Local and broader communities***

15. 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 Toormina, and the relevant "broader community" comprises the Local Government Area ("LGA") of Coffs Harbour.

#### ***Licence density***

16. The Authority noted that, compared to the NSW state average:
- a) Toormina and Coffs Harbour LGA have a **lower** saturation of hotel licences
  - b) Toormina has a **lower** saturation of late-trading outlets
  - c) Coffs Harbour LGA has a **higher** saturation of late-trading outlets
  - d) Toormina and Coffs Harbour LGA have a **lower** clustering of hotel licences and late-trading outlets.

#### ***Crime data***

17. The relevant BOCSAR data indicates that, for the year to June 2021:
- a) the Premises was located within high-density hotspots for incidents of alcohol-related domestic assault and malicious damage to property, and a medium-density hotspot for alcohol-related non-domestic assault
  - b) Toormina recorded **significantly higher** rates of alcohol-related assault (domestic and non-domestic), alcohol-related disorderly conduct and malicious damage to property, compared to the NSW state average.
  - c) Coffs Harbour LGA recorded **significantly higher** rates of alcohol-related assault (domestic and non-domestic), alcohol-related disorderly conduct and malicious damage to property, compared to the NSW state average.

### ***Alcohol-related health data***

18. The most recent HealthStats NSW data available at the time of the Authority's decision indicates that Coffs Harbour 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***

19. The Authority notes that ABS Socio-Economic Index for Areas ("SEIFA") data as at 2016 indicates that Toormina was highly **disadvantaged**, and that Coffs Harbour LGA was relatively **disadvantaged**, compared to other suburbs and LGAs in NSW.

### ***Business model at the Premises***

20. The Authority notes that the Premises currently operates under the full hotel licence LIQH400123132, with trading hours for consumption on premises and take away sales from 5:00 AM to 12 midnight Monday to Saturday and from 10:00 AM to 10:00 PM on Sunday. The Premises comprises a single storey structure providing an entertainment area, TAB, saloon bar, lounge bar, gaming room, restaurant, beer garden, play area, drive through bottle shop, sanitary facilities and back of house areas.

### ***Previous ETA application***

21. The Authority notes that a previous application for an ETA for the Premises was lodged on 22 November 2018 ("2018 Application"). The 2018 Application sought to extend trading hours for consumption on premises to 2:00 AM Monday to Saturday and 12:00 midnight Sunday.

22. The Authority refused the 2018 Application, primarily on the following grounds:

- a) NSW Police Force ("Police") and two members of the public objected to the 2018 Application on the basis of alcohol-related anti-social behaviour, elevated alcohol-related crime rates and relative socio-economic disadvantage in the local community
- b) the CIS did not adequately address the impacts of gambling activities during the proposed extended trading period.

### ***Current ETA application***

23. The Authority notes the current Application is for an ETA limited to certain internal areas of the Premises including the saloon bar, gaming room, entertainment area and sanitary facilities. The Authority notes that the ETA, if granted, would result in additional trading hours from 12:00 midnight to 2:00 AM Monday to Saturday, and from 10:00 PM to 12:00 midnight on Sunday.

24. The Authority notes that the Applicant also applied to extend trading hours for takeaway sales until from 9:00 AM to 2:00 AM Monday to Saturday and 10:00 AM to 11:00 PM on Sunday, however section 29(3A) of the Act only permits extended trading hours for takeaway sales until 12:00 midnight Monday to Saturday, and until 11:00 PM on a Sunday that does not fall on 24 December or 31 December.

### ***Gambling activities at the Premises***

25. The Authority finds that the CIS meets the minimum requirements of clause 28 of the Regulation in that it addresses matters relating to the proposed gambling activities to be conducted on the Premises during the period in which the ETA would be in force if granted.

26. The Authority notes that:

- a) the Application is for a new ETA for the existing hotel licence to permit the premises to trade until 2:00 AM Monday to Saturday and until midnight on Sunday. This represents an

additional 12 hours of post-midnight gaming per week from Monday to Saturday, along with two additional hours of late-night gaming on Sundays

- b) L&GNSW records indicate that Toormina Hotel operates 28 gaming machines, with a gaming machine shutdown period under section 40 of the *Gaming Machines Act 2001* in force between 4:00 AM to 10:00 AM Monday to Friday, and 6:00 AM to 9:00 AM Saturday, Sunday and public holidays. The Premises also operates TAB facilities.
- c) the Premises is situated in a Band 2 SA2 (medium risk profile) for the purposes of section 33 of the *Gaming Machines Act 2001*, in close proximity to a problematic Band 3 SA2 in the same LGA. As explained in the L&GNSW Factsheet “Local Impact Assessment Scheme Overview” published on the L&GNSW website, each SA2 area in the State is classified into Band 1 (low risk), Band 2 (medium risk) and Band 3 (high risk) depending on the gaming machine density, gaming machine expenditure and prevailing levels of relative socio-economic disadvantage within the SA2.
- d) the average profit per gaming machine at the Premises is almost two times the average for comparable country hotels
- e) based on revenue figures provided by the Applicant, the venue generated a significant increase in revenue during the period between December 2020 and November 2021, despite not trading beyond midnight and COVID-19 lockdowns and restrictions being in force during that period.

### **Purported benefits**

27. The Authority has had regard to the Applicant’s submission that:

- a) the Premises is the only hotel in the suburb, with the closest hotel approximately four kilometres away by road
- b) the Premises provides a variety of services and facilities to its patrons including the provision of liquor, meals, entertainment and gaming
- c) approval of the application would provide some public amenity benefit in terms of improved access, convenience and choice.

### **Stakeholder submissions**

28. The Authority has had regard to submissions from:

- a) **Police**, strongly objecting to the Application, based on the following claims and concerns:
  - i. the overall social impact of the ETA may be detrimental to the surrounding community
  - ii. the Application does not satisfy the requirement of section 15 of the Act, as the Applicant states “no liquor will be sold or supplied after 12:00 midnight”, and such does not pass the primary purpose test. The Authority notes that this is inaccurate, as section 15 of the Act is surpassed by section 15A(1), which permits hotels to cease sale or supply of liquor on the premises but continue to provide other services and facilities on the licensed premises
  - iii. the points raised in the Authority’s 2018 decision remain valid and relevant to the current Application, and that “insufficient time has passed, especially considering the covid [sic] 19 restrictions and shutdowns during the last 18 months to accurately assess any changes in behaviours or risk factors”
  - iv. in 2021 an ETA application for Toormina Hotel had been withdrawn following a DA application for a McDonald’s restaurant in the adjoining shopping centre carpark was declined by Council. The DA application for the McDonald’s restaurant has since been approved by the Council. Police are concerned that the ETA application is targeting the restaurant’s patrons and staff, as well as persons connected to the staff

- v. the gaming machine density in Toormina and its neighbouring suburb Sawtell is almost double the NSW average, and the community is socioeconomically disadvantaged
  - vi. access to the Premises during the ETA period appears to be via the gaming room, which is non-compliant with Clause 8 of the Regulations
  - vii. the density of licensed venues in Toormina is higher than the NSW average
  - viii. Toormina's rate of alcohol-related crime (and alcohol-related youth crime) is high and has a significant impact on policing and the community
  - ix. the Premises is located within high density crime hotspots for alcohol-related domestic assault and malicious damage to property
  - x. Escalated Licensing Operational Response Modelling (ELORM) categorised Toormina Hotel as a medium risk for the 20/21 summer period
  - xi. 7.1 percent of the local community are of Indigenous background, compared to 2.9 percent of the population of NSW
  - xii. the number of alcohol-related traffic offences and accidents in Coffs Clarence Police District (which encompasses Toormina) has it ranked as the fourth highest in relation to drink driving for 2020
  - xiii. an incident at the Premises involving an intoxicated person playing gaming machines raises concerns in relation to the level of supervision of patrons in relation to responsible service of alcohol and gaming
  - xiv. the Premises is in close proximity to a known Outlaw Motorcycle Club members' clubhouse. Police have sighted known members in the gaming room of the Premises and are concerned with possible money laundering activities occurring at the Premises
  - xv. the lack of public transportation available to patrons during the extended trading period
  - xvi. granting of the ETA will only serve to increase the hours of availability and access to gaming machines at the hotel during the late-trading period, exacerbating the serious and harmful effects gaming machines have already caused in the area.
- b) **L&GNSW Compliance** which did not identify any adverse holdings regarding the Application, but noted that an increased risk of alcohol-related harm occurring at any venue arises when trading hours are increased, particularly so when the trading hours encompass the late trading period.
- c) **Galambirra Elders Group** strongly objecting to the Application, based on the following claims and concerns :
- i. Toormina is one of the most economically disadvantaged areas in regional NSW, and has suffered greatly from COVID-19 and recent natural disasters, which devastated homes, properties and cars. The community is still struggling psychologically and financially to rebuild
  - ii. the majority of the Indigenous population live in social housing and are vulnerable to alcohol abuse, problem gambling, addiction and financial mismanagement
  - iii. granting of the Application will provide further opportunities for the vulnerable community to "squander" Centrelink payments during the extended trading period
  - iv. granting of the Application could cause an increase to financially disadvantaged individuals misusing their payments which puts additional pressure on charitable and government organisations already struggling with the implications of the COVID-19 pandemic

- v. the extended trading hours would contribute to further gambling-related harm in the area, which may include financial harm; relationship disruption, conflict or breakdown; emotional or psychological distress; cultural harm; reduced performance at work or study; and criminal activity.
  - d) **Sawtell Uniting Church (“SUC”)** which objects to the Application and contends that the overall social impact of the Application could be detrimental to the surrounding community. The key concerns of SUC include the effect on the disadvantaged community living in proximity to the Premises, the potential to exacerbate financial stress and gambling-related issues in the community
  - e) **Sawtell Catholic Care (“SCC”)**, which operates an elderly care residence that is 35 metres away from the Premises, objects to the Application on the basis that granting of the Application may increase the noise disturbance from late-night foot traffic and anti-social behaviour from patrons of the hotel
  - f) **Lifehouse Church**, which strongly objects to the Application, and raises concerns regarding:
    - i. ongoing issues relating to alcohol consumption in the area
    - ii. elevated assault rates
    - iii. approval of the Application being detrimental to the already disadvantaged community and possibly exacerbating the gambling-related issues in the community
  - g) **two members of the public**, who object to the Application, citing noise disturbance to neighbouring residential properties from late-night foot traffic and anti-social behaviour from the clientele of the hotel
  - h) **twelve members of the public**, who are supportive of the Application on the basis that the Premises provides late night entertainment, late night coverage of major sporting events, and is a popular meeting venue with a responsible management and team
  - i) **petition provided by the Applicant** which contains 353 signatures from persons in support of extending the Premises’ trading hours, including extending the hours of operation of the gaming machines. The petition states the signatories support the Application and have no concerns about the granting of the Application or the continued operation of the gaming machines giving rise to any disturbance, or resulting in any increase in crime, vandalism, anti-social behaviour or other negative impacts.
29. The Authority has had regard to the Applicant’s CIS and submissions in response which note that:
- a) the suggestion that the Application ought to be refused for non-compliance with section 15 is misconceived
  - b) as a result of the refusal of the 2018 Application the Hotel has “introduced practices to ensure the operation of the hotel will not adversely affect the...neighbourhood, nor be likely to increase rates of crime or anti-social behaviour”. However, the Authority notes that the Applicant did not elaborate on the practices the Hotel had introduced to minimise adverse effects on the neighbourhood
  - c) a range of alcohol-related harm mitigation measures and controls will be implemented to address potential issues arising were the Application granted, as reflected in the licence conditions consented to and the Hotel’s liquor plan of management. This includes practices of removing access to higher risk drinks and placing limits on the numbers of drinks sold during the extended trading period
  - d) the Applicant contends that gambling harm minimisation measures will be adopted and implemented as detailed within the gaming plan of management. The Applicant notes that the provider receiving funding from the Responsible Gambling Fund located within

the LGA was duly advised during the CIS and application stages. The Applicant contends that the provider “expresses no concerns regarding the ETA Application”

- e) the Applicant contends that residents of Toormina support the proposed extension of hours and, furthermore, the Hotel caters to a number of “workers who do not work “normal” business hours and wish to use the facilities to wind down after finishing work”. The Applicant contends that the signed petition indicates “a clear public demand and expectation for the additional trading hours”
- f) the proposed entry/exit complies with the requirements stipulated at clause 8 of the Regulations, and ensures that customers are not required to pass through the gaming room when entering and exiting the hotel
- g) the grant of the ETA will not change the density of licensed premises within the suburb, SA2 or LGA
- h) Police reference to youth crime has “little relevance to the application” as persons under the age of 18 years are not permitted entry to the Hotel unless always accompanied by a responsible adult
- i) Police refer to the availability of alcohol as a contributing factor to offences that occur in the area. The Applicant contends that the Application will not result in an increase in the sale and supply of liquor but rather a reduction of 16 hours each week
- j) as part of the CIS, the Applicant notified NSW Health, NSW Family and Community Services, the Local Health District, the local community centre and a number of health professionals, none of which made a submission expressing concerns about the Application
- k) the Hotel is located adjacent to the subregional shopping centre, and the Applicant contends that it is “conceivable that a small number of malicious damage incidents will be enough to create a “hotspot” in and around the shopping centre”
- l) the Applicant notes that ELORM tracked Toormina Hotel as a medium risk for the 20/21 summer period. The Applicant notes that the Hotel was rated as low for total risk
- m) the Applicant contends that the local community has an older age profile, (median age 44 years, compared to NSW average of 38 year) and considers this as a “protective factor against possible instances of anti-social behaviour...also a protective factor against problem gambling”. However, the Authority notes the Applicant has not provided any evidence to substantiate this claim
- n) the Applicant contends that granting the ETA would allow customers to “enjoy a reasonably fulsome night out... without having to traverse heavily trafficked local roads, including the Pacific Highway”, and as such would reduce the potential for road accidents
- o) in relation to the alleged incident of an intoxicated person playing gaming machines, the Applicant contends that the person in question “was not exhibiting any signs of intoxication observable” by staff and management. Police were provided with the CCTV footage, and no further information or feedback was provided by Police in relation to the intoxicated person
- p) the Applicant contends that the granting of the ETA would not require Police presence as no liquor will be sold during the extended trading period
- q) the Hotel does not permit persons wearing motorcycle colours and has not experienced any problems with members or ex-members of motorcycle gangs. Furthermore, the Applicant contends that staff are duly trained in anti-money laundering compliance measures



- r) the Applicant has agreed to provide a courtesy bus for use by patrons during the extended trading period
- s) the Applicant contends that the entry to the SCC premises is 370 metres from the Hotel, not 35 metres as indicated in the SCC submission. Furthermore, the rear of the SCC premises is separated from the Hotel by a 1.5 metre better brick wall, topped with tubular fencing and a steep gradient up to the SCC premises
- t) it is the Applicant's intention to maintain management and operational practices of the Hotel during the extended trading period on Sundays to minimise disturbance to the local residents.

30. The Authority notes that the Applicant did not respond to the Galambirrla Elders Group submission.

**Findings of concern**

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

- a) the rates of alcohol-related crime in the Toormina and Coffs Harbour LGA are significantly higher than NSW averages
- b) the rate of alcohol-attributed deaths in Coffs Harbour LGA is higher than NSW average
- c) the local community is highly socio-economically disadvantaged, and the broader community is relatively disadvantaged,
- d) the Premises is located in high density hotspots for alcohol-related domestic assault and malicious damage to property
- e) the Premises is located in a Band 2 SA2, in close proximity to a problematic Band 3 SA2 in Coffs Harbour LGA
- f) approval of the Application would result in an additional 12 hours of post-midnight gaming per week Monday to Saturday and two additional hours of late-night gaming on Sunday
- g) without trading beyond midnight, gaming at the Premises is already more intense compared to the average for NSW country hotels with similar numbers of gaming machines. During the COVID-19 pandemic and despite the enforced lockdown, the Hotel generated a significant increase in revenue
- h) the Applicant has not consented to the imposition of the gambling incident register or Responsible Gambling Officer conditions being placed on the licence
- i) the gaming plan of management has been assessed as not meeting the requirements of the Authority for a venue of this gaming intensity and trading times
- j) there is a higher than average Indigenous population.

32. The Authority finds credible the prospect that the Premises will have the capacity to attract late-night patrons, not only from within the suburb but also from nearby suburbs in the broader community; and considers that these factors increase the scope for adverse social impacts to be generated by late trading at the venue.

33. The Authority notes that both Police and Galambirrla Elders Group raised concerns about the potential impact that the proposed late-trading hours will have upon problem gamblers.

34. The Authority notes that section 3(1)(c) of the Act provides that one statutory object of the Act is to contribute to the responsible development of related industries. The gaming machine

industry constitutes one such “related” industry, whose operation on Hotel licensed premises is regulated by the *Gaming Machines Act 2001* and the *Liquor Act 2007*.

35. The Authority notes research evidence that higher-risk gamblers are significantly more likely than any other group to be gambling after midnight and to be playing for longer periods overall.
36. Toormina Hotel is the only hotel in Toormina, with no other venues in this local community to which gaming machine players may conveniently resort once the machines at this Premises shutdown for the night. When considering which course of action best serves the responsible development of this industry, the Authority is not merely focused on “problem” gamblers, but “at risk” gamblers as well. The *NSW Gambling Survey 2019* establishes that this combined group comprises some 36% of NSW electronic gaming machine players and gambling expenditure generally.
37. The Authority remains particularly concerned that extending the trading hours of the Premises into the late-night period may have an adverse social impact on “problem” or “at risk” gamblers in the local and broader communities, especially those that are socio-economically disadvantaged. Approval would allow such persons to engage in gambling activities for longer periods of time.
38. The Authority notes these risks are somewhat mitigated by the Applicant’s gaming plan of management (which includes some intermediate and advanced level harm minimisation strategies from the Office of Responsible Gambling’s Above and Beyond Fact sheet), and the Applicant’s consent to a gaming plan of management licence condition.
39. Notwithstanding the level of support from patrons and the Applicant’s efforts towards controlling the risk of gaming-related harms, taking into account the significantly elevated risk factors in the local and broader communities and those associated with the extensive additional late-night trading hours sought, the Authority on balance is not satisfied that the existing and proposed harm minimisation measures will sufficiently mitigate the risk of gambling harm to the community to warrant a grant.
40. Given the number of gambling risk factors, including the overall economic vulnerability and financially constrained local community which reduces its ability to sustain gambling losses, the Authority is satisfied that maintaining the status quo is the more responsible approach to the development of the gaming machine industry. This will ensure a longer effective shutdown of machines across the course of the week in this local community, giving “at risk” or “problem” gamblers a meaningful opportunity to stop gambling for the night.

## CONCLUSION

41. Having considered the positive and negative social impacts that are likely to flow from granting the ETA, the Authority is not satisfied that the overall social impact of granting the ETA would not be detrimental to the well-being of the local and broader communities.
42. Accordingly, the Authority has decided to refuse the Application under section 49 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 <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

## Schedule 1 – Material considered by the Authority Toormina Hotel

### Application material

1. Venue Plan of Management documents for the Premises, titled “Alcohol Plan of Management & Security Management Plan” and dated 8 February 2021.
2. Gaming Plan of Management documents for the Premises, titled “Toormina Hotel Gambling Plan of Management” and dated April 2021.
3. Completed Category B Community Impact Statement dated 21 June 2021, including:
  - a. list of stakeholders
  - b. special interest groups
  - c. Additional Information - Application and Community Impact Statement Application for an Extended Trading Authorisation (“ETA”) in Respect of the Hotel Licence Situated at Minorca Place, Toormina and known as “Toormina Hotel”
  - d. petition in support of the Application
4. Completed application dated 22 June 2021.
5. Completed Certifications of Advertising dated 30 July 2021.
6. Floor plan for the Premises indicating the proposed ETA area.

### Development consent

7. Notice of determination issued by Coffs Harbour City Council on 20 March 2017, approving the development application no. 0598/17DA for the Premises.

### Liquor & Gaming LiveData Report

8. L&GNSW Liquor & Gaming LiveData Report for the suburb of Toormina, generated on 20 December 2021, which sets out that:

#### Outlet diversification

- a. there are **5** authorised liquor licenses in Toormina. Of these, **4** are authorised to sell packaged liquor. This includes **2** packaged liquor licence, **1** registered club licence and **1** hotel licence.

#### Outlet density (annual rate per 100,000 residents)

- b. saturation of hotel licences in Toormina (**16.1**) and Coffs Harbour LGA (**20.6**), are **lower** compared to NSW (**28.5**)
- c. saturation of late-trading outlets in Toormina (**16.1**), is **lower** compared to NSW (**35.1**)
- d. saturation of late-trading outlets Coffs Harbour LGA (**37**), is **higher** compared to NSW (**35.1**)
- e. clustering of hotel licences in Toormina (**0**) and Coffs Harbour LGA (**0.7**), are **lower** compared to NSW (**15.4**)
- f. clustering of late-trading outlets in Toormina (**1**) and Coffs Harbour LGA (**14.8**), are **lower** compared to NSW (**73.6**).

#### Offence data (annual rate per 100,000 residents)

In the year to June 2021:

- g. alcohol-related domestic assault in Toormina (**428.4**) was **higher** compared to the Coffs Harbour LGA (**254.9**), and **higher** compared to all NSW (**115.7**)
- h. alcohol-related non-domestic assault in Toormina (**158.7**) was **lower** compared to the Coffs Harbour LGA (**210.9**), and **higher** compared to all NSW (**98.3**)
- i. late-night alcohol-related non-domestic assault in Toormina (**79.3**) was **higher** compared to the Coffs Harbour LGA (**45.3**), and **higher** compared to all NSW (**28.6**)

- j. alcohol-related non-domestic serious assault in Toormina (**79.3**) was **lower** compared to the Coffs Harbour LGA (**89.3**), and **higher** compared to all NSW (**36.2**)
- k. alcohol-related offensive conduct in Toormina (**47.63**) was **lower** compared to the Coffs Harbour LGA (**51.8**), and **higher** compared to all NSW (**24.9**)
- l. malicious damage to property in Toormina (**1396.2**) was **higher** compared to the Coffs Harbour LGA (**974.4**), and **higher** compared to all NSW (**658.3**)

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

- m. In the period 2018/2019 the alcohol-attributable death rate in Coffs Harbour LGA (**22.3**) was **higher** compared to the average across all of NSW (**19.7**)
- n. In the period 2018/2019-2019/2020 the alcohol-attributable hospitalisation rate in Coffs Harbour LGA (**429.1**) was **lower** compared to the NSW average (**513.2**).

SEIFA

- o. According to the SEIFA Index of Relative Economic Advantage & Disadvantage, households in Toormina and Coffs Harbour LGA are highly socio-economically disadvantaged and disadvantaged respectively (**bottom five percent** and **bottom 46 percent** of NSW households, in terms of household income and residents in skilled occupations).

**Stakeholder submissions**

- 9. Submission from two members of the public in objection to the Application, dated 21 May 2021 and 12 July 2021
- 10. Submission from Sawtell Catholic Care, dated 28 July 2021
- 11. Submission from Police dated 29 July 2021.
- 12. Submission from Sawtell Uniting Church, dated 30 July 2021
- 13. Submission from L&GNSW Compliance, dated 5 August 2021.
- 14. Submission from 12 members of the public in support of the Application, dated between 7 September 2021 and 30 October 2021.
- 15. Submission from Galambirra Elders Group, dated 27 January 2022.
- 16. Submission from a member of the public in objection to the Application.
- 17. submission from Lifehouse Church in objection to the Application.
- 18. Petition in relation to the extended trading authorisation, supplied as an annexure to the Community Impact Statement.

**Other relevant information**

- 19. Correspondence between L&GNSW staff and the Applicant between 28 July 2021 and 4 February 2022 in relation to the assessment of the Application.
- 20. The licence document for LIQH400123132 Toormina Hotel.
- 21. Gaming revenue statements for the Premises.

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

### Toormina Hotel

#### 3 Objects of Act

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

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

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

#### 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.

#### **48 Community impact**

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

- (2) In this section:

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

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

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

- (3) A relevant application must be accompanied by a community impact statement.
- (3A) However, a small bar application is not required to be accompanied by a community impact statement if:
  - (a) development consent is required under the Environmental Planning and Assessment Act 1979 to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
  - (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.
- (3B) For the purposes of subsection (3A), a **small bar application** means any of the following:
  - (a) an application for a small bar licence,
  - (b) an application for approval to remove a small bar licence to other premises,

- (c) an application for an extended trading authorisation for a small bar,
  - (d) an application to vary an extended trading authorisation for a small bar.
- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:
- (a) the application relates to the same premises as the premises to which a general bar licence relates, and
  - (b) development consent has been obtained under the Environmental Planning and Assessment Act 1979 to sell liquor during the times to which the application relates and those times are specified in the development consent.
- (3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:
- (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
  - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the Registered Clubs Act 1976.
- (4) The community impact statement must:
- (a) be prepared in accordance with the regulations and any requirements of the Authority, and
  - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
- (a) the community impact statement provided with the application, and
  - (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.

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

- (1) **Application of section** This section applies in relation to the following types of licences (referred to in this section as **a relevant licence**)—
- (a) a hotel licence,
  - (b) a club licence,
  - (c) an on-premises licence (other than an on-premises licence that relates to a vessel),
  - (d) a packaged liquor licence,
  - (e) a producer/wholesaler licence.
- (2) **Extended trading authorisation for consumption on premises** In the case of a relevant licence (other than a packaged liquor licence) that authorises the sale or supply of liquor for consumption on the licensed premises, the Authority may, on application by the licensee, authorise the licensee to sell or supply liquor, for consumption on the licensed premises only, during any of the following periods—
- (a) in the case of a hotel licence—a specified period between midnight (other than midnight on a Sunday) and 5 am on any day of the week (other than a Monday),
  - (b) in the case of a relevant licence other than a hotel licence—a specified period between midnight and 5 am on any day of the week,
  - (c) in any case—a specified period between 5 am and 10 am on a Sunday,
  - (d) in any case—a specified period between 10 pm and midnight on a Sunday.



- (2A) Without limiting subsection (2), the Authority may, in the case of an on-premises licence, authorise the licensee, on application by the licensee, to sell or supply liquor for consumption on the licensed premises during any of the following periods—
- (a) a specified period between 5 am and noon on a restricted trading day,
  - (b) a specified period between 10 pm and midnight on a restricted trading day.

**Note—**

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

- (3) Despite subsection (2)(a), the Authority may, in the case of a hotel—
- (a) situated in the area constituting the City of Sydney (as at 1 July 1994), or
  - (b) situated in the Kings Cross precinct, or
  - (b1) situated in the area including and bounded by the parts of streets specified in Schedule 3 (Oxford Street–Darlinghurst precinct) or that fronts or backs onto, or abuts, any such specified part, or
  - (c) situated in the Kosciuszko National Park, authorise the licensee, on application by the licensee, to sell or supply liquor, for consumption on the licensed premises only, during a specified period between midnight on a Sunday and 5 am on a Monday.
- (4) **Extended trading authorisation for take-away sales on Sundays** In the case of a relevant licence (including a packaged liquor licence) that authorises the sale or supply of liquor for consumption away from the licensed premises, the Authority may, on application by the licensee, authorise the licensee to sell or supply liquor, for consumption away from the licensed premises only, during either or both of the following—
- (a) a specified period between 5 am and 10 am on a Sunday,
  - (b) a specified period between 10 pm and 11 pm 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.

## 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.