



Mr David Rippingill
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19 November 2019

Dear Mr Rippingill,

Application No.	1-7369469442
Applicant	Mr Paul Anthony Dirou
Application for	Extended trading authorisation in relation to a full hotel licence
Licence name	Moko- Heather's Kitchen
Current Trading Hours	<u>Consumption on premises</u> Monday to Saturday 10:00 AM – 12:00 Midnight Sunday 10:00 AM – 10:00 PM <u>Take away sales</u> Monday to Saturday 5:00 AM – 11:00 PM Sunday 10:00 AM – 10:00 PM
Proposed Trading Hours	<u>Consumption on premises</u> Monday to Saturday 10:00 AM – 3:00 AM Sunday 10:00 AM – 12:00 Midnight <u>Take away sales</u> Monday to Saturday 5:00 AM – 11:00 PM Sunday 10:00 AM – 10:00 PM
Premises	75 Rowe Street Eastwood NSW 2122
Legislation	Sections 3, 11A, 12, 14, 15, 15A, 16, 17, 40, 45, 48, 49 and 51 of the <i>Liquor Act 2007</i> (NSW)

**Decision of the Independent Liquor and Gaming Authority
Application for an extended trading authorisation – Moko - Heather's Kitchen**

The Independent Liquor and Gaming Authority considered at its meeting on 11 September 2019 the application for an extended trading authorisation and decided on that date to **refuse** the application pursuant to section 49(2) of the *Liquor Act 2007* (NSW).

The enclosed statement of reasons has been prepared for the purposes of section 36C of the *Gaming and Liquor Administration Act 2007* (NSW).

If you have any questions, please contact lucas.ho@liquorandgaming.nsw.gov.au.

Yours faithfully

Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 25 June 2019 the Independent Liquor and Gaming Authority (“the Authority”) received from Mr Paul Anthony Dirou (“the Applicant”), through Liquor and Gaming New South Wales (“LGNSW”), an application (“Application”) for an extended trading authorisation (“ETA”) in respect of a full hotel licensed premises (LIQH440018970) at 75 Rowe Street Eastwood, New South Wales (“NSW”) 2122 (“the Premises”), trading as *Moko – Heather’s Kitchen* (“the Hotel”).
2. A LGNSW licensing record for the Hotel from the OneGov database as at 20 August 2019 (“the OneGov Record”) indicates that Mr Dirou has been the licensee of the Premises since 30 November 2017.
3. The Authority considered the Application at its meeting of 11 September 2019 and decided, on that date, to refuse the Application pursuant to section 49(2) of the *Liquor Act 2007* (NSW) (“Act”).
4. In determining the Application, the Authority has had regard to sections 3, 11A, 12, 14, 15, 15A, 16, 17, 40, 45, 48, 49 and 51 of the Act, plus relevant provisions of the *Liquor Regulation 2018* (NSW) (“Regulation”).

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 LGNSW liquor licensing records and data published by the Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health and the Australian Bureau of Statistics (“ABS”).
8. A list of the material before the Authority is set out in Schedule 1.

Legislative framework

9. The Authority has considered the Application in accordance with the following provisions of the Act:
 - (a) Section 3: Statutory objects of the Act and relevant considerations.
 - (b) Section 11A: 6-hour closure period.
 - (c) Section 12: Standard trading period.
 - (d) Sections 14-17: Specific provisions in respect of a hotel licence.
 - (e) Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
 - (f) Section 45: Criteria for granting a liquor licence
 - (g) Section 48: Requirements in respect of a CIS.
 - (h) Section 49: General provisions in respect of an ETA.
 - (i) Section 51: General provisions relating to licence-related authorisations.
10. An extract of these sections is set out in Schedule 2.

Key findings

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

Validity, procedural and trading hour requirements – Non-compliant CIS notices

12. Pursuant to section 49(2) of the Act, an application for an ETA for consumption on premises is required to be made by the licensee.
13. As noted above, the Application was made by Mr Dirou as licensee. However, the Applicant has not complied with a minimum consultation requirement during the pre-Application CIS process, with the *Notice of Intention to Apply for Liquor Licence or a Licence Authorisation* dated 2 October 2018 incorrectly identifying the Applicant as “BBDHM Pty Limited” instead of the licensee, Mr Dirou.
14. The OneGov Record indicates that “BBDHM Investments Pty Limited” has been the corporate business owner of the licensed business since 2 October 2015.
15. This failure to correctly identify the Applicant during the CIS consultation stage means that the CIS did not comply with the notice requirements specified by clause 29 of the Regulation. Sections 48(4) and 51(2) of the Act together require that an application for an ETA be accompanied by a valid CIS.
16. In *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at [91]-[93], McHugh, Gummow, Kirby and Jayne JJ noted that:

“An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition. Unfortunately, a finding of purpose or no purpose in this context often reflects a contestable judgment. The cases show various factors that have proved decisive in various contexts, but they do no more than provide guidance in analogous circumstances. There is no decisive rule that can be applied; there is not even a ranking of relevant factors or categories to give guidance on the issue”.

...

a court, determining the validity of an act done in breach of a statutory provision, may easily focus on the wrong factors if it asks itself whether compliance with the provision is mandatory or directory and, if directory, whether there has been substantial compliance with the provision.”

17. The Authority considers that compliance with the CIS notice requirements specified by clause 29 of the Regulation are a condition to the valid exercise of the power to grant an ETA, and that this instance of non-compliance renders the Application invalid. The non-compliant notices had clear potential to mislead the community, during the pre-Application CIS consultation process, as to the eligible applicant at all relevant times. Identification of the proper applicant is essential to enable agencies with a law enforcement role, or others in the community, to make submissions on the probity or trading history of the applicant. The Authority does not consider that any significant inconvenience will flow to the public from this finding. Some limited inconvenience will flow to the Applicant, who must remake the Application after correctly completing the CIS process.

18. The Authority notes that while clause 29(6) of the Regulation *now* provides that the Authority may disregard a failure to comply with CIS consultation requirements if it is of a minor and technical nature, that clause came into effect on 20 September 2019, whereas this Application was determined on 11 September 2019. It is doubtful whether a failure to identify the proper applicant may be characterised as a “minor and technical” non-compliance.

Non-Compliant Post-Application Advertising

19. Furthermore, the Applicant failed to identify in post Application Notices to the local consent authority, Police, neighbouring residents and the site notice, that the licensed Premises would be subject to a daily 6-hour closure period. The OneGov Record indicates that the Premises was already subject to a 6-hour daily liquor cessation period, pursuant to section 11A of the Act that operates between 4:00 am and 10:00 am. This will not change should the Application be granted. However, the post-Application Notices were struck through in the section detailing the 6-hour closure period.
20. While the Authority has a discretion, under clause 26 of the Regulation, to disregard non-compliance with respect to the post-Application advertising requirements if the failure was minor or technical in nature, the Authority has not needed to consider that discretion by reason of its finding that the Application is invalid by reason of the non-compliant CIS process and in light of the discussion below.
21. Notwithstanding the Authority’s decision on validity, the Authority has considered the overall social impact test under section 48(5) of the Act, in the event that the Application is valid.

Fit and proper person, responsible service of alcohol and development consent

22. The Authority is satisfied that:
- (a) For the purposes of section 45(3)(a) of the Act, the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, on the basis that no issues of concern were raised regarding the Applicant’s probity following consultation with relevant law enforcement agencies, including NSW Police (“Police”) and the compliance section of LGNSW.
 - (b) For the purposes of section 45(3)(b) and section 49(8)(a) of the Act, practices will be in place from the commencement of licensed trading on the Premises to ensure the responsible serving of alcohol and prevent intoxication. This finding is made on the basis of the Applicant’s business planning document – the *Plan of Management* dated August 2019.
 - (c) For the purposes of section 45(3)(c) of the Act, the requisite development consent permitting the operation of a hotel business with the proposed extended trading hours is in force. The Authority is satisfied on the basis of Modification MOD2018/0181 approved by City of Ryde on 17 April 2019 to be read in conjunction with development consent LDA2014/365 approved by the Land and Environment Court on 1 June 2015 (“DA”). The effect of the modification permits trading between 10:00 am to 12:00 midnight Monday to Saturday and between 10:00 am to 10:00 pm Sunday and public holidays. It also permits trading between 12:00 midnight and 3:00 am Monday to Saturday and between 10:00 pm and 12:00 midnight on Sunday for a twelve-month trial period commencing from when the Authority grants an ETA.

Further restrictions on granting an ETA

23. For the purpose of section 49(8)(b) of the Act, the Authority accepts, on the basis of the Plan of Management dated August 2019 that if granted, there would be measures in place during the extended trading period to ensure that the ETA would not result in the *frequent* undue disturbance to the quiet and good order of the neighbourhood.

CIS and Gambling Activities

24. The Authority is satisfied that the CIS meets the minimum requirements of clause 28 of the Regulation in that it addresses matters relating to the proposed gambling activities to be conducted on the Premises during the period in which the ETA will be in force.

Community impact statement

25. For the purposes of this decision and consistent with Authority *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Eastwood, and the relevant “broader community” comprises the local government area (“LGA”) of the Ryde City Council (“Ryde LGA”).

Positive social impacts

26. The type, location and licensed trading hours of comparable venues (hotels and clubs), providing both liquor and gambling services, particularly within the State suburb of Eastwood, are specified below.
27. The Authority has considered the Applicant’s proposal, the limited evidence of patron demand towards extending the venue’s current midnight closing time and the availability of like venues in the relevant communities when assessing the scope for increased positive *community* benefits to flow from extending the hours of this venue from Midnight to 3:00 am Monday through Saturday and from 10:00 pm to Midnight on Sunday.
28. In the letter dated 23 May 2019 accompanying the CIS the Applicant contends that in addition to allowing the Hotel to employ additional “local” staff for longer periods, granting the ETA will provide a “more balanced and sophisticated” late night option for the community and meet the community’s desire for a more vibrant late night economy.
29. The Applicant further contends that granting the ETA will be a positive step towards encouraging other food and drink premises to trade late. The Applicant submits that this Hotel business is aimed at offering “family-friendly Korean style dining” and has a “sufficiently diverse” late night food menu to increase the late-night food and drink options for members of the community. The Applicant contends that this benefit will be “supported by gaming revenue”.
30. The Applicant further contends that the provision of gaming, along with the food and beverage offering, in a “quality social environment” permits the Hotel to “assist Council” in achieving the objective to “activate Rowe Street at night”, in a “low impact” manner. Moreover, the Applicant further contends that granting the ETA will provide gaming patrons with “increased flexibility of access” to gaming machines, at their preferred times of day.
31. The Authority notes that no submissions were received in support of this Application. Rather, five opposing submissions were received - one from a local resident, two similar submissions from a corporation and an individual connected to the Eastwood

Hotel and The Landmark (together, the “Commercial Objector”) and two from the Northern Sydney Local Health District (“NSW Health”).

32. The Authority finds little evidence or material among the Application, CIS or submissions received on the Application indicating *how and to what extent* extending the licensed trading hours of this venue will be consistent with the expectations, needs and aspirations of the local or broader community for the purposes of section 3(1)(a) of the Act.
33. The Applicant contends that it will provide a benefit by way of late night dining facilities, but there is little substantiation of the extent of demand for the dining on offer at the Hotel well beyond peak dining hours, should the venue be licensed until 3:00 am Monday to Saturday and until 12:00 midnight Sunday.
34. While the Authority accepts that extending the licensed trading hours will benefit the licensed business, and may increase working hours for staff, the evidence or material that granting the Application will advance *community* expectations is weak.

NSW Health critique of “overstated” positive community benefits

35. NSW Health contend in their submission dated 25 July 2019 (“Second NSW Health Submission”) that when considering the 2016 *City of Ryde Night Time Economy Study* (“Ryde Night Time Economy Study”), there is no evidence that the *local community* supports or has expressed a desire for further late night alcohol trade. As the Applicant is seeking to extend its late night alcohol trade, they are not offering any further diversity to the community. According to NSW Health, this study contains no stated desire for extended late night alcohol trade from pubs or clubs, instead the idea suggested is in contrast to an extension of alcohol trade.
36. Furthermore, NSW Health submit that the community surveyed identified a number of concerns about the activation of the local night time economy in Ryde, some of which mitigate against granting the ETA. NSW Health note concerns included “increased violence, crime and anti-social behaviour due to drinking” and “Increased noise”.
37. NSW Health refers to the Applicant citing “later trading hours” as a “top 3” idea from local survey respondents in relation to Eastwood. However, NSW Health notes that the study explains this as a reference to “extended *retail* trading hours” and that Eastwood residents were most interested in improved parking, public space improvements, cleaning, lighting and pedestrian safety.
38. In its 16 August 2019 submission in response to the Second NSW Health Submission, the Applicant contends that NSW Health has failed to recognise the positive impact of the proposed ETA on the community because it has failed to accurately characterise the Hotel. The Applicant contends that this Hotel will operate more in the mode of a “small bar” with a focus on quality food and beverage provision in an “intimate” setting. Patron capacity is so low that were gaming not provided the Premises could be licensed as a small bar. If that was the case, then trade to 2:00 am would be automatically granted outside of the Sydney CBD. Evidently, with respect to alcohol, a capacity of 100 patrons allows for readily manageable supervision and mitigates the potential for disruption. Therefore, the impacts are considered both low and readily acceptable.

39. The Applicant further contends that benefits of extended trade include increased lighting and pedestrian safety through the maintenance of an “active street front” until 3:00 am and “continual passive surveillance” particularly on Rowe Street.
40. The plan/diagram of the licensed Premises and the Application Form and CIS material establishes that this is a moderately sized hotel with a patron capacity of 140 and a proposed capacity of 100 between midnight and 3:00 am Monday to Saturday. Nevertheless, the Premises are licensed with a full hotel licence, bringing with it the scope to provide a range of liquor and gambling services available to that licence type. The Applicant’s submissions with regard to small bars are an unhelpful diversion.
41. While the Applicant refers to the Ryde Night Time Economy Study when contending that the community wants later trading licensed venues, the Applicant has not provided any evidence of support from the local community indicating a desire for this Hotel to remain open later into the evening. The Authority accepts the point made by NSW Health that the community was more focussed on extended *retail* trading, which does not equate to support for hotels trading until 3:00 am across the week. As noted above, there is no positive evidence or information indicating community support for this Application.

Competitor’s critique of deviation from “original” dining focus of business

42. The Authority has considered the Commercial Objector’s contentions (expressed in submissions from Redcape Hotel Group and Mr John McGurk raising similar concerns) of a “continued deviation” from the “original proposal” of the Applicant as to the mode of business to operate on the Premises. The Commercial Objector contends that the Hotel has “moved its offering significantly from what was originally proposed” to a “gaming and sports venue, not a family food venue”.
43. The Applicant responds in the 16 August 2019 submission that there is no evidence to suggest that there has been any increase in adverse social impacts as a result of the change of business operations, with no record of adverse incidents. The Hotel continues to provide “quality food” served in a “stylish Korean themed bar and dining area” to attract patrons. The setting and the quality of food has created a “family friendly” atmosphere that attracts well-behaved patrons.
44. The Authority accepts that since the licence was granted in 2015, additional gaming machines were sought and have been approved to operate on the Premises and that the former Korean restaurant that featured prominently in the application for this licence is no longer operational.
45. When licensed businesses evolve over time, this diminishes the nature of positive community benefit (by contributing to the responsible development of the related hospitality industry) than was previously the case. In any event, the ETA sought by the Applicant will extend trading well beyond peak dining hours with little evidence of the extent of likely demand for post-midnight meals until as late as 3:00am.

Conclusion on Positive Benefits

46. In conclusion, while the Authority may infer that extending the licensed hours at this venue may increase the choice of late night hotel style entertainment and serve community needs, expectations and aspirations for the purposes of section 3(1)(a) of the Act, the extent of that benefit is constrained by the limited evidence of late night

demand for the Hotel's services, which tend to focus on the gaming room, and the current delivery of liquor and gambling services at hotels and clubs, particularly at the level of the local community.

47. The Applicant has not provided a persuasive case, for the purposes of section 3(1)(b) of the Act, as to how the liquor industry will be reasonably developed by extending the trading hours of this particular venue to the extent proposed.
48. On the evidence and material before it, the Authority is not persuaded that granting the Application will positively contribute, to any great extent, to the responsible development of the related hospitality industry for the purpose of section 3(1)(c) of the Act. The Authority is not satisfied that further extending the Hotel's gaming machine operations would advance the *responsible* development of this related industry, given the concentration, numbers and accessibility of gaming machines in this local community.

Negative social impacts

Licence type, scale and trading hours

49. The licence type is a full hotel licence, with the primary purpose of the sale of liquor by retail on the Premises. It is apparent from the CIS material that the facilities on offer at this Hotel include the sale and supply of alcoholic and non-alcoholic beverages, food and gaming machines. The licence is subject to a condition that Keno and TAB facilities are not provided on the Premises, which formed part of a package of harm reduction measures offered by the current business owner when it secured the grant of this new licence in 2015.
50. The ETA is proposed to extend to the whole of the licensed Premises, comprising some 410 square metres. The Hotel has a patron capacity of 140, with the Applicant proposing a reduced capacity of 100 from midnight. The Authority considers the Hotel to be of moderate scale in terms of its potential to attract and generate adverse social impacts upon the local and broader communities during the proposed late trading hours.
51. The licensed hours will be extensive should the ETA be granted. The Applicant is proposing to trade an additional 20 late trading hours per week, between 12:00 midnight and 3:00 am Monday through Saturday and between 10:00 pm and 12:00 midnight Sunday. The hours sought will increase the capacity for the operations of this Hotel, or the conduct of its patrons, to contribute to adverse social impacts over time.

Location Factors – prevailing crime

52. BOCSAR crime data for the year to March 2019 for both the suburb and LGA indicate that crime rates per 100,000 persons are below NSW rates recording:
 - A rate of **42.2** for incidents of *alcohol related domestic assault* per 100,000 persons for the suburb, a rate of **32.1** for the LGA and a rate of **115.5** for NSW.
 - A rate of **47.4** for incidents of *alcohol related non-domestic assault* per 100,000 persons for the suburb, a rate **33.7** for the LGA and a rate of **118.8** for NSW.
 - A rate of **384.8** for incidents of *malicious damage to property* per 100,000 persons for the suburb, a rate of **389.6** for the LGA and a rate of **737.8** for NSW.

- A rate of **21.1** for incidents of *alcohol related disorderly conduct (offensive conduct)* per 100,000 persons for the suburb, a rate of **4.0** for the LGA and with a rate of **36.6** for NSW.
53. However, when crime does occur in the local community BOCSAR hotspot maps for Eastwood between April 2018 to March 2019 indicate that the Hotel is located:
- within a medium-density hotspot for incidents of alcohol related assault;
 - within a high-density hotspot for incidents of domestic assault;
 - within a high-density hotspot for incidents of non-domestic assault;
 - within a low/medium density hotspot for incidents of malicious damage to property.
54. Although there is evidence of localised concentrations of crime in the neighbourhood of the Premises, the *rates* of crime at the level of the local or broader community do not, of themselves, pose a significant pre-existing risk factor when assessing the risk of extending the hours of this venue..

Socio-demographic and health data for the Communities

55. The Authority notes that socio-economic disadvantage does not present as an additional risk factor when assessing these communities on the whole. The 2016 ABS Socio-Economic Index For Areas (“SEIFA”) data recorded that both the suburb of Eastwood and the Ryde LGA ranked in the 9th decile on the Index of Relative Socio-Economic Advantage and Disadvantage (“IRSEAD”) compared to other suburbs and LGAs within the State. These are advantaged communities.
56. NSW Department of Health *Healthstats* data presents a mixed picture. Alcohol attributable hospitalisations across the LGA are moderately elevated, at 677.0 per 100,000 persons compared to the NSW spatially adjusted rate of 555.6 during the period from 2016 to 2018. Alcohol attributable deaths were recorded at a spatially adjusted rate of 12.6 per 100,000 persons of population, compared to the NSW rate of 18.1 during the period from 2015 to 2016.
57. Health data for the community poses an adverse factor of some weight.

Vulnerable Groups in the Local Community

58. In the Second NSW Health Submission, NSW Health submits that Eastwood has the third highest number and percentage of low-income households and the second highest unemployment rate in this LGA, with a pocket of 1,160 low income households surrounding the venue and housing 1,876 unemployed persons.
59. NSW Health cites the *Household Expenditure Survey 2009-2010* which indicated that the most disadvantaged portion of the population spends a larger proportion of total household income on alcohol and a 2017 report from the Australian Gambling Research Centre which identified that persons of low income were overrepresented among problem gamblers. Problem gamblers in low income households spent the greatest proportion of their household’s disposable income (27%) – equivalent to four times the average yearly household utility bills, and more than half the grocery bills, of that income group.
60. NSW Health contends that additional alcohol and gambling consumption during the proposed extended trading hours will place this already vulnerable portion of the local

community further at risk. The Applicant counters in its submission dated 16 August 2019 that NSW Health assumes that this Hotel's patronage is drawn *solely* from the low income SA1 area surrounding the Hotel. According to the Applicant, it is more appropriate to use SA2 statistical indicators as they provide wider reflection of a community.

61. The Authority accepts that there are vulnerable populations situated near the Hotel and has given some weight to this factor when considering the potential adverse social impact of the Hotel's 30 gaming machines on financially disadvantaged persons in the local community. The responsible development of the local gaming machines industry is discussed further below.

Proximity to residential premises, patron migration and late-night transport options

62. Under section 3(2)(c) of the Act the Authority is required to consider the need to ensure that the supply of liquor does not detract from the amenity of community life. In a very brief two-sentence submission one local resident, Ms Lau, opposes the Application on the basis that there is no justification for an establishment in a "residential suburb" to be allowed to trade until 3:00 am.
63. The Authority has considered the Applicant's response dated 12 October 2018, which accompanied the Application and CIS, and accepts that Rowe Street has a commercial character and is zoned for mixed use.
64. The Authority further accepts the Applicant's contention in the 12 October 2018 response (noting that a copy of the Environmental Noise Assessment report 5449-3.1R dated 27 June 2018 is also before the Authority) that the late trade has been assessed by an acoustic consultant to confirm that the operation will comply with the relevant acoustic criteria.
65. The Applicant submits in the 12 October 2018 response that "substantial provisions" have been made to mitigate the potential for alcohol related harm and that granting the extended trading hours, including a prohibition on live entertainment, low patron capacity, the provision of security, use of pre-closure procedures would bring the Hotel in line with the operation of other "similar premises" in the suburb.
66. The Authority finds the Premises to be of moderate scale and not of low patron capacity. The Authority accepts that the licensed business has made provision for these disturbance mitigation measures in its Plan of Management. The Authority accepts that there are two other Hotels with extended trading hours in the suburb.
67. Nevertheless, the Authority finds (on the basis of the Google maps aerial view photograph, sourced by staff on 20 August 2019) that there are residential premises within a short walking distance of the Premises.
68. NSW Health, in their 12 October 2018 submission ("First NSW Health Submission") and the Second NSW Health Submission, have made detailed and persuasive submissions on the scope for the proposed extension of late night hours to adversely impact local amenity, specifying the potential for increased patron migration and a lack of public transport options available during the proposed late trading hours.
69. The Authority accepts the contention in the Second NSW Health Submission, that Transport NSW information indicates that train services to and from Eastwood Railway

Station cease at 12:30 am on weeknights and at 1:30 am on weekends, with only one bus route operating after 12:30 am on weekends, operating infrequently.

70. The Authority does not accept the Applicant's contention in the submission dated 16 August 2019 responding to the Second NSW Health Submission that transport options are not a matter for NSW Health. Any submitter may bring the availability or otherwise of late-night transport options to the Authority's attention as a harm mitigation factor. The public health impacts of the operation of licensed premises are matters within the scope of expertise of NSW Health and there is no indication that its account of transport services is incorrect. The Applicant counters that there is "adequate transportation and Uber or taxis to remove the likely low number of patrons at close". Nevertheless, the Applicant provides little or no information indicating how many patrons may be on the Premises at different times of the week, nor does this submission rebut the contention that mainstream, less costly public transport options are infrequent after 12:30 am, which the Authority accepts is the case.
71. The Authority notes, as contended by the Applicant in the 16 August 2019 submission responding to the Second NSW Health Submission, that Police do not object to the Application in their submission dated 1 August 2019, but this does not address the NSW Health concerns about the potential for adverse amenity impacts from migrating patrons should another venue operate until 3:00 am across the week.
72. Granting the ETA will permit another licensed business to operate late in the evening when most non-licensed and licensed premises are closed and the area is relatively quiet. It will also permit patrons to continue to consume alcohol at the venue over a longer duration than is presently the case. The Authority is satisfied that granting the ETA will increase the scope for alcohol affected patrons to impact the amenity of the neighbourhood in this local community and may potentially increase alcohol related harm.
73. The Authority finds that permitting another late licensed venue to operate in this location increases the risk of exacerbating the existing levels of alcohol related harm, anti-social conduct or adverse impact upon local amenity, particularly given the proximity of local residents and reduced availability of public transport options late at night. Another late trading licensed venue in this location will provide another choice, but also another opportunity for late night patron migration, occurring at relatively sensitive times of the evening.

NSW Health and alcohol-related crime and late night amenity impacts

74. NSW Health contends in the Second NSW Health Submission that the "intention" of extending licensed hours is to increase the volume of alcohol sold by the business. The Authority accepts that this is one likely purpose of a hotel-licensed venue extending its late night trading hours by a substantial degree.
75. NSW Health refer to Livingston M and Wilkinson C and Room R *Community impact of liquor licences: An Evidence Check rapid review brokered by the Sax Institute for the NSW Ministry of Health* (2015) submitting that there is a strong association between the volume of alcohol sales and rates of alcohol-related harm. NSW Health further refers to BOCSAR research by Briscoe S and Donnelly N, *Temporal and regional aspects of alcohol-related violence and disorder* (2001) identifying a substantial increase in the

percentage of alcohol-related assaults and offensive behaviour in NSW during the night-time - commencing from 6:00 pm to 3:00 am.

76. NSW Health further submit that the Hotel proposes to operate at a time of day evidenced to have higher rates of alcohol-related assaults and offensive behaviour, with 30% of all alcohol-related domestic assault and 26% of all alcohol-related non-domestic assault recorded between 12:00 am and 6:00 am across the Ryde LGA. NSW Health refers to BOCSAR hotspot maps from April 2018 to March 2019 and contend that these patterns of assault and malicious damage will only worsen with additional extended licensed trading in the area.
77. Furthermore, NSW Health refer to Recommendation 14 of the 2015-2017 NSW *Domestic Violence Death Review Team Report* which states:
- When making determinations regarding any alcohol licensing related applications in areas identified by the NSW Bureau of Crime Statistics and Research as domestic violence 'hot spots', apply the following criteria:*
- For any applications pertaining to an extension of trading hours, or the development of new liquor outlets or bottle-shops in domestic violence hot spots, there should be a rebuttable presumption against granting the application.*
78. NSW Health submits that this Application should be refused on the basis that the Premises is situated within an identified hotspot for domestic violence and the Applicant has provided no evidence that granting the ETA will not increase domestic violence related assaults.
79. Aside from the relationship between late night trading and crime, NSW Health contend that granting the Application will contribute to the development of a “cluster” of late-night licensed venues with increased scope for patron migration.
80. In the 16 August 2019 submission the Applicant responds (and the Authority accepts), that there is no evidence to suggest that liquor would be sold otherwise than in accordance with the requirements of the Act. The Authority further accepts the Applicant’s contention that this venue has a record of trading within standard licensed hours indicating that the venue has been well-managed.
81. The Applicant submits that BOCSAR hotspot maps are an indicator of crime “density” and not risk. The Authority finds that BOCSAR hotspots disclose areas of relative vulnerability to alcohol related or other crime and it is appropriate to consider whether the venue will operate in a demonstrably higher risk area. The Authority accepts the relationship in the research between later trading and alcohol related crime and misconduct.
82. The Applicant submits that alcohol-related violence is “as likely” to occur in the morning afternoon or evening as it is during the late-night to early morning and there can be “no inference drawn” about an increased risk of alcohol-related violence during the early hours of the morning. Furthermore, that there is no evidence to suggest that there is a proportionally higher risk of alcohol-related violence in Eastwood during the hours proposed by this Application.
83. The Authority has considered the BOCSAR crime statistics for April 2018 to March 2019 for the number of incidents flagged as alcohol related by Police by day of week and time of day. This data indicates that in the suburb of Eastwood:

- for **non-domestic assault** incidents the highest count was 4, occurring between 6:00 pm and 12:00 midnight on Monday. However, the second highest count was 1, occurring between 12:00 pm and 6:00 pm Sunday and Friday, between 12:00 midnight and 6:00 am Wednesday and Saturday and between 6:00 pm and 12:00 midnight Wednesday.
 - for **offensive conduct** incidents the highest count was 1, occurring between 12:00 midnight and 6:00 am on Tuesday and Saturday, between 12:00 pm and 6:00 pm Wednesday and between 6:00 pm and 12:00 midnight Thursday.
 - for **domestic violence assault** incidents the highest count was 2, occurring between 12:00 midnight and 6:00 am on Friday and Saturday and between 6:00 am and 12:00 pm Saturday while the second highest count was 1, occurring between 6:00 am and 12:00 pm Monday and between 6:00 pm and 12:00 midnight Saturday.
 - for **offensive language** incidents the highest count was 1, occurring between 12:00 pm and 6:00 pm Sunday and between 6:00 pm and 12:00 midnight Thursday.
84. During the same period, this data indicated that across the LGA:
- for **non-domestic assault** incidents the highest count was 7, occurring between 6:00 pm and 12:00 midnight on Saturday while the second highest count was 6, occurring between 6:00 pm and 12:00 midnight on Monday.
 - for **offensive conduct** incidents the highest count was 1, occurring between 12:00 midnight and 6:00 am on Sunday, Tuesday and Saturday, between 12:00 pm and 6:00 pm Wednesday and between 6:00 pm and 12:00 midnight Thursday
 - for **domestic violence assault** incidents the highest count was 5, occurring 6:00 pm and 12:00 midnight Friday and Saturday while the second highest count was 4, occurring between 12:00 midnight and 6:00 am Tuesday and Saturday.
 - for **offensive language** incidents the highest count was 2, occurring between 12:00 pm and 6:00 pm Friday and between 6:00 pm and 12:00 midnight Friday while the second highest count was 1, occurring between 12:00 pm and 6:00 pm Sunday and between 6:00 pm and 12:00 midnight Thursday.
85. The Authority is satisfied that should the ETA be granted, this Hotel will have a substantially increased capacity, during higher risk times of the day and week, to accommodate, attract and generate alcohol affected patrons arriving and departing at later hours than is currently the case. There would be greater scope for patrons to consume liquor over longer hours and engage in alcohol related violence or anti-social conduct across the course of the week, until 3:00 am Monday to Saturday and until midnight on Sunday. The research identified by the Department of Health identifies that evening trade has an association with higher rates of assault and offensive behaviour.
86. The Authority does not accept the Applicant's contention that concerns about the development of a cluster of late-night premises and increasing patron migration is a "mute" (sic) issue by reason of Council's desire to attract people to the area in the Ryde Night Time Economy Study. While development consent has been granted to trade during the proposed additional hours, there is little evidence of a positive community wide desire for hotels to attract people to this location until 3:00 am, 6 nights per week.
87. As noted above, the local and broader community are not exposed to high rates of alcohol related crime compared to New South Wales as a whole. However, when crime does occur it is occurring in the neighbourhood of the Premises. Nevertheless, the

research shows that the venue will be extending its trade during higher risk times of the day and week and there is scope for adverse amenity impacts to increase, late at night, from patron migration, by contributing to a “cluster” of late trading hotels within walking distance of each other in Eastwood. This adverse amenity consideration has been given some weight for the purposes of section 3(2)(c) of the Act.

NSW Health on other alcohol related social impacts

88. In the Second NSW Health Submission, NSW Health advises that Ryde LGA has consistently exceeded the NSW wide rate of alcohol-attributable hospitalisations with data from the most recent 2016-18 period indicating a sharp increase that has Ryde LGA currently exceeding the NSW average by 22%. Furthermore, during 2017 there were 172 Emergency Department alcohol related visits to the nearby Ryde Hospital, 85 of which occurred during the hours of 10:00 pm and 6:00 am. Ryde Hospital’s rate of late-night alcohol related visits per 1,000 unplanned Emergency Department visits are 37% higher than the NSW average. The Authority accepts this data.
89. In the 16 August 2019 submission responding to the Second NSW Health Submission the Applicant counters that by referring to Livingston (2011) *Alcohol outlet density and harm: Comparing the impacts on violence and chronic harms*, which found that there is only a significant relationship between the density of packaged liquor outlets and increased rates of alcohol-caused chronic disease. This was explained by the availability of cheap alcohol at high volumes from packaged liquor outlets resulting in higher levels of drinking. The Applicant contends that hotels and pubs tend to charge higher prices for liquor and remove patrons before intoxication or binge drinking. Furthermore, per clause 16 of the Plan of Management, this Hotel will not sell any takeaway liquor and would not be able to do so under the Act after 11:00 pm.
90. The Authority accepts that granting the ETA will not impact this venue’s takeaway liquor trading hours. However, the Authority notes, as identified in Authority Guideline 6, that highly concentrated clusters of hotels in an area have been positively associated in Australian research with higher rates of alcohol related non-domestic assault (Livingston, 2008). Extended late-night trading hours are associated with acute alcohol related harms, violence, emergency department presentations and hospitalisations (Atkinson et al, 2018). Later trading hours are associated with increased patron intoxication across all venue types (Coomber et al, 2017). Relevantly, the density of licensed outlets where the main activity is liquor consumption (such as pubs) is positively related to assault related hospital admissions (Livingston, 2011).
91. While the Applicant submits that there is no basis to contend that the extended hours will result in an “unacceptable” increase in alcohol-attributable hospitalisations and chronic conditions, that is not the test.
92. On the Applicant’s contention that the venue is “oriented towards dining” with only limited bar tables oriented towards drinking only, the Authority is not satisfied, on the material before it, that the service of meals will play a prominent role in the Hotel’s operations after midnight. While the Authority accepts that the layout of the Hotel may aide staff in monitoring patrons and preventing instances of intoxication going unnoticed on the Premises, the venue is some 140 sqm and its primary purpose is the sale of liquor by retail.

93. The Authority is satisfied that the broader community is over exposed to alcohol attributable hospitalisations. This information has been given some weight as an adverse factor but has not been decisive as it does not disclose the relative vulnerability of the local community to alcohol related health impacts.
94. As noted above, although the SEIFA scores for the suburb and LGA on the whole indicate that socio-economic disadvantage is not a compounding risk factor, the Authority accepts (on the information discussed below) that there are pockets of social disadvantage in the neighbourhood of the Premises, within the relevant local community.

Responsible Development of Related (Gaming Machines) Industry

95. Section 3(1)(c) of the Act provides that it is a statutory object of the Act to contribute to the responsible development of related industries.
96. The OneGov Record indicates that there are 30 gaming machines operating on the Premises. The gaming machine shut down period under section 39 of the *Gaming Machines Act 2001* (NSW) ("GM Act") is from 4:00 am to 10:00 am and thus the extension of late-night hours proposed by this ETA will not intersect with that period.
97. On the basis of the LGNSW list of licensed premises as at 20 August 2019, the Authority is aware that the suburb of Eastwood has 3 club licences and 3 full hotel licences. The Authority takes note that a Google Maps search of the address of those premises identified on the LGNSW list indicates that:
 - Brush Park Bowling Club Limited is located at Marsden Road and Rutledge Street Eastwood (some 2.5 kilometres walking distance from the Premises). This registered club has unrestricted on premises licensed trading hours;
 - Eastwood Rugby Club located at 146-150 Vimiera Road Eastwood (some 2.4 kilometres walking distance from the Premises). This registered club has unrestricted on premises licensed trading hours;
 - Eastwood Club Limited located at 6 Hillview Road Eastwood (some 400 metres walking distance from the Premises). This registered club has unrestricted on premises licensed trading hours;
 - Eastwood Hotel located at 115 Rowe Street Eastwood (some 76 metres walking distance from the Premises). This hotel has extended trading hours;
 - The Landmark located at 20 West Parade Eastwood (some 400 metres walking distance from the Premises). This hotel has extended trading hours.
98. This information satisfies the Authority that, within reasonable walking distance and within the neighbourhood of the Premises, are a number of licensed venues with substantial late-night gaming machine holdings offering liquor, gambling and hospitality services.
99. The Authority is aware, through recent consideration of licensing applications for venues in Eastwood, that the three hotels are operating at close to their maximum gaming machine entitlements. That means nearly 90 gaming machines on the premises of these three venues along with further significant gaming machine holdings across the three Eastwood clubs. The Authority finds that gaming machine accessibility is already extensive across this predominantly residential local community.

100. The Authority notes and gives some weight to the social impact concerns identified in the Second NSW Health Submission, outlined above, regarding the additional trading hours placing already vulnerable people of the community further at risk, in particular problem gamblers.
101. Should the ETA be granted, the 30 machines operating at this venue will have the capacity to operate 17 hours per day from Monday to Saturday and for 14 hours on a Sunday.
102. While the local community is relatively advantaged, the Authority has taken into account the close proximity of a substantially disadvantaged cohort in the neighbourhood of the Premises, within the local community, identified in the Second NSW Health Submission. The Authority has taken into account the substantial numbers and clustering of gaming machines available over extended hours in this local community, when considering whether extending the hours of this venue to operate across the hours proposed.
103. The Authority accepts the Commercial Objector's contention, which is not in dispute, that this Hotel has sought and had approved an increase in its gaming machine threshold since the licence was granted. This is apparent from the OneGov licence record, noted above.
104. The Commercial Objector contends that it observed patrons at the Hotel between 19 June 2019 to 2 July 2019 and recorded the number of patrons attending the bar and gaming area of the Hotel at various times. It submits that "no objective evidence or weighting" can be drawn from such a "limited number" of persons attending the venue.
105. In its 16 August 2019 submissions, the Applicant acknowledges that the Hotel is operating at the maximum number of gaming machines permitted for a hotel in New South Wales, but submits that the Hotel is not a "leading" gaming hotel and currently ranked 334 across NSW. The Authority accepts that contention and notes that the average profit per machine is below the average for the Ryde LGA.
106. The Applicant's submission dated 16 August 2019 contends that without opening after midnight it is not possible to survey patrons who may wish to use the facilities after midnight. Surveys of patrons in the Hotel gaming room after 10:00 pm during one week in July 2019 indicated that the average age is 39, the vast majority are employed in "white collar" employment and primarily male and of Chinese or Korean descent.
107. The Authority accepts that the Applicant conducted these surveys but that they only addressed the patrons residential suburb, gender, age, occupation and ethnic background. It appears from these surveys that:
 - On 11 July 2019 – 7 patrons completed the survey, only one of which identified as being from the suburb of Eastwood.
 - On 10 July 2019 – 5 patrons completed the survey, only one of which identified as being from Eastwood.
 - On 9 July 2019 – 6 patrons completed the survey, none of which identified as being from Eastwood.
 - On 8 July 2019 – 6 patrons completed the survey, only two of which identified as being from Eastwood.
 - On 6 July 2019 – 5 patrons completed the survey, only one of which identified as being from Eastwood.

- On 5 July 2019 – 7 patrons completed the survey, only two of which identified as being from Eastwood.
108. It is unclear whether these surveys represent the total number of people in the gaming room of the Hotel after 10:00 pm on these days, or only the patrons willing to answer the survey questions.
109. The Authority accepts the information provided by the Commercial Objector on the number of patrons observed in the Hotel at various times between 19 June 2019 and 2 July 2019. The Authority is satisfied that:
- At 11:00 pm on 19 June 2019 the Hotel had 11 patrons in the bar area and 3 patrons in the gaming room and at 12:00 midnight 0 patrons in the bar area and 2 patrons in the gaming room.
 - At 11:00 pm on 20 June 2019 the Hotel had 0 patrons in the bar area and 5 patrons in the gaming room and at 12:00 midnight 0 patrons in the bar area and 0 patrons in the gaming room.
 - At 11:00 pm on 21 June 2019 the Hotel had 2 patrons in the bar area and 6 patrons in the gaming room and at 12:00 midnight 0 patrons in the bar area and 0 patrons in the gaming room.
 - At 11:00 pm on 22 June 2019 the Hotel had 0 patrons in the bar area and 2 patrons in the gaming room and at 12:00 midnight 0 patrons in the bar area and 0 patrons in the gaming room.
 - At 11:00 pm on 23 June 2019 the Hotel had 2 patrons in the bar area and 2 patrons in the gaming room and at 12:00 midnight 0 patrons in the bar area and 0 patrons in the gaming room.
 - At 11:00 pm on 24 June 2019 the Hotel had 2 patrons in the bar area and 2 patrons in the gaming room and at 12:00 midnight 0 patrons in the bar area and 0 patrons in the gaming room.
 - At 11:00 pm on 25 June 2019 the Hotel had 4 patrons in the bar area and 3 patrons in the gaming room and at 12:00 midnight 2 patrons in the bar area and 5 patrons in the gaming room.
 - At 11:00 pm on 26 June 2019 the Hotel had 0 patrons in the bar area and 5 patrons in the gaming room and at 12:00 midnight 1 patron in the bar area and 5 patrons in the gaming room.
 - At 11:00 pm on 27 June 2019 the Hotel had 7 patrons in the bar area and 4 patrons in the gaming room and at 12:00 midnight 3 patrons in the bar area and 2 patrons in the gaming room.
 - At 11:00 pm on 28 June 2019 the Hotel had 14 patrons in the bar area and 7 patrons in the gaming room and at 12:00 midnight the Hotel was closed.
 - At 11:00 pm on 29 June 2019 the Hotel had 4 patrons in the bar area and 5 patrons in the gaming room and at 12:00 midnight nothing was recorded.
 - At 11:00 pm on 30 June 2019 the Hotel had 2 patrons in the bar area and 6 patrons in the gaming room and at 12:00 midnight 3 patrons in the gaming room and nothing recorded for the bar area.
 - At 10:00 pm on 1 July 2019 the Hotel had 3 patrons in the bar area and 2 patrons in the gaming room and at 11:30 pm 1 patron in the bar area and nothing recorded for the gaming room.
 - At 11:00 pm on 2 July 2019 the Hotel had 8 patrons in the bar area and 11 patrons in the gaming room and at 12:00 midnight the Hotel was recorded as closed.
110. Without significant evidence of local support for the late hours sought by the Applicant, the information provided by the Applicant and the Commercial Objector indicate modest

patronage at this venue as it approaches its current standard closing times - with gaming room patronage a prominent feature of that patronage.

111. In the 23 May 2019 submission attached to the CIS, the Applicant contends that when compared to NSW averages the local and broader communities exhibit, higher levels of tertiary education, a higher proportion of white-collar workers, higher family income, higher levels of married couples and higher household income.
112. The Applicant then notes, by reference to the 2012 Ogilvy Illumination report titled *Prevalence of Problem Gambling in NSW* that in NSW “Problem gambling prevalence was associated with a level of education, being lowest among those with university degrees (0.1%)” before contending, by reference to ABS *Eastwood-Denistone SA2, Community Profile*, that in terms of residents who have attained Bachelor Degree level and above, the local and broader population of Eastwood-Denistone (41.4%) and the Ryde LGA (39.4%) are considerably higher than the NSW average (23.4%).
113. The Applicant further notes in the 16 August 2019 submission that that the Hotel is located in a LIA Band 1 SA2 area, meaning that it is recognised by the Authority as having the highest SEIFA scores, the lowest gaming machine density and expenditure.
114. The Authority notes by reference to the LGNSW Fact sheet *Local Impact Assessment scheme overview* published on the LGNSW website, that each SA2 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 the relative socio-economic disadvantage of the SA2. Each SA2 is assigned a score with a weighting of:
 - 70% SEIFA
 - 15% gaming machine expenditure per capita
 - 15% number of gaming machines per capita.
115. All SA2s in NSW are then ranked into Band 1, Band 2, Band 3 accordingly:
 - The bottom 20% (i.e those with the highest levels of socio-economic disadvantage) are put into Band 3.
 - The next 30% are put into Band 2.
 - The remaining 50% (i.e. those with the lowest levels of socio-economic disadvantage) are put into Band 1.
116. The Authority notes that when areas are allocated Bands under the GM Act that decision is now dominated by the higher socio-demographic status of the area. That is, gaming machine density and expenditure plays a lesser role in the banding process.
117. Nevertheless, it remains appropriate, when considering an application for an ETA, to consider the statutory objects of the Act, including whether granting an ETA advances the *responsible* development of a *related* industry – in this case, gaming machines.
118. The Authority notes, as contended in the Applicant’s 16 August 2019 submission, that counselling services are provided to players, the Hotel participates in the *GameCare* self-exclusion scheme, local counselling services are available and have been notified of the ETA with no responses received from those services, no concerns were expressed by “statutory stakeholders” with respect to gaming related harm and there have been no referrals or self-exclusions at the Hotel (noting that the Hotel was notified since lodging the Application of a single exclusion since lodgement by a person who was not a patron of the Hotel). The Applicant contends that this demonstrates the

character of the locality's patrons using the gaming machines at the Hotel who are "unlikely to engage in problem gambling".

119. The Authority has also considered the Applicant's contention that there is "limited potential for additional, substantial negative impact" in that there is no expansion in the nature of the gaming provided, with the Hotel maintaining the same number of gaming machines, and the Hotel will be closed for at least 7 hours providing a break in the availability of gaming services at the Hotel.
120. The Authority accepts that the *number* of gaming machines will not be increased as a result of this Application. That is not possible because the venue is already operating at its maximum gaming machine threshold. Nevertheless, granting the ETA will considerably expand the operation of gaming machines in this suburb as yet another hotel offers gaming machines for a later and longer duration than is presently permitted by the licence. Hotel businesses are conducted on a for profit basis and hoteliers do not have the same prohibition on incentivising company officers or managers by reference to liquor and gaming machines sales that are provided by section 10(1)(K) of the *Registered Clubs Act 1976* (NSW).
121. The Applicant contends that the ETA will provide *gaming patrons* with increased *flexibility* of access to gaming machines at their preferred times, but the Authority notes that the Ryde Night Time Economy Study indicates that the majority of respondents left the Eastwood Town Centre between 6:00 pm and 10:00 pm. This information, along with the Commercial Competitor's observations on the Hotel's evening patronage towards closing time, suggests that patrons seeking to utilise *gaming machines* during late extended hours may be a small cohort of the community.
122. The Applicant then contends that it is "unlikely" that the extended trading hours will encourage patrons or problem gamblers in the area to increase their spend on gambling and it is "far more likely" that the availability of "additional gambling options" after midnight will see current gambling patterns "disrupted and distributed" across the three, rather than two, venues in Eastwood. According to the Applicant, the introduction of additional gambling machines in Eastwood does not represent an *additional* opportunity to gamble that would have been foregone but for their introduction. The Applicant also contends that there is presently "spare capacity" for gambling that will be increased if the Application is approved.
123. The Applicant has not provided any positive evidence to establish that an increase in gaming machine expenditure from problem gamblers will *not* occur as a result of granting this ETA and instead that current gambling patterns will be disrupted and distributed across the three hotels in the local community. Other than advice that only one person has taken advantage of the GameCare self-exclusion scheme which the Hotel participates in, (noting that the Applicant claims the person was *not* a patron of the Hotel), there is little information explaining how long gaming machine players are on the Premises, their average spend or how often staff actually intervene with those players who spend prolonged periods of time playing gaming machines without interruption.
124. Authority Guideline 6 places applicants on notice that the Authority may consider certain gaming related research and information when considering an ETA for a gaming venue. The Authority accepts the independent analysis of the research provided by the

Productivity Commission (“Commission”), expressed at Chapter 14 of The Australian Government Productivity Commission Inquiry Report, *Gambling*, No. 50, 26 February 2010 (“PC Report”) where the Commission examined the available empirical evidence on gaming machine shut down periods across several Australian jurisdictions and found that existing shut down periods in hotels and clubs were too brief and mostly occur at the wrong times of day. The Commission recommended requiring a more extended shut down for all hotels and clubs that commences “before 2 am” and that is of “at least six hours” duration. This would better target problem gamblers without unduly restricting non-problem gamblers.

125. The Commission notes in the Overview and Chapter 14 of the PC Report evidence that higher risk gamblers present a much greater share of those people playing at night, and at that time gamblers are more likely to be playing under the influence of alcohol, thus reducing the capacity for informed consent on a potentially very costly activity where impulsivity and faulty cognitions are already widespread.
126. The Applicant contends that any negative impacts associated with gambling at this venue will already have been “offset” by a \$200,000 monetary donation made by the Hotel to the Eastwood St Vincent de Paul Society for the first tranche of ten gaming machines. This requirement is recorded as Condition 61010 of the Hotel’s Liquor Licence. The Authority notes that \$150,000 of this donation has been paid by the Hotel, with the remaining \$50,000 scheduled for payment in December 2019.
127. The Authority acknowledges this monetary donation provided by the Hotel and the positive impact this has upon the local community. However, this proposal was made in order to obtain an increase in the gaming machine threshold of the Premises pursuant to section 34 of the GM Act, at a time when the Hotel was only trading during standard trading hours. The Authority does not accept that this financial commitment negates the now proposed expansion of late-night gaming machine hours should the ETA be granted.
128. The Applicant further contends that given the “locality’s lack of indicia commonly linked to problem gambling”, there is nothing to suggest that extended trading hours will result in “unacceptable” increases in social impact resulting from gaming. The Authority reiterates the high numbers of readily accessible hotel gaming machines in close proximity to each other and the Commission’s analysis that longer gaming machine closure times are a preferable harm minimisation measure.
129. The existing local club and hotel venues in Eastwood call into question whether granting this ETA would serve the *responsible* development of this related industry in the local community.
130. The Authority has taken into account the fact that the broader community of Ryde is an SA2 Band 1 area under the GM Act, but that does not overcome its concern about whether extending the trading hours of the machines at this venue would be consistent with the responsible development of the local gaming machines industry. The type, location and gaming machine holdings of local venues indicates otherwise.
131. The Authority finds that refusing the ETA will better conform with the *responsible* development of this related industry for the purposes of section 3(1)(c) of the Act in respect of the local community.

Additional measures

132. The Authority has also considered the measures set out in the Plan of Management and Gaming Machine Plan of Management dated August 2019. The gaming machine plan addresses *inter alia* signage and advertising; the handling of promotional prizes, rewards schemes, cash and winnings; design and use of hotel gaming rooms and related facilities; self-exclusion schemes; gambling held and local face-to-face counselling services; responsible conduct of gambling; and the regulation of gaming machines. Most of these matters reflect minimum legislative requirements. That is, these are not measures that go significantly beyond minimum legal requirements to further reduce the scope for the gaming room to exact adverse social impacts during the hours proposed.

Overall social impact

133. Having considered the positive and negative impacts that are likely to flow from granting the ETA, the Authority is *not satisfied*, for the purposes of section 48(5) of the Act, that the overall social impact of granting extended trading would not be detrimental to the well-being of the local community.

134. The Application is refused pursuant to section 49(2) of the Act.



Philip Crawford
Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* (NSW) 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 the New South Wales Civil and Administrative Tribunal (“NCAT”) for an administrative review under the *Administrative Decisions Review Act 1997* (NSW).

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions> 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 before the Authority

1. Application Form ("Application") for an extended trading authorisation ("ETA") in relation to Moko – Heather's Kitchen and Category B Community Impact Statement ("CIS") both signed by the licensee Mr Paul Dirou ("Applicant") and dated 24 May 2019. The Application and CIS were sent via a letter dated 23 May 2019 and were lodged with Liquor and Gaming New South Wales ("LGNSW") on 25 June 2019 and were accompanied by the following material:
 - (a) The public consultation site notice, police notice and local consent authority notice.
 - (b) A seven-page document prepared by Design Collaborative Pty Limited ("Design Collaborative") on behalf of the Applicant dated 23 May 2019 providing additional information on the CIS by addressing the submission from Northern Sydney Local Health District ("NSW Health").
 - (c) A map depicting the 130 metres in which notification of the Application was distributed.
 - (d) A nine-page document prepared by Design Collaborative on behalf of the Applicant dated 23 May 2019 providing additional information on the CIS by addressing the requirement of clause 28 of the *Liquor Regulation 2018* (NSW).
 - (e) Submission letter from Senior Constable Meegan Perigo, Licensing Officer or Ryde Police Area Command of New South Wales ("NSW") Police ("Police") dated 5 October 2018 advising that the premises does not have a current occupancy certificate, that internal changes made to the premises have not been approved by council and that Police will not comment until these issues have been resolved.
 - (f) Submission letter from NSW Health dated 12 October 2018 outlining concerns that Health has with the proposed ETA.
 - (g) Submission letter from NSW Roads and Maritime Services dated 15 October 2018 providing alcohol related road crash data and making recommendations.
 - (h) Email submission from Aboriginal Affairs dated 10 October 2018 advising no objection provided the NSW Aboriginal Land Council and the Local Aboriginal Land Council have been notified.
 - (i) Submission letter from Family and Community Services ("FACS") dated 8 October 2018 advising that FACS do not have a response and will not be providing input.
 - (j) Email submission from Ms Lau (address not specified) dated 6 October 2018 opposing the Application.
 - (k) Email from Design Collaborative on behalf of the Applicant dated 12 October 2018 attaching a three-page letter of the same date responding to Ms Lau.
 - (l) The Independent Liquor and Gaming Authority ("Authority") Guideline 6.
 - (m) Notice of intention to apply for liquor licence or a licence authorisation dated 2 October 2018.
 - (n) *Liquor Promotion Guidelines* principles 5, 6 and 7.
 - (o) Modification MOD2018/0181 approved by City of Ryde on 17 April 2019 to be read in conjunction with development consent LDA2014/365 approved by the Land and Environment Court on 1 June 2015. The development consent material includes a copy of the Environmental Noise Assessment Report 5449-3.1R issued by Day Design Pty Ltd on 27 June 2018 and a copy of the Pre Final Inspection Certificate dated 31 October 2018 and Interim Occupation Certificate BR17319 issued by Peter J Boyce & Associates on 1 November 2018.
 - (p) OneGov licence record for Moko – Heather's Kitchen as at 15 October 2018.
 - (q) *Noise Management Policy*.
 - (r) Example late night food menu.
 - (s) Letters from Design Collaborative dated 2 October 2018 to relevant stakeholders notifying them of the proposed Application as part of the CIS consultation.
 - (t) Letters from Design Collaborative dated 24 May 2019 to relevant stakeholders notifying them that the ETA Application has been lodged with the Authority.
 - (u) Plan/diagram of the premises held on the LGNSW file.
 - (v) Australian Securities and Investments Commission search for the organisation BBDHM Investments Pty Limited, held on the LGNSW file.
 - (w) Plan of Management dated March 2019, held on the LGNSW file.
2. Submission letter from NSW Health dated 25 July 2019 objecting to the Application.

3. Email from AMW Lawyers dated 26 July 2019 attaching a six-page submission letter of the same date raising concerns with the Application on behalf of a commercial objector, Redcape Hotel Group Pty Ltd (who have interests in the two other hotels operating in Eastwood - Eastwood Hotel and The Landmark) ("Commercial Objector").
4. Email from AMW Lawyers dated 26 July 2019 attaching a submission (in the form of the official LGNSW submission form and an annexure) from Mr McGurk (who is connected with The Landmark and Eastwood Hotel) raising similar concerns as set out in the submission from the Commercial Objector noted above.
5. Submission letter from Police dated 1 August 2019 advising that Police do not object but request the Plan of Management licence condition be amended.
6. Email submission from the Compliance Operations Unit of LGNSW dated 1 August 2019 providing details of the compliance history of the hotel.
7. Five-page letter from Design Collaborative on behalf of the Applicant dated 16 August 2019 (sent via email dated 17 August 2019) providing a response to the submission from the Commercial Objector and attaching the following documents:
 - (a) Profit and loss statement for the hotel for the year ended 30 June 2018.
 - (b) Menu for the hotel.
8. Five-page letter from Design Collaborative on behalf of the Applicant dated 16 August 2019 (sent via email dated 17 August 2019) responding to the NSW Health submission.
9. Ten-page letter from Design Collaborative on behalf of the Applicant dated 16 August 2019 providing additional information on the ETA as a result of the updated Guideline 6 dated 5 August 2019. The following document accompanied this letter:
 - (c) Gaming Machine Plan of Management dated August 2019.
 - (d) Advanced licensee interim certificate 10001266179 issued to Mr Dirou on 26 July 2019.
 - (e) Certificate of advertising signed by Jethro Chi Fung Yuen dated 3 July 2019.
 - (f) Revised Plan of Management dated August 2019.
 - (g) Plan/diagram of the premises highlighting the licensed area in blue, the area covered by the existing minors area authorisation in red and the area to be covered by the ETA in orange.
 - (h) Results from patron surveys conducted in the hotel gaming room after 10:00 pm on the 5, 6, 8, 9, 10 and 11 July 2019.
10. NSW Healthstats data on alcohol attributable deaths in Ryde City Local Government Area ("Ryde LGA") (between 2001 and 2016) and alcohol attributable hospitalisations in Ryde LGA (between 2001 and 2018), sourced by licensing staff on 19 August 2019.
11. LGNSW Licence Details Report for the hotel from 1 July 2008 to 19 August 2019, sourced by licensing staff on 19 August 2019.
12. Email from Design Collaborative dated 20 August 2019 providing a response to the submission from Police.
13. Licence density calculated by licensing staff using 2016 Australian Bureau of Statistics ("ABS") population and LGNSW licensed premises information as at 20 August 2019.
14. LGNSW List of Licensed Premises in Eastwood as at 20 August 2019.
15. Google geographical maps and street view image of the premises, sourced by licensing staff on 20 August 2019.
16. ABS Socio-Economic Indexes For Areas data based on the 2016 Census for Eastwood and the Ryde LGA, sourced by licensing staff on 20 August 2019.

17. Bureau of Crime Statistics and Research (“BOCSAR”) Crime data sourced by licensing staff on 20 August 2019, regarding:
 - (a) Hotspot maps for the suburb from April 2018 to March 2019 for alcohol related assault, domestic assault, non-domestic assault and malicious damage to property.
 - (b) Count and rate per 100,000 persons for alcohol related domestic assault, alcohol related non-domestic assault, malicious damage to property and alcohol related disorderly conduct (offensive conduct) for NSW, Eastwood and the Ryde LGA between April 2017 to March 2019.
 - (c) Number and proportion of selected offences flagged as alcohol related by NSW Police for the Ryde LGA and NSW from 2018.
 - (d) Number of alcohol related incidents by offence type, day of week and time of day for NSW, Eastwood and the Ryde LGA for April 2018 to March 2019.
18. Email from Design Collaborative dated 29 August 2019 in response to an email from licensing staff of the same date asking the Applicant to respond to points raised by the Commercial Objector.
19. Additional material sourced by licensing staff:
 - (a) OneGov licence record for the hotel as at 20 August 2019.
 - (b) Material held by LGNSW relating to an application that was granted in 2017 increasing the gaming machine threshold at the hotel and an application in 2019 to amend a condition imposed as a result of that 2017 threshold application.

Schedule 2

Relevant extracts from the *Liquor Act 2007 (NSW)*

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.

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) (a), the **standard trading period** for premises to which this subsection applies ends at 10 pm.
- (1C) Subsection (1B) applies to the following premises or part of premises:
 - (a) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is the sale or supply of liquor for consumption away from the licensed premises—the licensed premises,
 - (b) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is not the sale or supply of liquor for consumption away from the licensed premises—the part of the premises that is a liquor sales area (within the meaning of section 30) of the licensed premises,
 - (c) if a hotel licence, club licence, on-premises licence or producer/wholesaler licence authorises the licensee to sell liquor for consumption away from the licensed premises—any part of the licensed premises to the extent that it is used for that purpose.
- (2) Any regulation that prescribes a shorter period for the purposes of subsection (1) may:
 - (a) apply to a specified class of licensed premises, and
 - (b) apply in relation to a specified day or days, and
 - (c) in the case of licensed premises on which liquor may be sold or supplied for consumption on the premises as well as for consumption away from the premises—specify different periods for the sale or supply of liquor for consumption on the premises and for the sale or supply of liquor for consumption away from the premises.
- (3) Without limiting subsection (2) (a), a class of licensed premises may be specified by reference to licensed premises that are located in a particular area (however described).

14 Authorisation conferred by hotel licence

- (1) A hotel licence authorises the licensee to sell liquor by retail on the licensed premises for consumption on or away from the licensed premises.
- (2) **Trading hours for consumption on premises**

The times when liquor may be sold for consumption on the licensed premises are as follows:

 - (a) during the standard trading period or at such other times as may be authorised by an extended trading authorisation,
 - (b) on 31 December in any year (but without limiting the operation of any extended trading authorisation)—from the start of the standard trading period for that day until 2 am on the next succeeding day,
 - (c) at any time on any day (including a restricted trading day) to a resident of the licensed premises or to a guest of such a resident while the guest is in the resident's company.
- (3) **Restricted trading days**

Despite subsection (2) (a), the times when liquor may be sold for consumption on the licensed

premises on a restricted trading day are as follows:

- (a) between midnight and 5 am on that day (but only if authorised by an extended trading authorisation),
 - (b) between noon and 10 pm on that day.
- (3A) In the case of Christmas Day, liquor must not be sold for consumption on the licensed premises between noon and 10 pm unless it is sold with or ancillary to a meal served in a dining area on the licensed premises.
- (4) **Trading hours for consumption away from premises**
Liquor may be sold for consumption away from the licensed premises during the standard trading period or at such other times as may be authorised by an extended trading authorisation.
- (4A) An extended trading authorisation must not authorise the sale after 10 pm on any day of liquor for consumption away from the licensed premises.
- (5) **No take-away sales on restricted trading days**
However, the sale of liquor for consumption away from the licensed premises is not authorised on a restricted trading day.
- (6) **Functions on other premises**
A hotel licence also authorises the licensee to sell liquor by retail for the purposes of a function to be held on such other premises as the Authority may, on application by the licensee, authorise, but only for consumption on those premises and at such times as may be specified by the Authority in the licence.
- Note.** Section 51 applies to an authorisation referred to in this subsection.

15 Hotel licence—general provisions

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

15A Cessation of liquor sales during trading hours

(1) Extended trading periods

A hotelier may, at any time during the period that an extended trading authorisation is in force in relation to the licensed premises:

- (a) cease to sell or supply liquor on the licensed premises, and
- (b) continue to provide, or make available, other services and facilities on the licensed premises (such as food and non-alcoholic beverages, entertainment and the use of the premises for conferences or meetings and for gambling activities that are otherwise permitted on the premises).

(2) Authority may approve of cessation of liquor sales during standard trading period

A hotelier may, at any time during the standard trading period:

- (a) cease to sell or supply liquor on the licensed premises, and
- (b) continue to provide, or make available, other services and facilities on the licensed premises (such as food and non-alcoholic beverages, entertainment and the use of the premises for conferences or meetings and for gambling activities that are otherwise permitted on the premises),

but only with the approval of the Authority.

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

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

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.

- (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.

45 Decision of Authority in relation to licence applications

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

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

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

48 Community impact

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
 - (a) the views of the local community, and
 - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
- (2) In this section:

relevant application means any of the following:

 - (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
 - (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
 - (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,
 - (d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),
 - (e) an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),
 - (f) any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,
 - (g) any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,but does not include any application for an extended trading authorisation in relation to a

- special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).
- (3) A relevant application must be accompanied by a community impact statement.
- (3A) However, a small bar application is not required to be accompanied by a community impact statement if:
- (a) development consent is required under the *Environmental Planning and Assessment Act 1979* to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
 - (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.
- (3B) For the purposes of subsection (3A), a **small bar application** means any of the following:
- (a) an application for a small bar licence,
 - (b) an application for approval to remove a small bar licence to other premises,
 - (c) an application for an extended trading authorisation for a small bar,
 - (d) an application to vary an extended trading authorisation for a small bar.
- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:
- (a) the application relates to the same premises as the premises to which a general bar licence relates, and
 - (b) development consent has been obtained under the *Environmental Planning and Assessment Act 1979* to sell liquor during the times to which the application relates and those times are specified in the development consent.
- (3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:
- (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
 - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the *Registered Clubs Act 1976*.
- (4) The community impact statement must:
- (a) be prepared in accordance with the regulations and any requirements of the Authority, and
 - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
- (a) the community impact statement provided with the application, and
 - (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:

- (c) a specified period between 5 am and 10 am on a Sunday,
- (d) (Repealed)

(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.
- (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.