



Mr Brett Tobin
Hatzis Cusack Lawyers
[by mail to: bt@hatziscusack.com.au](mailto:bt@hatziscusack.com.au)

9 February 2023

Dear Mr Tobin

Application No.	1-8272624788
Applicant	Hugh Robert Wilcox Gillroy
Application for	Hotel – change of conditions
Licence name	Moonee Beach Hotel
Current trading hours	<u>Consumption on premises</u> Monday to Saturday 05:00 AM – 05:00 AM Sunday 05:00 AM – 12:00 AM <u>Takeaway</u> Monday to Sunday 05:00 AM – 12:00 AM
Premises	Lot 4 Pacific Hwy Moonee Beach NSW 2450
Legislation	Sections 3, 11A, 12, 14, 15, 15A, 40, 44, 45, 49, 51, 53 and 121 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority
Application for a Hotel – change of conditions– Moonee Beach Hotel**

The Independent Liquor & Gaming Authority considered the application above at its meeting on 13 October 2022, and pursuant to section 53 of the *Liquor Act 2007*, decided to **refuse** the application.

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, at
wendy.yeung.wye.kong@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 16 May 2022, Hugh Robert Wilcox Gillroy (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application for change licence conditions (“Application”) for the premises at Lot 4 Pacific Hwy, Moonee Beach NSW2450 (“Premises”).
2. The Authority considered the Application at its meeting on 13 October 2022 and decided to **refuse** the application under section 53 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 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.
5. 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”).
6. A list of the material considered by the Authority is set out in Schedule 1.

LEGISLATIVE FRAMEWORK

7. The Authority has considered the application in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018:
 - a) Section 3: Statutory objects of the Act and relevant considerations.
 - b) Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.
 - c) Sections 14, 15 and 15A: 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 49: General provisions in respect of ETAs.
 - h) Section 51: General provisions relating to licence-related authorisations.
 - i) Section 53: Provisions for the Authority to impose, vary or revoke licence conditions.
 - j) Section 121: General provisions relating to minors.
8. An extract of these sections is set out in Schedule 2.
9. The Authority has also had regard to its Guideline 6 in considering the overall social impact of approving the application pursuant to section 48 of the Act.

KEY FINDINGS

10. 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

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

- a) the Application has been validly made and meets the procedural requirements under sections 40 and 53 of the Act, and
- b) the proposed trading hours for the Premises meet the requirements under sections 11A, 12 and 14 of the Act in respect of trading and 6-hour closure periods.

Fit and proper person

12. Pursuant to section 45 of the Act, the Authority is 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.

Community impact

Local and broader communities

13. 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 Moonee Beach, and the relevant "broader community" comprises the Local Government Area ("LGA") of Coffs Harbour.

Licence density

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

- a) Moonee Beach has a **higher** saturation of hotel licences, and
- b) Coffs Harbour LGA has a **lower** saturation of hotel licences.

Crime data

15. The relevant BOCSAR data indicates that, in the year to March 2022:

- a) the Premises was not located within hotspots for incidents of alcohol-related assault, domestic and non-domestic assault, malicious damage to property or disorderly conduct.
- b) Moonee Beach recorded **lower** rates of alcohol-related domestic and non-domestic assault and malicious damage to property, compared to the NSW state average.
- c) Moonee Beach recorded a rate of alcohol-related disorderly conduct that closely **aligns** with the NSW state average.
- d) Coffs Harbour LGA recorded **higher** rates of alcohol-related assault, domestic and non-domestic assault, malicious damage to property and disorderly conduct, compared to the NSW state average.

Alcohol-related health data

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

SEIFA

17. The Authority notes that ABS Socio-Economic Index for Areas (“SEIFA”) data as at June 2022 indicates that Moonee Beach recorded a high level of socio-economic advantage and Coffs Harbour recorded an average level of socio-economic advantage compared to other suburbs and LGAs in NSW.

Business model

18. The Authority notes that the business model involves a full hotel with consumption on the premises as the primary service and the provision of food, gaming, and takeaway alcohol as ancillary offerings. Minors are permitted at the premises under the supervision of an adult.

Purported benefits

19. The Authority notes that no purported benefits have been provided by the Applicant.

Stakeholder submissions

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

- a) **NSW Police Force (Police)**, which notes that this application relates to a non-reviewable decision by the Authority and submits this is an attempt by the Applicant to undermine the Authority’s decision-making process to have the previous variation the current liquor licence application reviewed.

Police maintain the objections submitted in the previous submission relating to the ‘vary extended trading authorisation (ETA)’ application 1-8161101207, approved 13 April 2022, should remain current in reference to this current application. These include: the Premises having a history of being targeted by armed criminals; a significant number of robberies occurring in the local Police Districts; and many of these robberies occurring at isolated venues late at night. Police submit the current owners and management team had significantly changed the trading practices and were operating outside the agreed extended trading hours attracting a local criminal element to the Premises.

Police note the business owners did not adhere to the Coffs Harbour Liquor Accord agreement for members to action the approved 2:00 AM lockout and observed patrons being permitted to enter the Premises past 2:00 AM. Police also observed patrons entering the gaming area past 12:00 AM noting this area was excluded from the original approved ETA boundary plan with compliance breach notices being issued and ignored by the business owners.

Police submit the availability of alcohol contributes to increased crime in the Coffs Harbour area with the unavailability of public transport past 8:00 PM contributing to the alcohol related issues at the Premises. Police contend there should be consistency in relation to comparable conditions for similar hotel liquor licences in the Coffs Harbour region; this includes the imposition of licence conditions relating to the provision of a courtesy bus service for patrons to utilise where necessary and the provision of adequate security guards at the Premises.

Police contend they were not consulted in the development or the review of the current approved alcohol plan of management, with requests to receive a copy of the plan being ignored by the business owner. Police contend the Applicant breached section 4.6 of the alcohol plan of management and observed the CCTV system was not recording continually as per the licence condition requirement with several 'black spots' observed in the footage not covering all required areas at the Premises. Police also submit the Applicant is in breach of section 124 of the *Liquor Act 2007* with children being observed in the licensed bar area and further noted the minors area authorisation area excludes the bar areas at the Premises.

- b) **L&GNSW Compliance (Compliance)**, which notes they have supported the Police with their enquiries into the operation of the hotel and the venue's failure to operate in accordance with the authorised hours. Compliance recommends that the licensee ensure that the venue's liquor and gaming plan of management includes strategies to prevent intoxication, provide other means of transport and policies/ procedures for monitoring and reducing alcohol related crime.

Compliance notes that Police have a strong objection to the removal of the associated licence conditions and highlights the lack of Police resources, noting Moonee Beach is covered by Coffs Harbour Police Station, which is 13km away. Compliance also raises concerns with the licensee and business owner's alleged disregard to Police guidance in relation to the operation of the venue and gaming room.

Removing the licence condition relating to the courtesy bus may increase risk in the community. The Moonee Beach area's public transport needs are met by public buses with the last one leaving the area at approximately 8:30 PM on weekdays and 10:30 PM on a Friday. After this time the burden falls to a small fleet of taxis and ride share drivers centralised in Coffs Harbour. During peak periods and late at night there are extensive delays for public transport in the Moonee Beach Hotel area.

Compliance has been advised that Police believe the use of a courtesy bus at the venue, especially at closing time, and the current provision of security personnel at the premises assists in minimising the harm and disturbance occurring in the vicinity and wider neighbourhood and further notes that several other venues in the Coffs Harbour LGA have similar conditions imposed on the liquor licence.

21. The Authority has also had regard to the Applicant's submission in response submitting there is no jurisdictional impediment to the Authority exercising statutory power to grant this application. The Applicant contends the Police submission renews their objections on the same grounds as previously submitted application and the licence conditions should be proportionate to the risk of alcohol-related crime and anti-social behaviour in and around the relevant venue.
22. The Applicant notes Moonee Beach is not part of the entertainment precinct of Coffs Harbour and the venue is not located in or near any crime hotspots and submits the current condition requiring two security guards every night until close is excessive and disproportionate to the crime risks.
23. The Applicant contends that the hotel would voluntarily operate a courtesy bus on an 'on demand' basis and would agree to a security condition requiring not less than two security guards on Friday and Saturday nights from 9:00 PM until close and on other nights whenever live entertainment is provided, aligning with the licence conditions of the nearby Plantation Hotel.

Findings of concern

24. Having regard to the relevant statistics and the submissions received, including the Applicant's reply submission, the Authority finds that Moonee Beach has a licence density that is above state average, the Coffs Harbour LGA is subject to a relatively high level of alcohol-related domestic assault, and that there are some alcohol-related health issues in the broader community. The Authority considers that, if the change in conditions is granted, there is a risk that the liquor sold at the Premises would exacerbate the existing alcohol-related problems in the community and, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues in the local and broader communities, including undue disturbance of the quiet and good order of the neighbourhood of the licensed premises and the local and broader communities.

Mitigating factors

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

- a) the premises is not situated in a crime hotspot area;
- b) there are lower rates of alcohol related crime in the suburb of Moonee Beach compared to Coffs Harbour LGA and NSW, and
- c) the plan of management is in place to mitigate related risks.

CONCLUSION

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

27. The Authority is not satisfied that the other legislative criteria for the granting of the Application have been met.

28. Accordingly, the Authority has decided to refuse the application under section 53 of the Act.

Yours faithfully



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](#) and be accompanied by the fee prescribed by the regulations.

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

Schedule 1 – Material considered by the Authority

Moonee Beach Hotel

Application material

1. Plan of Management documents for the Premises, titled Alcohol Plan of Management and Security Management Plan and dated 30 August 2021.
2. Floor plan for the Premises, dated 13 April 2022, indicating the current licensed area.
3. Completed application dated 4 May 2022.
4. Completed certification of advertising dated 27 June 2022.
5. Plan of Management documents for the Premises, titled Alcohol Plan of Management and Security Management Plan and dated 30 August 2021.

Liquor & Gaming LiveData Report

6. L&GNSW Liquor & Gaming LiveData Report for the suburb of Moonee Beach, NSW 2450, generated on 27 June 2022, which sets out that:

Outlet diversification

- a) there are **5** authorised liquor licenses in Moonee Beach. This includes 2 on-premises licences, 2 packaged liquor licence and 1 hotel licence.

Outlet density (annual rate per 100,000 residents)

- a) saturation of hotel licences in Moonee Beach (45.96) is higher compared to Coffs Harbour LGA (17.78), and higher compared to NSW (26.83)

Offence data (annual rate per 100,000 residents)

In the year to March 2022:

- a) alcohol-related domestic assault in Moonee Beach (**89**) was lower compared to the Coffs Harbour (**257.6**), and lower compared to all NSW (**112.6**)
- b) alcohol-related non-domestic assault in Moonee Beach (**0**) was lower compared to the Coffs Harbour (**202.2**), and lower compared to all NSW (**85.7**)
- c) alcohol-related offensive conduct in Moonee Beach (**44.5**) was lower compared to the Coffs Harbour (**52.8**), and higher compared to all NSW (**44**)
- d) malicious damage to property in Moonee Beach (**266.9**) was lower compared to the Coffs Harbour (**887.3**), and lower compared to all NSW (**590.8**)

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

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

SEIFA

- a) According to the SEIFA Index of Relative Economic Advantage & Disadvantage, households in Moonee Beach have a higher level of socio-economic advantage (8 decile) and households in Coffs Harbour have an average level of advantage (5 decile) compared to households in NSW, in terms of household income and residents in skilled occupations).

Stakeholder submissions

7. Submission from NSW Police, dated 7 June 2022.
8. Submission from L&GNSW Compliance Branch, dated 28 June 2022.

Other relevant information

9. Correspondence between L&GNSW staff and the Applicant, including Annexure I, between 24 June 2022 and 8 August 2022 in relation to the assessment of the Application.
10. Copy of the previous Authority paper dated 13 April 2022.
11. Copy of the current licence report dated 9 May 2022.
12. Authority paper including Annexure A dated 24 August 2022.
13. Copy of licence report for Plantation Hotel dated 29 September 2022.

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

Moonee Beach 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 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 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.

15A Cessation of liquor sales during trading hours

- (1) **Extended trading periods** A hotelier may, at any time during the period that an extended trading authorisation is in force in relation to the licensed premises—
 - a. cease to sell or supply liquor on the licensed premises, and
 - b. continue to provide, or make available, other services and facilities on the licensed premises (such as food and non-alcoholic beverages, entertainment and the use of the premises for conferences or meetings and for gambling activities that are otherwise permitted on the premises).
- (2) **Authority may approve of cessation of liquor sales during standard trading period** A hotelier may, at any time during the standard trading period—
 - a. cease to sell or supply liquor on the licensed premises, and
 - b. continue to provide, or make available, other services and facilities on the licensed premises (such as food and non-alcoholic beverages, entertainment and the use of the premises for conferences or meetings and for gambling activities that are otherwise permitted on the premises), but only with the approval of the Authority.
- (3) An application for the approval of the Authority under subsection (2) may be made by the hotelier concerned. Any such application must be accompanied by the fee prescribed by the regulations.
- (4) The Authority may give its approval only if it is satisfied that—
 - a. the operation of gaming machines on the licensed premises during the period to which the approval relates will not detract unduly from the character of the hotel, and
 - b. gambling activities on the licensed premises will be conducted in a responsible manner.
- (5) **Cessation of liquor sales during standard trading period without gambling activities** A hotelier may, at any time during the standard trading period—
 - (a) cease to sell or supply liquor on the licensed premises, and
 - (b) continue to provide, or make available, other services and facilities on the licensed premises (such as food and non-alcoholic beverages, entertainment and the use of the premises for conferences or meetings).

However, it is a condition of the licence that the licensed premises must not be used for the purposes of any gambling activities during any such time that liquor is not being sold or supplied unless an approval is in force under subsection (2) in relation to the licensed premises.

40 Licence applications

- (1) Licence applications are to be made to the Authority.

- (2) An application for a licence may be made by:
 - (a) an individual, or
 - (b) a corporation, or
 - (c) in the case of a club licence—a club (or a person on behalf of a club) that meets the requirements specified in section 10 (1) of the Registered Clubs Act 1976.
- (3) An application for a licence may not be made by:
 - (a) an individual who is under the age of 18 years, or
 - (b) a person who is disqualified from holding a licence or who holds a suspended licence, or
 - (c) an individual who is a controlled member of a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012.

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

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

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

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

44 Submissions to Authority in relation to licence applications

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

45 Decision of Authority in relation to licence applications

- (1) The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (2) The Authority may, in such circumstances as the Authority considers appropriate, treat an application for a licence as having been withdrawn.
- (3) The Authority must not grant a licence unless the Authority is satisfied that:
 - (a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and

- (b) practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and
- (c) if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates—that development consent or approval is in force.

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

- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.
- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
 - (a) that the person:
 - (i) is a member of, or
 - (ii) is a close associate of, or
 - (iii) regularly associates with one or more members of,
 a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and
 - (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.
- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
 - (a) is of good repute, having regard to character, honesty and integrity, and
 - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.
- (7) In deciding whether or not to grant a licence, the Authority must consider whether, if the licence were granted, it
 - would provide employment in, or other opportunities for, any of the following—
 - (a) the live music industry,
 - (b) the arts sector,
 - (c) the tourism sector,
 - (d) the community or cultural sector.

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.