



Mr Brett Tobin
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9 September 2022

Dear Mr Tobin

Application No.	1-8130178811
Applicant	Ms Wendy Weakley
Application for	Gaming Machine Threshold Increase with Class 1 Local Impact Assessment
Licence name	Namoi Hotel
Licence number	LIQH400116780
SA2	Narrabri – Band 2
Trading hours	Monday to Saturday 5:00 AM – 5:00 AM Sunday 10:00 AM – 10:00 PM
Premises	49 Maitland Street Narrabri NSW 2390

Decision of the Independent Liquor and Gaming Authority with Reasons on Application under section 34 of the *Gaming Machines Act 2001* (NSW) for an Increase in Gaming Machine Threshold for Namoi Hotel

The Independent Liquor & Gaming Authority considered the application above, and decided on 16 March 2022 to **refuse** the application pursuant to section 34 of the *Gaming Machines Act 2001*.

Statement of reasons

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

The Authority is not required to provide reasons for this decision under section 36C of the *Gaming and Liquor Administration Act 2007*, however, this document has been prepared by the Authority on its own initiative to provide the applicant with the reasoning for its decision.

Yours faithfully

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

STATEMENT OF REASONS

DECISION

1. On 15 November 2021, an application (**Application**) was lodged by Hatzis Cusack Lawyers on behalf of Ms Wendy Weakley (**Applicant**) with Liquor & Gaming NSW (**L&GNSW**) for a gaming machine threshold increase (**GMT increase**) for the premises at 49 Maitland Street, Narrabri NSW (**Premises**) for determination by the Independent Liquor & Gaming Authority (**Authority**).
2. The Application for a GMT increase was lodged under section 34 of the *Gaming Machines Act 2001* (NSW) (**GM Act**), with an associated Class 1 Local Impact Assessment (**LIA**) under section 36 of the GM Act, seeking a threshold increase of 16 (from 9 to 25).
3. The Authority considered the Application at its meeting on 16 March 2022 and decided to refuse the Application made under section 34 of the GM Act.
4. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the GM Act.

MATERIAL CONSIDERED BY THE AUTHORITY

5. The Authority has considered the Application and all submissions received in relation to the Application.
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 GM Act, and the associated clauses of the Gaming Machines Regulation 2019 (**GM Regulation**):
 - a) Section 3: Statutory objects of the Act and relevant considerations.
 - b) Section 34: Provisions relating to an application to increase a gaming machine threshold.
 - c) Section 35: Requirements relating to threshold increase applications.
 - d) Section 36: Provisions relating to approval of a LIA by the Authority.
 - e) Sections 36A and 36B: Provisions relating to community benefit requirements.
 - f) Section 36C: Provisions relating to guidelines for threshold increase applications.
8. An extract of these sections is set out in Schedule 2.
9. The Authority has also had regard to published Guideline 11 titled "Class 1 Local Impact Assessment process guidelines" (**Class 1 LIA Guidelines**); and to published Guideline 16 titled "Late Night Gaming Applications" (**Guideline 16**).

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.

Business model at the Premises

11. The Authority notes that the Namoi Hotel has operated as a licensed hotel at the Premises in Narrabri since 1959. The hotel has been operated by the current business owner since 2005. The Premises offers a variety of facilities; including the provision of liquor in bar areas and through a bottle shop, meals in a bistro/dining area, entertainment, accommodation areas and gaming room facilities.
12. The Premises is located in the suburb of Narrabri, within the Narrabri SA2, and the Local Government Area of Narrabri Shire (**Narrabri LGA**).

13. The Authority notes the Application is for a GMT increase of 16 from the current level of 9, which would permit the operation of a total of 25 electronic gaming machines (**EGM**) at the premises following the acquisition of requisite gaming machine entitlements from other venues.

Gambling activities at the Premises

14. The Authority notes that:

- a) The Premises operates under LIQH400116780, which authorises trading hours from 5:00 AM to 5:00 AM Monday to Saturday and from 10:00 AM to 10:00 PM on Sunday. The Premises currently operates nine gaming machines, with a standard gaming machine shut down period under section 40 of the GM Act in force between 4:00 AM to 10:00 AM Monday to Sunday and public holidays.
- b) Gaming machines may be operated from 10:00 AM to 4:00 AM Monday to Saturday, and from 10:00 AM to 10:00 PM on Sunday. Permitted hours of gaming therefore include 24 hours per week of late-night gaming; being 12 hours of gaming between 12:00 AM (midnight) and 2:00 AM per week, and an additional 12 hours of gaming from 2:00 AM to 4:00 AM.
- c) The Premises is situated in a Band 2 SA2 for the purposes of section 33 of the GM Act. As explained in the L&GNSW fact sheet *Local Impact Assessment scheme overview* published on the L&GNSW website, each SA2 area in the State is classified into Band 1 (low risk), Band 2 (medium risk) and Band 3 (high risk) depending on the gaming machine density, gaming machine expenditure and prevailing levels of relative socio-economic disadvantage within the SA2.
- d) ABS Socio-Economic Index for Areas (**SEIFA**) data as at 2016 indicates that Narrabri suburb and SA2 is ranked in the third decile compared to other suburbs and SA2s within NSW, while Narrabri LGA is ranked in the fourth decile compared to other LGAs in NSW.
- e) The Premises is located in the Hunter New England Local Health District which, according to the *NSW Gambling Survey 2019* had:
 - i. higher rates of gambling participation than the NSW state average
 - ii. an average level of problem gambler participation and a higher prevalence of moderate risk gambler participation compared to the NSW state average
 - iii. lower overall prevalence of combined at risk gamblers compared to the NSW state average.
- f) The Premises is situated within Narrabri LGA, which is classified as a country region. Australian Bureau of Statistics data indicates that education levels within the LGA were lower than the NSW state average, the proportion of the population identified as Indigenous was more than four times the NSW state average, and the proportion of lone person households was above the NSW state average. These indicators are considered risk factors of problem gambling by the Office of Responsible Gambling.
- g) L&GNSW gaming data indicates that the average profit per gaming machine at the Premises for the calendar year ending December 2019 (pre-COVID) was approximately 1.8 times the average profit per gaming machine for all hotels in the SA2 and all hotels in the LGA, and more than two times that of the average for comparable country hotels of similar size in similarly banded SA2s.
- h) L&GNSW gaming data indicates that the average profit per gaming machine at the Premises for the calendar year ending December 2021 was approximately 1.4 times the average profit per gaming machine for all hotels in the SA2 and all hotels in the LGA, and approximately 1.7 times that of the average for comparable country hotels of similar size in similarly banded SA2s.

- i) L&GNSW gaming data indicates, based on a comparison of average annual profits per gaming machine (above), that gaming intensity at the Premises was higher than for other local hotels in the SA2 and LGA, and also when considered against similarly sized country hotels in similarly banded SA2s. In short, gaming at the Premises operated at a higher intensity per machine than average.

Stakeholder submissions

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

- a) **NSW Police Force**, which objects to the Application and notes that:
 - i. given the small size of the hotel and capacity of the gaming room, an increase in gaming room size to accommodate 25 EGMs would have a direct impact on the hotel's primary purpose, and the gaming room/rooms would become the main focus of the venue and the business;
 - ii. saturation of gaming machines in the local area of Narrabri is already extremely high compared to the NSW average per 100,000 people and does not support the need for an increase in GMT at the Namoi Hotel;
 - iii. the Applicant has failed to address the link between problem gambling, EGM use and organised crime in regional pubs and clubs
 - iv. crime statistics are inflated within Narrabri, with Police managing the area remotely due to resourcing limitations for a small town; and
 - v. the applicant has failed to demonstrate that the proposed GMT increase will have an overall positive impact, or any positive social benefit, on the local community.
- b) **Narrabri RSL Memorial & Citizens Club Ltd**, which objects to the Application and notes that:
 - i. Narrabri LGA is relatively socio-economically disadvantaged compared to other LGAs in NSW;
 - ii. average monthly profit per EGM is lower in Narrabri LGA compared to the neighbouring LGAs;
 - iii. local clubs have been required to amalgamate, or are in the process of amalgamating, or required obtain financial support in order to remain financially viable; and
 - iv. Narrabri township already has an optimal number of EGMs. Narrabri is a small rural town 180km from the nearest regional centre, so it is important to retain community and sporting facilities. Increased competition and the spread of gaming machine revenue will adversely impact the long-term viability of community clubs that provide facilities such as the golf course and bowling greens.
- c) A group of **Narrabri Licensed Venues**, which objects to the Application and notes that:
 - i. Narrabri LGA is relatively socio-economically disadvantaged compared to other LGAs in NSW and the proposed increase in EGMs would likely be detrimental to an already socio-economically disadvantaged area;
 - ii. the proposed increase in EGMs in Narrabri LGA would be a disproportionate increase compared to nearby comparable LGAs; and
 - iii. the average annual profit of EGMs in Narrabri LGA is relatively low compared to neighbouring LGAs and the NSW average, which is attributed to the low socio-economic standing of Narrabri LGA. An increase of 16 EGMs in the LGA will reduce the profitability of the existing machines in the area.

16. The Authority has also had regard to the Applicant's submissions in response, as well as the Applicant's LIA submission, which notes that:
- a) the Authority must determine the Application under the existing legislative framework. This was implemented following legislative reform in 2008 which resulted in the introduction of the current LIA process and the associated Authority guidelines;
 - b) the relative socio-economic advantage and disadvantage of Narrabri SA2, the density of gaming machines per head of population, and annual gaming profits per head of population have all been considered through the "banding" scheme process, which determined the SA2 to be Band 2 for the purpose of section 33 of the GM Act;
 - c) Under the existing legislative framework, the Application is considered to be for a "low range" threshold increase in a Band 2 SA2. As such, the application requires a Class 1 LIA to be undertaken (and not a Class 2 LIA as suggested by Police). As part of this process, an applicant needs to demonstrate that a "positive contribution" will flow to the local community;
 - d) the Class 1 LIA Guidelines published by the Authority provide for an applicant to pay a community benefit levy by way of a "positive contribution". The Applicant has proposed to pay a substantial levy to the RGF, in accordance with the methodology put forward in the Guidelines;
 - e) the Premises has gambling harm measures in place, as referred to in the LIA submission, that comply with the statutory requirements of the GM Act and Regulation. In addition, the Premises has prepared, and will abide by, a Gaming Plan of Management with additional measures to ensure harm minimisation within its gaming operation, to be implemented upon grant of the Application;
 - f) the Applicant has consented to conditions being imposed upon the licence requiring the Premises to operate in accordance with the Gaming Plan of Management, for a Gambling Incident Register to be operational at all times, and for a Responsible Gambling Officer to be present after midnight whenever gaming machines are being operated;
 - g) the Narrabri SA2 has a number of positive indicators of socio-economic cohesion and lack of disadvantage. These metrics do not suggest a community that is especially vulnerable to gaming-related harm. The "Band 2" classification of the SA2 likewise is not normally applied to venues located in the lowest socio-economic areas, which are normally classified as "Band 3" under the current legislative scheme. SEIFA data for Narrabri suburb also indicates the suburb is not highly disadvantaged;
 - h) objections have been received from "Narrabri Licensed Venues" and the Narrabri RSL which are commercial competitors to the Applicant and seek to shut out competition from the Premises;
 - i) the low-range increase, if approved, would provide substantial resources to the RGF and otherwise result in an overall reduction in the number of gaming machine entitlements throughout NSW through the tradeable entitlement scheme;
 - j) the Namoi Hotel is to undergo significant changes and refurbishments, with a new floor space of approximately 1,000sqm. With such a large floor space the Applicant is confident that a gaming room may be created to accommodate 25 EGM while still complying with the primary purpose requirements; and
 - k) there is no evidence indicating that the Premises is problematic for money laundering activities.

Consideration of the LIA under section 36 of the GM Act

17. The Namoi Hotel is located in Narrabri SA2. The application for a GMT increase to 25 electronic gaming machines falls within the low range threshold in a Band 2 SA2, and accordingly requires a Class 1 LIA. Under the legislation, the Authority is required to approve the LIA before agreeing to any increase in the GMT.
18. Subsection 36(3) relevantly provides that the Authority may approve the LIA only if it is satisfied that the LIA complies with the requirements of the legislation and that it is otherwise appropriate to do so.

Does the LIA comply with the formal requirements of Part 4 Division 1 of the GM Act and the GM Regulations?

19. The Authority is satisfied with the Applicant's compliance with sections 35(1), and 35(3) of the GM Act and clauses 31 and 33 of the GM Regulation, and on the evidence before it, notes that the formal requirements of notification, consultation and advertisement of the LIA, as set out in cl 37 of the GM Regulations and the Class 1 LIA Guidelines, have been met.

Does the LIA demonstrate that gambling activities will be conducted in a responsible manner?

20. The Authority is satisfied that the LIA demonstrates that gambling activities at the Premises will be conducted in a manner consistent with sound gambling harm minimisation practices, and that the Applicant's Gaming Plan of Management includes multiple intermediate and advanced level harm minimisation strategies from the Office of Responsible Gambling's Above and Beyond Fact sheet.

21. Notwithstanding the Applicant's efforts towards controlling the risk of gaming-related harms, taking into account the significantly elevated risk factors associated with the extensive late-night trading hours already permitted under the licence, and the size of the proposed GMT increase, the Authority is not satisfied that the existing and proposed harm minimisation measures will sufficiently mitigate the risk of gambling harm to the community.

Does the proposed GMT increase result in a positive contribution towards the local community?

22. The Class 1 LIA Guidelines address what constitutes a "positive contribution" for a Class 1 LIA, and provides a formula for a donation to the RGF by licensed hotels in the following terms:

15% of average annual profit of existing gaming machines before tax, multiplied by the GMT increase, multiplied by five years.

23. The Authority is satisfied that the donation the Applicant proposes to pay to the RGF meets the minimum level of financial contribution specified in the Class 1 LIA Guidelines.

24. The Authority notes that, pursuant to section 36C(3) of the GM Act, the Class 1 LIA Guidelines do not limit the Authority's discretion when deciding in a particular case what constitutes a positive contribution towards a local community or an overall positive impact on a local community.

Are the Proposed Premises situated in the immediate vicinity of a school, hospital or place of public workshop?

25. The Authority is satisfied that the venue is not a new hotel within the meaning of subsection 36(3)(c)(ii) of the GM Act and that, therefore, clause 31 of the GM Regulation does not apply to the Application.

Does the LIA adequately address community concerns?

26. On balance, and on the information before it, the Authority is satisfied that the Applicant has reasonably addressed community concerns arising out of the consultation process under the Regulation for the purposes of section 36(3)(c)(iii) of the GM Act.

Is it otherwise appropriate that the LIA be approved?

27. In relation to whether the Authority is satisfied that it is "otherwise appropriate" that the LIA be approved pursuant to subsection 36(3)(e) of the GM Act, the provision grants a degree of discretion to the Authority. It is well established however, that "every statutory power, however

widely expressed, is confined by the subject matter, scope and purpose of the statute”: see *Independent Liquor and Gaming Authority v Auld* [2019] NSWCATAP 184 at [130].

28. When considering subsection 36(3)(e) of the GM Act, the Authority has regard to the objects in subsection 3(1) of the GM Act, including relevantly (a) to minimise harm associated with the misuse and abuse of gambling activities, (b) to foster responsible conduct in relation to gambling, (c) to facilitate the balanced development, in the public interest, of the gaming industry, and (d) to ensure the integrity of the gaming industry.
29. In considering the objects of the GM Act, the Authority has taken into account the growing national and international research base providing evidence in relation to gambling-related harm; which is relevant when considering the balanced development, in the public interest, of the gaming machines industry as follows:
 - a) 1% of the NSW population are problem gamblers and that, based on self-reported gambling spend, problem gamblers account for 36.7% of gambling expenditure while moderate-risk gamblers and low-risk accounting for an additional 14.5% and 19.5% respectively (Browne et al, *NSW Gambling Survey 2019*, revised March 2020, pp.ii-iii).
 - b) Moderate-risk and problem gambling was higher among unemployed gamblers (19.5% compared with 7.2% overall) and gamblers who spoke a language other than English at home (14%), compared with gamblers who spoke only English (6.5%) (Browne et al, *NSW Gambling Survey 2019*, revised March 2020, p.iii).
 - c) Use of electronic gaming machines stands out as the form of gambling that is of greatest concern compared to other forms of gambling, being the second most prevalent form (after lotteries) and with participation predictive of the highest risk of problem gambling, having 3.6 times the odds of being a moderate-risk or problem gambler (Browne et al, *NSW Gambling Survey 2019*, revised March 2020, pp.iii-iv).
 - d) Higher-risk gamblers are significantly more likely than any other group to be gambling after midnight and to be playing for longer periods overall, with late-night play often occurring in an environment where the atmosphere is more intense compared to other times of day (Smith et al, *Shutdown periods for electronic gaming machines*, November 2019 (“Shutdown Periods Research 2019”).
 - e) Higher risk gamblers represent a greater share of those people playing at night. At that time gamblers are more likely to be playing under the influence of alcohol, thus potentially reducing the capacity for informed participation in a potentially costly activity where impulsivity and faulty cognitions are already widespread (Productivity Commission Inquiry Report *Gambling*, No. 50, 26 February 2010, pp.30-31).
30. The Authority notes that permitted hours of gaming at the Premises include 24 hours per week of higher risk late-night gaming; being 12 hours of gaming between 12:00 AM (midnight) and 2:00 AM per week, and an additional 12 hours of gaming from 2:00 AM to 4:00 AM.
31. The Authority notes the Premises is the only hotel in Narrabri able to offer gaming later than 3:00 AM on any day of the week. The Authority also notes that, of the three other local hotels able to trade after midnight, each may only offer late-night trading three days per week, one of which may not trade later than 1:30 AM. The Authority notes that gaming machines at the premises generate an average profit in excess of those at other hotels in the SA2, in the wider local government area, and in comparison to similar hotels in similarly banded locations in rural and regional areas of the State.
32. The Authority notes the Premises is part of a cluster of five hotels within a 750 metre radius. In this context, the Authority is concerned regarding the effect of permitting a GMT increase of 16

which represents a 29% increase in potential hotel gaming machines across Narrabri; and a 39% increase in hotel gaming machines available during the higher risk post-midnight period.

33. The Authority finds credible the prospect that the Premises would have the capacity to attract additional patrons to utilise the additional EGMs that may be acquired should the application for a GMT increase be approved. Given that the Premises currently remains open after midnight, permitting patrons to game until 4:00 AM six days per week – the period identified in research as being of the greatest concern for problem and at risk gamblers – the Authority considers that approval of the LIA could significantly increase the scope for adverse social impacts generated due to the hours of late-night gaming already permitted at the venue.
34. When considering which course of action best serves the responsible development of the gaming machines industry, the Authority is not merely focused on “problem” gamblers, but other “at risk” gamblers as well. Research suggests this group comprises some 36% of NSW electronic gaming machine players (Browne et al, *NSW Gambling Survey 2019*, revised March 2020, p.iii-iv). The Authority also gives consideration to the extent of trading hours past midnight, especially during the higher-risk post-2:00 AM period.
35. The Applicant’s efforts to mitigate the risks of gaming-related harms, as reflected in the proposed Gaming Plan of Management, are acknowledged. Despite this, taking into account the significantly elevated risk factors associated with the extensive late-night trading hours already permitted, the Authority is not satisfied on balance that the existing and proposed harm minimisation measures will sufficiently mitigate the risk of gambling harm to the community should the LIA approved.
36. Furthermore, the Authority cannot be satisfied that introducing an additional 16 gaming machines into a premises which is already licensed to trade during the higher-risk late-night period, will not have an adverse social impact on “problem” or “at risk” gamblers in the local and broader communities, especially those that are socio-economically disadvantaged or come from vulnerable communities. The proposed GMT increase does not therefore facilitate the balanced development, in the public interest, of the gaming industry as it is likely to lead to increased levels of problem gambling.
37. In reaching this conclusion, the Authority has had regard to the Applicant’s LIA submission dated November 2021, and correspondence between that Applicant and L&GNSW in relation to the Application.
38. On this basis, the Authority is not satisfied that it is otherwise appropriate that the LIA be approved under section 36(3)(e) of the GM Act.

DECISION

39. Having regard to the materials before the Authority and the matters set out in these reasons, the Authority is not satisfied that it is otherwise appropriate that the LIA be approved pursuant to subsection 36(3)(e) of the GM Act, taking into consideration the statutory objects in subsection 3(1) of the GM Act.
40. Subsection 36(1) of the Act provides that “If an LIA is required to be provided with a threshold increase application, the application cannot be approved unless the Authority approves the LIA”.
41. Given the Authority has decided not to approve the LIA, it cannot approve the Application. Accordingly, the Application is refused.



Murray Smith

Deputy Chairperson

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

Important Information:

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

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

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

Schedule 1 – Material considered by the Authority

Namoi Hotel

Application material

1. Application for a Gaming Machine Threshold Increase dated 12 November 2021.
2. Class 1 Local Impact Assessment dated November 2021.
3. Proposed Gaming Plan of Management for the Premises dated January 2022.

Liquor & Gaming records

4. The liquor licence document for LIQH400116780 Namoi Hotel as at January 2022
5. L&GNSW Gaming Report, dated 3 March 2022, containing gaming machine profit data for the venue by quarter for the calendar years 2019 (pre-COVID) and 2021; and comparative ranking data for other hotels in the SA2, the LGA and for other comparable hotels in country regions operating similar numbers of gaming machines.

Stakeholder submissions (material needs to be in ascending order)

6. Submission from NSW Police Force dated 22 December 2021 in relation to the Application.
7. Submission from Narrabri RSL Memorial & Citizens Club Ltd, dated 11 January 2022.
8. Submission from a group of Narrabri Licensed Venues (undated) in relation to the Application.

Other relevant information

9. Authority Guideline 16 titled “Late Night Gaming Applications” dated 12 May 2021.
10. Authority Guideline 11 titled “Class 1 Local Impact Assessment process guidelines” dated 2 November 2021.
11. Correspondence between L&GNSW staff and the Applicant between 15 November 2021 and 3 March 2022 in relation to the assessment of the Application and in response to submissions received in relation to the Application.
12. Authority Board paper dated 7 March 2022, including proposed conditions to be imposed upon the licence in the event the application was granted.

Schedule 2 – Relevant extracts from the *Gaming Machines Act 2001*

Namoi

3 Objects of Act

- (1) The objects of this Act are as follows-
 - (a) to minimise harm associated with the misuse and abuse of gambling activities,
 - (b) to foster responsible conduct in relation to gambling,
 - (c) to facilitate the balanced development, in the public interest, of the gaming industry,
 - (d) to ensure the integrity of the gaming industry,
 - (e) to provide for an on-going reduction in the number of gaming machines in the State by means of the tradeable gaming machine entitlement scheme.
- (2) The Authority, the Minister, the Secretary, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under this Act.
- (3) In particular, due regard is to be had to the need for gambling harm minimisation when considering for the purposes of this Act what is or is not in the public interest.

34 Application to increase gaming machine threshold

- (1) A hotelier or club may apply to the Authority to increase the gaming machine threshold for the hotel or the premises of the club (a threshold increase application).
- (2) The hotel or club premises to which a threshold increase application relates is referred to in this Division as the relevant venue.
- (3) A threshold increase application must comply with the requirements of this Division and the regulations.
- (4) The Authority may approve a threshold increase application only if the Authority is satisfied that the requirements of this Division and the regulations have been complied with in relation to the application.
- (5) If the application is approved, the Authority may increase the gaming machine threshold for the relevant venue in accordance with the Authority's approval.
- (6) Nothing in this Division requires the Authority, if it approves a threshold increase application, to increase the relevant venue's gaming machine threshold by the number to which the application relates.
- (7) Without limiting subsection (1), a threshold increase application may be made by a person in relation to premises that are the subject of an application for a licence under the Liquor Act 2007 that has not yet been granted.

35 Requirements relating to threshold increase applications

- (1) Except as provided by this section, a threshold increase application must be accompanied by a local impact assessment (LIA). An LIA, if required, is to be a class 1 LIA or a class 2 LIA as determined by this section.
- (2) **When LIA is not required** A threshold increase application is not required to be accompanied by an LIA if the application is made together with a transfer or lease application and any one or more of the following apply—
 - a. the relevant venue is situated in a Band 1 LSA and the threshold increase application, if approved, would not result in the gaming machine threshold for the venue being increased, over any period of 12 months, by a number that is more than the number corresponding to a low-range increase for the venue,
 - b. the relevant venue and the hotel or club from which the gaming machine entitlements or permits are proposed to be transferred or leased by the transfer or lease application (the transferring/lessor venue) are situated in the same local statistical area,
 - c. the relevant venue and the transferring/lessor venue are situated in the same local government area and the classification of the local statistical area in which the transferring/lessor venue is situated is the same as or ranked higher than the classification of the local statistical area in which the relevant venue is situated,
 - d. the relevant venue and the transferring/lessor venue are situated in adjoining local statistical areas (whether or not in the same local government area) and the classification of the local statistical area in which the transferring/lessor venue is situated is the same as or ranked higher than the classification of the local statistical area in which the relevant venue is situated.
- (2A) For the purposes of subsection (2), a **transfer or lease application** means either or both of the following—
 - a. an application under section 19 or 25 for the Authority's approval of the transfer or lease of gaming machine entitlements to the relevant venue,
 - b. an application under and in accordance with the arrangements referred to in section 26 for the acquisition by the relevant venue of permits.
- (2B) If a threshold increase application that is not required to be accompanied by an LIA is approved, the applicant must within 1 month after the approval provide a local impact statement for the venue (containing such information about the venue and the impact of the approved increase as the Authority may determine) to such persons and bodies as the applicant would have been required to notify of the proposed application had it been required to be accompanied by a class 2 LIA.

- (3) **When class 1 LIA is required** A threshold increase application must, unless subsection (2) applies in relation to the application, be accompanied by a class 1 LIA if the relevant venue—
 - a. is situated in a Band 1 LSA and the application is for a mid-range increase in the gaming machine threshold for the venue, or
 - b. is situated in a Band 2 LSA and the application is for a low-range increase in the gaming machine threshold for the venue.
- (4) **When class 2 LIA is required** A threshold increase application must, unless subsection (2) applies in relation to the application, be accompanied by a class 2 LIA if the relevant venue—
 - a. is situated in a Band 1 LSA and the application is for a high-range increase in the gaming machine threshold for the venue, or
 - b. is situated in a Band 2 LSA and the application is for a mid-range or high-range increase in the gaming machine threshold for the venue, or
 - c. is situated in a Band 3 LSA.
- (5) For the purposes of this section, a **low-range increase**, a **mid-range increase** or a **high-range increase** in a gaming machine threshold for a venue is to be determined in accordance with the regulations.
- (6) The regulations may make provision for or with respect to the following—
 - a. the information to be provided by an LIA,
 - b. the requirements that must be complied with in relation to an LIA, which may include a requirement to verify any information by statutory declaration,
 - c. the matters to be assessed or addressed by an LIA,
 - d. the advertising of LIAs,
 - e. the making of submissions in relation to LIAs.
- (7) The regulations may also create exceptions to this section and provide for the conditions to which any such exception is subject.
- (8) Except to the extent to which the regulations make provision, an LIA is to be provided in the form and manner approved by the Authority.

36 Approval of LIA by Authority

- (1) If an LIA is required to be provided with a threshold increase application, the application cannot be approved unless the Authority approves the LIA.
- (2) The applicant is liable to meet any costs incurred by the Authority in connection with its determination of the LIA. The Authority may refuse to determine the LIA until any such costs are paid to the Secretary or provision, satisfactory to the Authority, has been made for their payment.
- (3) The Authority may approve an LIA only if it is satisfied that—
 - a. the LIA complies with the requirements of this Division and the regulations in relation to the LIA, and
 - b. the LIA has demonstrated that gambling activities in the relevant venue will be conducted in a responsible manner, and
 - c. in the case of a class 1 LIA—
 - i. the proposed increase in the gaming machine threshold for the relevant venue will provide a positive contribution towards the local community where the venue is situated, and
 - ii. the relevant venue is not, if the venue is a new hotel or comprises new club premises, situated in the immediate vicinity of a school, hospital or place of public worship, and
 - iii. the LIA has adequately addressed any community concerns arising out of the consultation process under the regulations, and
 - d. in the case of a class 2 LIA—
 - i. the proposed increase in the gaming machine threshold for the relevant venue will have an overall positive impact on the local community where the venue is situated, and
 - ii. the relevant venue is not, if the venue is a new hotel or comprises new club premises, situated in the immediate vicinity of a school, hospital or place of public worship, and
 - iii. the LIA has adequately addressed any community concerns arising out of the consultation process under the regulations, and
 - e. it is otherwise appropriate that the LIA be approved.
- (4) The regulations may specify other grounds on which the Authority may refuse to approve an LIA.
- (5) If any submissions are made in relation to an LIA in accordance with the regulations, the Authority must take those submissions into consideration in deciding whether to approve the LIA.
- (6) The Authority may, in any case it considers appropriate, partly approve an LIA, in which case the Authority may increase the relevant venue's gaming machine threshold by a number that is less than the number to which the threshold increase application relates.
- (7) Without limiting any other provision of this Division, the approval of an LIA is subject to such conditions as may be specified by the Authority. The LIA has no effect if any such conditions are not complied with.

36A Community benefit requirement—payment of money to Responsible Gambling Fund

- (1) A community benefit requirement cannot be wholly or partly satisfied by a payment of money except a payment to the Secretary under the Casino Control Act 1992 for payment into the Responsible Gambling Fund as a community benefit payment under this Act.

Note—

Section 115B of the Casino Control Act 1992 provides that a payment under this Act into the Responsible Gambling Fund is to be applied for such purposes as the Minister determines for the benefit of local communities in which gaming machine thresholds for venues have increased.

- (2) A community benefit payment by a venue is to be taken into account by the Authority in the determination of a threshold increase application as if it were a contribution to the local community where the venue is situated.
- (3) In this section, community benefit requirement means a requirement under section 36 that a proposed increase in the gaming machine threshold for a venue will—
 - a. provide a positive contribution towards the local community where the venue is situated, or
 - b. have an overall positive impact on the local community where the venue is situated.

36B Community benefit requirement—consideration of additional positive contributions

- (1) In determining a threshold increase application, the Authority is to have regard to additional positive contributions by the venue in connection with the proposed increase and may decide to treat those additional positive contributions as being in partial satisfaction of a community benefit requirement (so as to reduce what is required to satisfy a community benefit requirement).

- (2) In this section—

additional positive contributions means any of the following actions by a venue—

- a. the putting in place of harm minimisation and responsible gambling measures that are in addition to measures already required by law,
- b. the application of funds by a club to community development and support that constitutes Category 1 harm minimisation expenditure in excess of the amount that entitles the club to the maximum reduction in gaming machine tax under section 17 of the Gaming Machine Tax Act 2001,
- c. the payment of money by a club into the ClubGRANTS Fund (established under section 17A of the *Gaming Machine Tax Act 2001*),
- d. such other actions as the regulations prescribe as additional positive contributions for the purposes of this section.

Category 1 harm minimisation expenditure means expenditure for projects or services that constitute Category 1 projects and services under the ClubGRANTS guidelines (referred to in section 16 of the Gaming Machine Tax Act 2001) and that in the opinion of the Authority are concerned with harm minimisation.

community benefit requirement has the same meaning as in section 36A.

36C Guidelines for threshold increase applications

- (1) The Authority may publish guidelines about the operation of this Division for the purpose of providing guidance in respect of the requirements of this Division relating to threshold increase applications.
- (2) Without limitation, the guidelines may provide guidance about the following—
 - a. what the Authority considers to be a positive contribution towards a local community or an overall positive impact on a local community,
 - b. conditions that the Authority may impose on its approval of an LIA.
- (3) The guidelines do not limit the Authority's discretion when deciding in a particular case what constitutes a positive contribution towards a local community or an overall positive impact on a local community, or in deciding to impose conditions on an approval.