



Mr Bobby Stefanovski  
Liquor Advisory Services  
By email to: [bobby.las@bigpond.com](mailto:bobby.las@bigpond.com)

8 August 2022

Dear Mr Stefanovski

<b>Application No.</b>	APP-0008940503
<b>Application date</b>	4 July 2021
<b>Applicant</b>	Peter Andrew Chivas
<b>Application for</b>	Hotel (general bar) with minors area authorisation and extended trading authorisation
<b>Licence name</b>	Duck Duck Goose Dumpling Bar
<b>Proposed trading hours</b>	<u>Entire premises</u> Monday to Thursday 10:00 AM – 12:00 AM Friday to Saturday 10:00 AM – 02:00 AM Sunday 10:00 AM – 10:00 PM
<b>Premises</b>	439 High Street PENRITH NSW 2750
<b>Legislation</b>	Sections 3, 11A, 12, 14-17, 40, 44, 45, 48, 49, 51 and 121 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority  
Application for a hotel (general bar) with extended trading authorisation and minors area authorisation – Duck Duck Goose Dumpling Bar**

The Independent Liquor & Gaming Authority considered the application above, and decided on 13 October 2021 to **approve** the application under sections 45, 51 and 121 of the *Liquor Act 2007*, subject to imposing conditions as set out in Schedule 1.

**Statement of reasons**

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

If you have any questions, please contact the case manager, Glenn Barry at [glenn.barry@liquorandgaming.nsw.gov.au](mailto:glenn.barry@liquorandgaming.nsw.gov.au)

Yours faithfully

Philip Crawford

**Chairperson**

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

## STATEMENT OF REASONS

### DECISION

1. On 4 July 2021, Mr Andrew Peter Chivas (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application (“Application”) for a new hotel (general bar) licence (“Licence”) with extended trading authorisation (“ETA”) and minors area authorisation (“MAA”) for the premises at 439 High Street, PENRITH NSW 2750 (“Premises”).
2. The Authority considered the Application at its meeting on 13 October 2021 and decided to grant the Licence/ETA/MAA under sections 45, 51 and 121 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the Act and the Liquor Regulation 2018.
4. A preliminary notification of this decision was sent to the Applicant on 30 November 2021, together with the licence document for the Premises.

### MATERIAL CONSIDERED BY THE AUTHORITY

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

### LEGISLATIVE FRAMEWORK

9. The Authority has considered the Application in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018:
  - a) Section 3: Statutory objects of the Act and relevant considerations.
  - b) Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.
  - c) Sections 14-17: 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 121: Minors in hotels in company of responsible adult.
10. An extract of these sections is set out in Schedule 3.

## **KEY FINDINGS**

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

### **Validity, procedural and trading hour requirements**

12. The Authority is satisfied on the material before it that:
- a) the Application has been validly made and meets the procedural requirements under sections 40 and 51 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.
13. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements.

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

14. Pursuant to section 45 of the Act, the Authority is also satisfied that:
- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
  - b) practices would be in place from the commencement of licensed trading at the Premises to facilitate the responsible serving of alcohol, having regard to the plan of management documentation for the Premises and the conditions to be imposed on the licence, and
  - c) the requisite development consent is in force, based on Development Application DA21/0321 in respect of the Premises, issued by Penrith City Council on 24 June 2021.

### **Community impact**

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

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

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

16. The Authority notes that, compared to the NSW state average:
- a) Penrith has a higher saturation of hotel licences, while Penrith LGA has a lower saturation of hotel licences
  - b) Penrith and Penrith LGA have a lower clustering of hotel licences.

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

17. The relevant BOCSAR data indicates that, for the year to March 2021:

- a) the Premises is located within hotspots for incidents of alcohol-related assault, alcohol-related non-domestic assault, offensive conduct and malicious damage to property;
- b) Penrith recorded higher rates across all relevant offence types typically considered by the Authority, compared to the NSW state average
- c) Penrith LGA recorded higher rates of alcohol-related assault (domestic and non-domestic) and malicious damage to property, and lower rates of alcohol-related offensive conduct compared to the NSW state average.

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

18. The most recent HealthStats NSW data available at the time of the Authority's decision indicates that Penrith LGA recorded a higher than average level of alcohol-attributable deaths for the period 2017-2018, and a lower than average level of alcohol-attributable hospitalisations for the period 2017-2019.

### ***SEIFA***

The Authority notes that ABS Socio-Economic Index for Areas ("SEIFA") data as at 2016 indicates that the suburb of Penrith and the Penrith LGA were disadvantaged and advantaged respectively compared to other suburbs and LGAs in NSW.

### ***Business model and purported benefits***

19. The Authority notes:

- Penrith City Council raises no concerns with the Application proposals as indicated by the approval of the Applicant's development consent
- The proposed business model will provide a contemporary night-time venue within the Penrith CBD, with a mixed intended purpose of food, beverage and entertainment offerings. The Applicant contends the entertainment offering will include live performances in the form of soul and jazz performers, providing local musicians with a new venue at which to perform
- The Applicant contends that the premises will be a 'destination' food venue offering a 'high end' dumpling and bao bar food offering. This will be the first of its kind into the Penrith market
- The layout was architecturally designed and aims to bring a modern Asian theme to the local and broader communities of Penrith
- The Applicant is experienced in operating several hospitality businesses across Western Sydney.

### ***Stakeholder submissions***

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

- a) **NSW Police Force** ("Police"), which cites no objections in relation to the Application and contended the Premises should be managed under a plan of management.
- b) **Penrith City Council** ("Council"), which cites no objection to the granting of the liquor licence citing the Application was consistent with the associated development consent.

- c) **L&GNSW Compliance**, which notes that a search of records did not identify any adverse findings regarding this Application.
- d) **Transport for NSW** (“TfNSW”), which cites no objection to the grant of the Licence, however, recommends the Applicant participate in community engagement activities including the liquor accord and accesses the TfNSW website to provide important information to customers in relation to the provision of transport alternatives, drink driving and safe drinking practices.
- e) **One member of the public**, which detailed support for the Application, submitting the business would be beneficial for the development of the area.

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

- a) the Applicant acknowledges receipt of the submissions provided noting there were no agency objections and submitted that no further comments would be provided in relation to submissions.
- b) agrees with the summary provided by L&GNSW Compliance including the concerns raised in regard to the ETA, however, contended these issues had been sufficiently addressed in the Application.

***Findings of concern***

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

- a) relevant crime rates in Penrith are significantly higher than the comparable NSW averages
- b) the Premises is located in crime hotspots for all offences considered by the Authority
- c) licence density for all licence types considered by the Authority is notably higher than NSW averages
- d) there are some alcohol-related health issues in the broader community

23. The Authority considers that, if the Licence is granted, there is a risk that the liquor sold at the Premises would exacerbate the existing alcohol-related problems in the community and, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues in the local and broader communities

***Mitigating factors***

24. On balance, the Authority is satisfied that the risks associated with the license are sufficiently mitigated by the following:

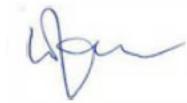
- a) the risk mitigation strategy proposed by the Applicant in its plan of management
- b) absence of any objections from the public or agency stakeholders, with one public submission in support
- c) generally lower than average liquor licence clustering in the local and broader community;
- d) an RSA marshal and security staff to be rostered on evenings from 7:00 PM when licence trades past midnight;
- e) SEIFA ranking in the broader community is above average;

- f) lower alcohol-attributable hospitalisations in the LGA compared to NSW;
- g) experience of the Applicant as an operator of multiple licensed premises with sound compliance records
- h) the Premises will provide Penrith with a diverse food and entertainment offering  
harm minimisation measures set out in the plan of management and licence conditions as set out in Schedule 1.

## CONCLUSION

25. Having considered the positive and negative social impacts that are likely to flow from granting the Licence, ETA and MAA, the Authority is satisfied that the overall social impact of granting the Licence, ETA and MAA would not be detrimental to the well-being of the local and broader communities.
26. The Authority is also satisfied that the other legislative criteria for the granting of the Licence, ETA and MAA have been met.
27. Accordingly, the Authority has decided to grant the Licence, ETA and MAA under section 45, 49 and 121 of the Act.

Yours faithfully



Philip Crawford

**Chairperson**

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

### Important Information:

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

An application to NCAT must be made within 28 days of notice of this decision being published on the Liquor & Gaming NSW website <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

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

## Schedule 1 – Licence conditions to be imposed

### Duck Duck Goose Dumpling Bar

1. Section 11A of the Liquor Act 2007 applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 4:00 AM and 10:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. Restricted trading & NYE (std)  
Consumption on premises  
Good Friday 12:00 noon – 10:00 PM  
Christmas Day 12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)  
December 31<sup>st</sup> Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later  
  
Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.
3. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining the licence.
4. The premises is to be operated at all times in accordance with the Plan of Management dated 11 May 2021 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. Closed-circuit television system
  - 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
    - a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
    - b) recordings must be in digital format and at a minimum of ten (10) frames per second,
    - c) any recorded image must specify the time and date of the recorded image,
    - d) the system's cameras must cover the following areas:
      - i. all entry and exit points on the premises,
      - ii. the footpath immediately adjacent to the premises, and
      - iii. all publicly accessible areas (other than toilets) within the premises.
  - 2) The licensee must also:

- a) keep all recordings made by the CCTV system for at least 30 days,
- b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to sub-clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
- c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

#### 7. Incident Register

- 1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:
  - a) any incident involving violence or anti-social behaviour occurring on the premises,
  - b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
  - c) any incident that results in a person being turned out of the premises under section 77 of the Act,
  - d) any incident that results in a patron of the premises requiring medical assistance.
- 2) The licensee must, if requested to do so by a police officer or inspector:
  - a) make any such incident register immediately available for inspection by a police officer or inspector, and
  - b) allow a police officer or inspector to take copies of the register or to remove the register from the premises.
- 3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

#### 8. Crime Scene Preservation

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

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

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

9. Extended Trading Authorisation: Whole of the licensed premises.
10. Minors Area Authorisation: Whole of the licensed premises excluding bar area.

## Schedule 2 – Material considered by the Authority

### Duck Duck Goose Dumpling Bar

1. Plan of Management documents for the Premises, titled Duck Duck Goose Dumpling Bar Plan of Management and dated 11 May 2021.
2. Completed Category B Community Impact Statement dated 29 June 2021.
3. Completed application dated 4 July 2021.
4. Completed certification of advertising dated 19 July 2021.
5. ASIC business records in relation to the Applicant, HUNGRY BAKER HOSPITALITY PTY LTD and PERISHER HOLDINGS PTY LIMITED dated 11 May, 4 July 2021 and 26 July 2021.
6. Floor plan for the Premises indicating the proposed licensed area, and the area to which the ETA and MAA will apply.

### Development consent

7. Notice of determination issued by Penrith City Council on 24 June 2021, approving development application DA21/0321 for the Premises.

### Liquor & Gaming LiveData Report

8. L&GNSW Liquor & Gaming LiveData Report for the suburb of Penrith, generated on 26 July 2021, which sets out that:

#### Outlet diversification

- a. There are **78** authorised liquor licences in Penrith. Of these, **6** are hotel licences, **1** hotel-general bar licence, **1** small bar licence, **57** are on-premises licences, **8** are packaged liquor licences and **5** registered club liquor licences.

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

- b. saturation of hotel licences in the suburb of Penrith (**52.7**) is **higher** compared to Penrith LGA (**10.2**), and **higher** compared to NSW (**28.4**)
- c. clustering of hotel licences in the suburb of Penrith (**3.6**) is **higher** compared to Penrith LGA (**1.5**), and **lower** compared to NSW (**15.3**).

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

In the year to March 2021:

- d. alcohol-related domestic assault in the suburb of Penrith (**271.4**) was higher compared to Penrith LGA (**140.9**), and higher compared to all NSW (**112.9**)
- e. alcohol-related non-domestic assault in the suburb of Penrith (**536.1**) was higher compared to Penrith LGA (**102.8**), and higher compared to all NSW (**89.9**)
- f. alcohol-related non-domestic serious assault in the suburb of Penrith (**198.6**) was higher compared to Penrith LGA (**43.2**), and lower compared to all NSW (**32.5**)
- g. alcohol-related offensive conduct in the suburb of Penrith (**92.7**) was higher compared to Penrith LGA (**11.7**), and higher compared to all NSW (**22.6**)
- h. malicious damage to property in the suburb of Penrith (**2766.8**) was higher compared to Penrith LGA (**877.6**), and higher compared to all NSW (**649.5**).

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

- i. In the period 2017/2018 the alcohol-attributable death rate in Penrith LGA (**26**) was higher compared to the average across all of NSW (**20**)
- j. In the period 2017/2018-2018/2019 the alcohol-attributable hospitalisation rate in Penrith LGA (**486.2**) was lower compared to the NSW average (**542.1**).

#### SEIFA

- k. According to the SEIFA Index of Relative Economic Advantage & Disadvantage, households in the suburb of Penrith and Penrith LGA are socio-economically disadvantaged and advantaged respectively (**Bottom 17%** and **Top 30%** of NSW households, in terms of household income and residents in skilled occupations).
- l. In the suburb of Penrith, Aboriginal & Torres Strait Islanders comprise 5.4% of the population.

#### **Stakeholder submissions**

9. Submission from Transport for NSW, dated 2 July 2021.
10. Submission from Penrith City Council, dated 7 July 2021.
11. Submission from a member of the public, dated 8 July 2021.
12. Submission from NSW Police, dated 12 July 2021.
13. Submission from L&G Compliance, dated 22 July 2021.

#### **Other relevant information**

14. Statement of Environmental Effects from Stimson Urban & Regional Planning dated 4 May 2021.
15. Correspondence between L&GNSW staff and the Applicant between 16 July 2021 and 8 September 2021 in relation to the assessment of the Application.
16. Liquor licence locations map compiled in 2021.
17. 5-year crime comparison data compiled in 2021.
18. Proposed business food menu compiled in 2021.
19. Google map images extracted from the Google website compiled in 2021, showing the location and photos of the Premises in map view and street view.

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

### Duck Duck Goose Dumpling Bar

#### 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—
- i. cease to sell or supply liquor on the licensed premises, and
  - ii. 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.

**16 Hotel licence may be designated as a general bar licence**

- (1) The Authority may, in granting a hotel licence, designate the licence as a general bar licence and specify in the licence that it is a general bar licence.
- (2) The designation of a hotel licence as a general bar licence cannot be changed.
- (3) It is not lawful to keep or operate gaming machines on the premises to which a general bar licence relates. Accordingly, the keeping or operation of gaming machines on any such premises cannot be authorised under the *Gaming Machines Act 2001*.
- (4) Despite section 14, a general bar licence does not authorise the sale or supply of liquor for consumption away from the licensed premises at any time.

**17 Hotel licence—miscellaneous conditions**

(1) **Cash advances prohibited** A hotelier must not—

- (a) provide a cash advance in the hotel, or
- (b) permit a cash advance to be provided in the hotel on behalf of the hotelier, except as a prize or bonus won as a direct or indirect consequence of participating in a form of gambling that may lawfully be conducted on the licensed premises.

(2) **Hotels must be open to general public** The business carried out under a hotel licence must not be, or include a business that is limited to the sale or supply of liquor only—

- (a) to persons who have been invited to use or attend the hotel, or
- (b) to a particular class, or particular classes, of persons using or attending the hotel.

(2A) To avoid doubt, subsection (2)—

- (a) does not prevent a hotel being closed to the general public because it has been booked for a private function including, for example, a wedding or party, but
  - (b) does not allow it to be closed to the general public for use as a members-only premises or club, or for other exclusive use on a recurrent basis.
- (3) Subsection (2) is subject to such exceptions as may be approved by the Authority on a temporary basis in relation to any particular hotel or to such other exceptions as may be prescribed by the regulations. Also, subsection (2) does not apply to the extent that is necessary to comply with any other provision of this Act or with any other law.

- (4) **Food must be made available** Liquor may only be sold or supplied in a hotel if food of a nature consistent with the responsible sale, supply and service of alcohol is made available whenever liquor is sold or supplied on the premises for consumption on the premises. If any requirements are prescribed by the regulations in relation to the nature of any such food, those requirements must be complied with.
- (5) **Prohibition on residents and employees drinking liquor in bar area outside trading hours** Liquor may not be sold or supplied to, or consumed by, a resident or an employee of the licensee in a bar area of the hotel except at the time when liquor is authorised to be sold or supplied to other persons in that or any other bar area of the hotel. This subsection has effect despite any other provision of this Act, but is subject to subsection (6).
- (6) The Authority may, on application by a hotelier, authorise the use of a bar area of the hotel for the sale, supply or consumption of liquor exclusively to, or by, residents at a time when liquor may not otherwise be sold or supplied in a bar area of the hotel.

**Note—**

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

#### **40 Licence applications**

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

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

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

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

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

#### **44 Submissions to Authority in relation to licence applications**

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

#### **45 Decision of Authority in relation to licence applications**

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

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

- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.
- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
  - (a) that the person:
    - (i) is a member of, or
    - (ii) is a close associate of, or
    - (iii) regularly associates with one or more members of,a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and

- (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.
- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
  - (a) is of good repute, having regard to character, honesty and integrity, and
  - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.
- (7) In deciding whether or not to grant a licence, the Authority must consider whether, if the licence were granted, it would provide employment in, or other opportunities for, any of the following:
  - (a) the live music industry,
  - (b) the arts sector,
  - (c) the tourism sector,
  - (d) the community or cultural sector.

#### **48 Community impact**

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

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

  - (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
  - (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,

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

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

(3) A relevant application must be accompanied by a community impact statement.

(3A) However, a small bar application is not required to be accompanied by a community impact statement if:

- (a) development consent is required under the Environmental Planning and Assessment Act 1979 to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
- (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.

(3B) For the purposes of subsection (3A), a **small bar application** means any of the following:

- (a) an application for a small bar licence,
- (b) an application for approval to remove a small bar licence to other premises,
- (c) an application for an extended trading authorisation for a small bar,
- (d) an application to vary an extended trading authorisation for a small bar.

(3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:

- (a) the application relates to the same premises as the premises to which a general bar licence relates, and
- (b) development consent has been obtained under the Environmental Planning and Assessment Act 1979 to sell liquor during the times to which the application relates and those times are specified in the development consent.

(3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:

- (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
- (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the Registered Clubs Act 1976.

- (4) The community impact statement must:
  - (a) be prepared in accordance with the regulations and any requirements of the Authority, and
  - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
  - (a) the community impact statement provided with the application, and
    - (a1) any published cumulative impact assessment that applies to the area in which the premises the subject of the application are located, and
    - (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),

that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.
- (6) The regulations may make provision for or with respect to the following:
  - (a) the requirements that must be satisfied in relation to the preparation of a community impact statement (including consultation requirements),
  - (b) the matters to be addressed by a community impact statement,
  - (c) the information to be provided in a community impact statement,
  - (d) the criteria for determining the local and broader community for the purposes of a relevant application,
  - (e) any other matter relating to the preparation and content of a community impact statement.
- (7) Without limiting subsection (6), the regulations may provide that the matters to be addressed by a community impact statement are, in the case of an application for an extended trading authorisation in relation to a hotel licence, to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.

#### **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.

## **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.

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.