



Mr Justin Sammut  
Solicitor, LAS Lawyers

19 January 2023

Dear Justin

<b>Application No.</b>	1-8068046758 & 1-8248794141
<b>Applicant</b>	Mr Mark Orr
<b>Application for</b>	New extended trading authorisation (Hotel) and change 6-hour closure period
<b>Licence name</b>	Hurlstone Park Hotel
<b>Trading hours</b>	<u>Current:</u> Monday – Thursday: 8 am to 12 midnight Friday – Saturday: 9 am to 12 midnight Sunday: 10 am to 10 pm Liquor closure: 2 am to 8 am  <u>Proposed:</u> Monday – Thursday: 10 am to 2 am Friday – Saturday: 10 am to 4 am Sunday: 10 am to 12 midnight Liquor closure: 4 am to 10 am
<b>Premises</b>	590-602 New Canterbury Road Hurlstone Park NSW 2193
<b>Legislation</b>	Sections 3, 11A, 12, 14, 15, 40, 44, 45,48, 49, 51, 53, and 121 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority  
Application for an Extended Trading Authorisation and to change the 6-hour closure period  
– Hurlstone Park Hotel**

The Independent Liquor & Gaming Authority considered the application above, and decided on 15 June 2022 to **refuse** the application pursuant to sections 48 and 49 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, Michelle Stark, at [michelle.stark@liquorandgaming.nsw.gov.au](mailto:michelle.stark@liquorandgaming.nsw.gov.au)

Yours faithfully

Murray Smith  
**Deputy Chairperson**  
For and on behalf of the **Independent Liquor & Gaming Authority**

## STATEMENT OF REASONS

### DECISION

1. On 18 August 2021, an application (“Application”) was lodged by LAS Lawyers on behalf of Mr Mark Orr (“Applicant”) with Liquor & Gaming NSW (“L&GNSW”) for an extended trading authorisation (“ETA”) for licence number LIQH400118228 (“Licence”) and to change the 6-hour closure period for the premises at 590-602 New Canterbury Road, Hurlstone Park NSW (“Premises”) for determination by the Independent Liquor & Gaming Authority (“Authority”).
2. The Application for an ETA was lodged under section 49 of the *Liquor Act 2007* (“Act”) and the change 6-hour closure period condition was made under section 11A of the Act.
3. The Authority considered the Application at its meeting on 15 June 2022 and decided to refuse the Application under sections 48 and 49 of the Act and update the CCTV condition on the Licence to include: *ii. The footpath immediately adjacent to the Premises* under section 53(1)(b) of the Act.
4. 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

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 1.

### LEGISLATIVE FRAMEWORK

9. The Authority has considered the application in the context of the following sections of the Act, 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) Sections 14 and 15: Specific provisions in respect of a hotel 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 49: General provisions in respect of ETAs.
  - i) Section 51: General provisions relating to licence related authorisations.
  - j) Section 53: General provisions relating to the imposition, variation or revocation by the Authority of licence conditions.
  - k) Section 121: Minors in hotels in company of responsible adult.

10. An extract of these sections is set out in Schedule 2.
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, its *Guideline 14* titled “Applications to Change Existing Licences” and its *Guideline 16* titled “Late Night Gaming Applications”.

## **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 requirements**

13. The Authority is satisfied on the material before it that the Application has been validly made and meets the procedural requirements under sections 11A, 49 and 51 of the Act.
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.

### **Development consent**

15. Pursuant to section 45 of the Act, the Authority is also satisfied that the requisite development consent is in force, based on the agreement made by the parties to Land and Environment Court of NSW proceedings in *Hurlstone Park Property Pty Ltd v Canterbury City Council* (case number 15/10562) filed 19 February 2016 pursuant to section 34(3)(a) of the *Land and Environment Court Act 1979* confirming that Development Application DA-102/2015 for the Premises is approved subject to the annexed conditions.

### **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 Hurlstone Park, and the relevant “broader community” comprises the Local Government Area (“LGA”) of Canterbury-Bankstown.

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

17. The Authority notes that Hurlstone Park has a lower density of hotel licences compared to the NSW state average.

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

18. The relevant BOCSAR data indicates that, for the year to December 2021:
  - a) the Premises was not located within hotspots for incidents of alcohol-related assault (domestic and non-domestic), alcohol-related offensive conduct, and malicious damage to property.
  - b) Hurlstone Park recorded lower rates of alcohol-related assault (domestic and non-domestic), lower malicious damage to property and lower alcohol-related disorderly conduct, compared to the NSW state average.
  - c) Canterbury-Bankstown LGA recorded lower rates of alcohol-related assault (domestic and non-domestic), malicious damage to property and alcohol-related disorderly conduct, 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 Canterbury-Bankstown recorded a lower than average level of alcohol-attributable deaths for the period 2016-2019, and a lower than average level of alcohol-attributable hospitalisations for the period 2016-2020.

## **SEIFA**

20. The Authority notes that ABS Socio-Economic Index for Areas (“SEIFA”) data as at 2016 indicates that Hurlstone Park and Canterbury-Bankstown were relatively advantaged and no more advantaged or disadvantaged, respectively, compared to other suburbs and LGAs in NSW.

### ***Purported benefits***

21. The Authority has had regard to the Applicant’s purported benefits, including that approval of the ETA would:

- encourage the further development and recovery of the business following COVID-related shutdowns
- ensure positive contributions both economically and socially by way of further employment opportunities for new and existing staff and
- lead to greater tax contributions.

### ***Stakeholder submissions***

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

a) **NSW Police Force**, which object to the Application and note that:

- i. the public response is largely negative due to increased risk of disturbance complaints (related to noise, and patrons loitering intoxicated)
- ii. the applicant has shown a lack of experience in managing this type of venue, in part due to the turnover in management/licensee since opening for trade in June 2020
- iii. there is a risk of alcohol-related harm from an increase in trading hours.

b) **L&GNSW Compliance**, which notes that:

- i. a review of L&GNSW compliance records identified nil adverse findings against the Licensee
- ii. extended trading may increase the risk of alcohol-related harm occurring at any venue as liquor is sold or supplied for a longer period
- iii. it is recommended that the Licensee ensure the venue’s plan of management (POM) include information on how alcohol-related harm will be prevented on the licensed premises, what measures would be introduced to monitor patrons during extended hours, and strategies/controls to ensure extended hours do not detract from the amenity of community life.

c) **16 members of the public**, who object to the ETA application and note that:

- i. the amenity of a predominantly residential area will be further compromised from a potential increase in noise, smoke odour, litter and intoxicated patrons exhibiting anti-social behaviour
- ii. limited transport availability between 2am and 4am may lead to further disturbances from patrons loitering and/or arguing over access to taxis.

d) **Eight members of the public**, who object to the change of 6-hour closure period and note that:

- i. excessive noise under the current trading hours already provides a negative impact on residents, and will be exacerbated if changed to a 4am closing time
- ii. the premises is located in a predominantly residential area and a 4am closing

time is unwarranted.

23. The Authority has had regard to the petition in support of the grant of the ETA signed by 66 patrons.

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

- a) the updated plan of management includes an obligation on the Premises to conduct a perimeter check to clean up litter in the vicinity of the hotel and entrances to the residential apartments
- b) a security guard stationed outside the Premises from 12 midnight will ensure patrons leave without negatively impacting the local community
- c) the security guard will patrol the perimeter of the Premises until closed and all patrons have left the vicinity.

### ***Findings of concern***

25. Having regard to the submissions received, including the Applicant's reply submission, the Authority finds that there may be a risk that if the ETA were to be granted, liquor sold at the Premises would, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues.

26. The Authority is of the view that if the ETA were to be granted there may be a risk of frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises and the local and broader communities.

### ***Mitigating factors***

27. The Authority is aware that the risk may be somewhat mitigated by the following:

- a) existing noise and security conditions on the licence including the requirement to maintain a complaints register
- b) risk mitigating procedures in the plan of management (POM), including extra security to reduce the risk of affecting the amenity of the neighbourhood
- c) the applicant offering to provide extra security external to the venue in response to issues highlighted in the submissions raised against this application
- d) Hurlstone Park crime rates being lower than those of the Canterbury-Bankstown LGA, major cities and NSW across all usually considered offence types.

### **CONCLUSION**

28. Nevertheless, having considered the positive and negative social impacts that are likely to flow from granting the ETA, as well as the Applicant's efforts to mitigate the potential associated risks, the Authority has determined that the overall social impact of granting the ETA would be detrimental to the well-being of the local and broader communities.

29. Accordingly, the Authority has decided to refuse the application under section 48 and 49 of the Act.



Murray Smith

**Deputy 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 Hurlstone Park Hotel

### Application material

1. Completed ETA application dated 23 July 2021.
2. Completed Category B Community Impact Statement dated 23 July 2021, together with its attachments.
3. Gaming Plan of Management for the Premises dated July 2021.
4. Completed certification of advertising dated 11 February 2022.
5. Plan of Management for the Premises, dated February 2022.
6. Floor plan for the Premises, indicating the licensed area and area to which the Minors Area Authorisation applies and the proposed area to which the ETA will apply.
7. Completed change 6-hour closure period application dated 28 March 2022

### Development consent

8. Agreement made by the parties to Land and Environment Court of NSW proceeding in *Hurlstone Park Property Pty Ltd v Canterbury City Council* (case number 15/10562) filed 19 February 2016 pursuant to section 34(3)(a) of the *Land and Environment Court Act 1979* confirming that Development Application DA-102/2015 for the Premises is approved subject to the annexed conditions.
9. Draft Plan of Management for Grumpy's Hotel dated September 2015.

### Liquor & Gaming LiveData Report

10. L&GNSW Liquor & Gaming LiveData Report for the suburb of Hurlstone Park, generated on 1 March 2022, which sets out that:

#### Outlet diversification

- a. There are **3** authorised liquor licenses in Hurlstone Park. Of these, 3 are authorised to sell packaged liquor. This includes 1 packaged liquor licence, 1 registered club licence and 1 hotel licence.

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

- b. saturation of liquor licences in Hurlstone Park (**63.9**) is **lower** compared to Canterbury-Bankstown LGA (**71.0**), and **lower** compared to NSW (**199.2**)
- c. saturation of hotel licences in Hurlstone Park (**21.3**) is **higher** compared to Canterbury-Bankstown LGA (**9.5**), and **lower** compared to NSW (**28.2**)
- d. saturation of late trading outlets in Hurlstone Park (**0**) is **lower** compared to Canterbury-Bankstown LGA (**15.9**), and **lower** compared to NSW (**199.2**)
- e. clustering of liquor licences in Hurlstone Park (**11.7**) is **lower** compared to Canterbury-Bankstown LGA (**14.5**), and **lower** compared to NSW (**34.1**)
- f. clustering of hotel licences in Hurlstone Park (**1**) is **higher** compared to Canterbury-Bankstown LGA (**0.6**), and **lower** compared to NSW (**15**)
- g. clustering of late trading outlets in Hurlstone Park (**0**) is **lower** compared to Canterbury-Bankstown LGA (**5.4**), and **lower** compared to NSW (**66.5**)

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

In the year to December 2021:

- h. alcohol-related domestic assault in Hurlstone Park (**38**) was lower compared to the Canterbury-Bankstown LGA (**79.9**), and lower compared to all NSW (**223.9**)
- i. alcohol-related non-domestic assault in Hurlstone Park (**0**) was lower compared to the Canterbury-Bankstown LGA (**45.2**), and lower compared to all NSW (**169.6**)

- j. the percentage of all alcohol-related non-domestic assaults that occurred late at night (i.e. midnight to 6am) increased from 23.1% (56 of 242) in the year to December 2020 to 39.5% (68 of 172).
- k. alcohol-related offensive conduct in Hurlstone Park (**0**) was lower compared to the Canterbury-Bankstown LGA (**2.6**), and lower compared to all NSW (**44.8**)
- l. malicious damage to property in Hurlstone Park (**531.3**) was lower compared to the Canterbury-Bankstown LGA (**729.8**), and lower compared to all NSW (**1201.6**)

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

- m. In the period 2018/2019 the alcohol-attributable death rate in Canterbury-Bankstown LGA (**17.6**) was lower compared to the average across all of NSW (**19.7**)
- n. In the period 2018/2019-2019/2020 the alcohol-attributable hospitalisation rate in Canterbury-Bankstown LGA (**359.7**) was lower compared to the NSW average (**513.2**).

#### SEIFA

- o. According to the SEIFA Index of Relative Economic Advantage & Disadvantage, households in Hurlstone Park and Canterbury-Bankstown LGA are socio-economically advantaged and advantaged respectively (**Top 22%** and **Top 46 %** of NSW households, in terms of household income and residents in skilled occupations).

### **Stakeholder submissions**

- 11. Submission from a member of the public, dated 6 June 2021.
- 12. Submission from a member of the public, dated 15 June 2021.
- 13. Submission from a member of the public, dated 22 June 2021.
- 14. Submission from a member of the public, dated 27 June 2021.
- 15. Submission from a member of the public, dated 29 June 2021.
- 16. Submission from a member of the public, dated 30 June 2021.
- 17. Submission from Police, dated 26 August 2021.
- 18. Submission from a member of the public, dated 4 April 2022.
- 19. Submission from a member of the public, dated 4 April 2022.
- 20. Submission from a member of the public, dated 5 April 2022.
- 21. Submission from a member of the public, dated 6 April 2022.
- 22. Submission from a member of the public, dated 18 April 2022.
- 23. Submission from Liquor & Gaming Compliance, dated 27 April 2022.
- 24. Submission from a member of the public, dated 28 April 2022.
- 25. Petition in support of the grant of the ETA signed by 66 patrons.

### **Other relevant information**

- 26. Automated Gaming Machine Reporting – Pre-COVID.
- 27. The Premises' revenue breakdown for the period from July 2019 – June 2020.
- 28. The Premises' revenue breakdown for the period from July 2020 – June 2021.
- 29. Quarterly Breakdown – Pre-Duty Profit and Duty Analysis to June 2021.
- 30. Automated Gaming Machine Reporting – Current Data as at 25 March 2022.
- 31. Key liquor licence details for the Licence recorded as at 28 March 2022.
- 32. Correspondence between L&GNSW staff and the Applicant's representative between 18 August 2021 and 1 June 2022 in relation to the assessment of the Application.
- 33. Additional Information comprising late night patron profile surveys, late night problem gambling surveys.
- 34. The Authority's Statement of Reasons dated 13 January 2020 relating to the Authority's decision of 13 November 2019 to grant the Licence and Minors Area Authorisation, refuse the



associated ETA application, and approve the associated application to increase the gaming machine threshold of the Premises from 0 to 20.

35. The decision of the Land and Environment Court of NSW in *Vinson v Randwick Council* [2005] NSWLEC 142.

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

### Hurlstone Park 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.,
  - (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).

#### 14 Authorisation conferred by hotel licence

- (1) A hotel licence authorises the licensee to sell liquor by retail on the licensed premises for consumption on or away from the licensed premises.
- (2) **Trading hours for consumption on premises** The times when liquor may be sold for consumption on the licensed premises are as follows—
  - (a) during the standard trading period or at such other times as may be authorised by an extended trading authorisation,
  - (b) on 31 December in any year (but without limiting the operation of any extended trading authorisation)—from the start of the standard trading period for that day until 2 am on the next succeeding day,
  - (c) at any time on any day (including a restricted trading day) to a resident of the licensed premises or to a guest of such a resident while the guest is in the resident's company.
- (3) **Restricted trading days** Despite subsection (2)(a), 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 noon and 10 pm on that day.
- (3A) In the case of Christmas Day, liquor must not be sold for consumption on the licensed premises between noon and 10 pm unless it is sold with or ancillary to a meal served in a dining area on the licensed premises.
- (4) **Trading hours for consumption away from premises** Liquor may be sold for consumption away from the licensed premises during the standard trading period or at such other times as may be authorised by an extended trading authorisation.
- (4A) An extended trading 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.
- (5) **No take-away sales on restricted trading days** However, the sale of liquor for consumption away from the licensed premises is not authorised on a restricted trading day.
- (6) **Functions on other premises** A hotel licence also authorises the licensee to sell liquor by retail for the purposes of a function to be held on such other premises as the Authority may, on application by the licensee, authorise, but only for consumption on those premises and at such times as may be specified by the Authority in the licence.

**Note—**

Section 51 applies to an authorisation referred to in this subsection.

## 15 Hotel licence—general provisions

- (1) The following provisions apply in relation to a hotel licence (*the hotel primary purpose test*)—
  - (a) except as provided by section 15A, the primary purpose of the business carried out on the licensed premises must at all times be the sale of liquor by retail,
  - (b) the keeping or operation of gaming machines (as authorised under the *Gaming Machines Act 2001*) on the licensed premises must not detract unduly from the character of the hotel or from the enjoyment of persons using the hotel otherwise than for the purposes of gambling.
- (2) The authorisation conferred by a hotel licence does not apply unless the hotel primary purpose test is complied with in relation to the licensed premises.
- (3) Any premises (other than the actual hotel) that are authorised by the Authority for the sale of liquor under a hotel licence are, for the purposes of this Act, taken to be part of the licensed premises to which the licence relates.

## 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.

#### **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.

### **53 Authority may impose, vary or revoke licence conditions**

- (1) Without limiting any other provision of this Act, the Authority may at any time—
  - (a) on application by the Secretary or the Commissioner of Police, or
  - (b) on the Authority's own initiative,
 impose conditions on a licence.
- (1A) The conditions that may be imposed by the Authority on a licence under this section include, but are not limited to, conditions—
  - (a) prohibiting the sale or supply of liquor on the licensed premises before 10 am or after 11 pm (or both), and
  - (b) restricting the trading hours of, and public access to, the licensed premises.
- (2) The Authority may at any time—
  - (a) on application by the licensee, the Secretary or the Commissioner of Police, or
  - (b) on the Authority's own initiative,
 vary or revoke a condition of a licence that has been imposed (or taken to have been imposed) by the Authority under this Act.
- (3) An application under subsection (1) or (2) must—
  - (a) be in the form and manner approved by the Authority, and
  - (b) in the case of an application by a licensee—be accompanied by the fee prescribed by the regulations, and
  - (c) be accompanied by such information and particulars as may be prescribed by the regulations, and
  - (d) if required by the regulations to be advertised—be advertised in accordance with the regulations, and
  - (e) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.



- (4) The Authority must not impose a condition on a licence after it has been granted, or vary or revoke a condition that has been imposed (or taken to have been imposed) by the Authority, unless the Authority has—
  - (a) given the licensee a reasonable opportunity to make submissions in relation to the proposed decision, and
  - (b) taken any such submissions into consideration before making the decision.
- (5) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application under this section to vary or revoke a condition to which a licence is subject.
- (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 vary or revoke the licence condition.

#### **121 Minors in hotels in company of responsible adult**

- (1) The Authority may, on the application by a hotelier, grant an authorisation (***a minors area authorisation***) to enable the use by a minor of a specified part of the hotel while in the company of a responsible adult.

**Note—**

Section 51 applies to a minors area authorisation.

- (2) The specified part of the hotel to which a minors area authorisation applies may, if the authorisation so provides, comprise the whole of the hotel.