

# NSW Independent Liquor & Gaming Authority

Northcoast Property Holdings Pty Ltd Toormina Hotel	Executive Director, Regulatory Operations & Enforcement L&GNSW
--	---

15 October 2024

Dear Sir/Madam

Reference No.	DOC24/227195
Applicant	Northcoast Property Holdings Pty Ltd
Application for	Review of a decision made under section 54 of the <i>Liquor Act 2007</i> by a delegate of the Secretary of the (then) NSW Department of Enterprise, Investment and Trade
Licence Name	Toormina Hotel
Premises	Lot 1, Minorca Place, Toormina, NSW 2452
Date of reviewable decision	14 July 2023
Legislation	Section 36A of the <i>Gaming and Liquor Administration Act 2007</i>

## Decision on application to review delegated decision of the Secretary Toormina Hotel, Toormina

### Our decision

At a meeting held on 21 August 2024, we decided to **confirm** the delegate’s decision, made under section 54 of the *Liquor Act 2007* (the Act), for the Toormina Hotel (the venue) dated 14 July 2023, in respect of the imposition of CCTV and security conditions.

### Background

On 11 August 2023, the Independent Liquor & Gaming Authority (the Authority) received an application, under section 36A of the *Gaming and Liquor Administration Act 2007* (the GALA Act), to review a decision made by Mr Dimitri Argeres, A/Executive Director, Regulatory Operations and Enforcement, as a delegate of the Secretary of the Department of Enterprise, Investment and Trade (the Secretary).

The delegate’s decision, made on 14 July 2023, imposed four conditions on the licence of the Toormina Hotel (the venue) under section 54 of the *Liquor Act 2007* (the Act), in relation to plan of management, closed circuit television (CCTV), crime scene preservation and security.

The review applicant seeks that the Authority vary the delegate’s decision in relation to two conditions imposed, CCTV and security conditions.

## **Stay application**

As part of the review application, the applicant also sought a stay of the operation of the security condition, undertaking to comply with an amended condition requiring two guards from 8pm. The Authority determined not to grant a stay, and the applicant was informed on 23 November 2023.

## **The delegate's decision**

On 15 February 2023, Liquor & Gaming NSW received a submission from NSW Police requesting that a delegate of the Secretary consider imposing five conditions on the venue's licence, relating to plan of management, closed circuit television (CCTV), crime scene preservation, security and courtesy bus.

Police submitted that the venue has demonstrated poor management of violent incidents, crime scene preservation procedures and patron intoxication resulting in unacceptable risks. Police further submitted that the CCTV system at the venue was inadequate as an evidence-gathering tool and recommended that the proposed conditions were necessary and appropriate to manage the escalation of violent incidents.

On 14 July 2023 a delegate of the Secretary of the NSW Department of Enterprise, Investment and Trade determined, utilising powers under section 54 of the Act, to impose four conditions on the licence of the venue in relation to plan of management, closed CCTV, crime scene preservation and security. In making this decision the delegate was satisfied that sufficient evidence had been provided by the Police to demonstrate that the four conditions were necessary and appropriate.

The delegate detailed the following reasons for imposing the CCTV and security conditions that are under review:

- CCTV: instances where CCTV coverage and quality resulted in the inability by Police to identify offenders, as well as instances where the venue failed to provide footage in a timely manner were considered. While the manager agreed to a version of the CCTV condition, the manager proposed the condition include the provision of footage "within a reasonable time". Given Police instances of issues and delays, the delegate determined to include the L&GNSW standard 24-hour timeframe instead to ensure clear expectations.
- Security: Police presented several incidents where security and management at the venue failed to prevent and manage alcohol-related harm. Consideration was given to the venue's proposal that one, rather than two, security be required, however, the delegate determined the risk was on-going and that two security were required to manage it.

## **Submissions**

The review application was accompanied with a submission by the review applicant. The submission is detailed below.

Submission made with the review application:

- The CCTV condition should be varied to permit the provision of footage within a reasonable time, rather than 24 hours. The applicant submits the wording is consistent with the requirements for notices issued under section 21 of the Act and reflects Parliament's appreciation of the varied circumstances within which CCTV may need to be provided.
- This change permits flexibility and adaptation to the circumstances, such as requests that include the review and tracking or multiple camera angles. They also acknowledge that there are circumstances where 24-hour provision is necessary.

- The security condition beginning at 6pm is not proportionate to risks of alcohol-related violence during the earlier times, proposing that 8pm is more appropriate.
- As determined in the expert report commissioned by the venue, the patron profile of the venue is skewed towards dinner and family groups during mealtimes and does not engage in high-risk entertainment, such as nightclub activities. This profile suggests that higher patron numbers would not likely result in a higher risk and that patrons are more likely to focus on food or gaming.
- The applicant further disputes the inclusion of children as patrons as they are not permitted to consume alcohol, therefore not creating any additional risk. The applicant seeks that the condition provide clarification on this point.

On 5 March 2024, the Office of ILGA (the OILGA) invited further submissions in response to the review application. Submissions were received from Liquor & Gaming NSW and NSW Police. No submissions were received from Council during the submission period. These submissions are detailed below, as well as a submission in response from the review applicant.

Submission on behalf of L&GNSW, received on 2 April 2024:

- The review application notes that the CCTV condition is largely in a form that was agreed to prior to the decision and that the current condition wording requiring footage to be provided “within 24 hours” is contained within the standard CCTV conditions adopted by the Independent Liquor & Gaming Authority. L&GNSW submits that the imposition of the standard CCTV condition is an appropriate response to incidents where the venue failed to provide CCTV footage to Police in a timely manner.
- The amendment of security requirements from 6:00pm to 8:00pm was previously submitted to the delegate. The delegate noted submissions from Police that out of six violent incidents at the venue, three occurred prior to 8:00pm.
- The delegate determined the risk of further alcohol related harm to be appropriately mitigated by having two security guards on Friday and Saturday nights. In consideration of higher patron numbers earlier in the evening for dining, the delegate considered it necessary that security be deployed from 6pm.
- The consideration to exclude children from patron numbers for the purposes of condition 10100 is unnecessarily complicated. The amendment would be unique to this licence, which could ultimately make both enforcement of, and compliance with, the condition more difficult.
- L&GNSW acknowledge that while children themselves present a lower risk, they are more vulnerable to harm that may arise at licensed premises. Several violent incidents have occurred in the early hours of the evening when children are more likely to be present. Excluding minors from consideration in this condition has potential to result in inadequate security during these periods.
- The objects of the Act include the need to minimise harm arising from violence and anti-social behaviour. By removing the requirement to have sufficient security during times where patrons’ attendance is higher, the risk of unintended consequences for all patrons, including children, remains. The requirements of the security condition are in place to mitigate risk and lower any alcohol related harm that may arise.

Submission on behalf of Police, received on 2 April 2024:

- They support the decision of the Secretary’s delegate overall, including the wording and timeframes used in the CCTV condition, noting it is consistent with the standard conditions.

- Police referred to previously provided information regarding reported assaults at the venue, noting incidents that occurred at 5:30pm and 5:50pm. They support the delegate's decision to impose security from 6:00pm and encouraged the venue to consider security from 5:00pm.
- Police do not support the separation of categories of patrons.
- Regarding the acknowledgement of children as patrons, Police recognise that the Act does not provide a definition, however, referred to the Oxford dictionary definition 'a customer of a shop, hotel, etc, especially a regular one'. The provision of equipment and amusement for children supports their position as patrons and customers.
- The monitoring of minors within a venue is a central and important risk factor for licensees, indicated through the need to obtain authorisation to allow minors access to enter the hotel, apart from the dining area. The addition of minors to a hotel increases the workload of a security guard, as minors can be victims of crime within licensed premises. Being accompanied by a parent or responsible adult alone doesn't ensure compliance with liquor legislation and requirements. Police referenced incidents in 2021 and 2023 involving minors and concerns regarding relaxed attitudes at the venue in relation to minors.

Submission on behalf of review applicant, received on 18 April 2024, in response to the L&GNSW and Police submissions:

- The submission reiterated that consideration was needed regarding the timeframe for the provision of CCTV, what time security should be engaged and whether children should be counted as patrons for the purposes of a security condition.
- The decision by the delegate to impose the 24-hour requirement in the CCTV condition appears standard and a matter of policy. Submissions from the venue should be given weight beyond uniformity.
- The force of the applicant's submission is reflected in the Police submission of 3 April 2023 during the section 54 decision submission process where they agreed to the use of reasonable time, rather than 24-hours. Police have since revised their position, agreeing with L&GNSW, and citing the prevention of confusion for the applicant.
- Acknowledged both Police and L&GNSW seek the commencement of security at 6:00pm.
- The applicant noted that the recent 15-month assault data provided by Police does not include any incidents during the 6:00pm – 8:00pm Friday and Saturday period.
- Evidence from the expert report, based on 6-days of observations at the venue, indicates that the 6:00pm-8:00pm period is primarily family groups and dinner. These people are less likely to be affected by alcohol and present less risk.
- The applicant submits that children should not be included for the purposes of patron numbers for additional security required by the imposed condition.
- The need for security stems primarily from those consuming alcohol. When children are present, the total number of persons in a venue consuming alcohol are lessened, reducing the risk.
- The applicant disputes the claim by Police that identifying minors for patron counts would cause confusion, noting that it is the licensee's obligation to identify these persons for supervision requirements.
- The applicant also disputes the claim by Police that the venue has a "lax attitude to monitoring minors". The applicant provided communications with Police explaining a recent incident and the applicant submits the Police response to the incident is unbalanced and unfair.
- The modest relaxation of the conditions are a more measured approach and proportionate response to risk and the facilitation of a balanced liquor industry.

## **Our findings**

In accordance with the powers under section 36A(4) of the GALA Act, we confirm the delegate's decision for the venue, dated 14 July 2023, in respect of the imposition of CCTV and security conditions.

After considering the material on which the delegate made their decision, the submissions of the applicant, L&GNSW, and Police in response to the review application, we agree with the delegate's decision that there was sufficient evidence to make a finding that it is necessary and appropriate to impose conditions in relation to CCTV and security.

In respect of the CCTV condition, we have considered the evidence and submissions provided and have determined that the 24-hour provision requirement was imposed appropriately as a direct response to the venue's previous non-compliance when providing CCTV footage and the subsequent impact to Police investigation. The 24-hour timeframe ensures that CCTV footage is provided in a timely manner, reducing the risk of impact or delay to Police or L&GNSW investigations. A clear timeframe for the venue will also provide them guidance for the development of policies and procedures to manage these requirements, as well as offering an enforceable condition for regulators.

We agree that instances of violence during earlier trade were indicative of the need to impose the security condition and that the security condition be implemented from 6:00pm. We acknowledge the venue's submissions that there is a prevalence of families with accompanying minors during this period but do not agree that this negates the need for security during this time. Security presence during these times will reduce the risk to these more vulnerable patrons.

Finally, we do not support the proposed changes to the condition to exclude minors when calculating patron numbers. We consider the safety of patrons, especially minors, to be of the highest priority and that the separation of patron counts would likely result in confusion and the possible under provision of security personnel. Further, the venue did not provide any additional processes to support the management of the proposed change, and we accept the concerns raised regarding the implementation and possible repercussions to the safety of minors at the venue.

## **Relevant legislation**

We are satisfied that the decision under section 54 of the Liquor Act, to which the review application relates, is a reviewable decision for the purposes of section 36A(1) of the GALA Act and that the review applicant is able to lodge the review application in accordance with section 36A(2) and section 36A(2A) of the GALA Act.

We are satisfied that the decision to confirm the delegate's decision has been made in accordance with the Authority's powers under section 36A of the GALA Act.

## **The material we considered**

In determining the review application, the following material was considered:

### *Material before the delegate:*

- Original material that was before the decision maker at the time of imposing the conditions under section 54, including submissions from Police and the venue
- liquor licence for Toormina Hotel, Northcoast Property Holdings Pty Ltd, (LIQH400123132) dated 4 July 2022

*Review application and submissions:*

- review application dated 11 August 2023 and supporting documents
- submission from L&GNSW in response to the application for review, dated 2 April 2024
- submission from Police in response to the application for review, dated 2 April 2024
- submission from the review applicant in response to submissions, dated 18 April 2024

**Decision to be published**

This decision will be published on the website.

**If you have any questions**

Please contact the Office of ILGA at [office@ilga.nsw.gov.au](mailto:office@ilga.nsw.gov.au) if you have any questions.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Caroline Lamb'.

Caroline Lamb  
**Chairperson**  
**Independent Liquor & Gaming Authority**