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Dear Ms Brown

**Application for Variation of Extended Trading Authorisation
The Winston, Winston Hills**

INTRODUCTION

The Independent Liquor and Gaming Authority (**Authority**) has completed its assessment of an application made by your client, Mr Khim Poudel (**Applicant**) that was received on 15 November 2013 (**Application**). The Application concerns the licensed premises trading as "The Winston", located at the corner of Caroline Chisholm Drive and Junction Road, Winston Hills (the **Premises**).

The Government Licensing System (**GLS**) record of the liquor licence discloses that the Premises currently operates as a "full" Hotel pursuant to liquor licence number LIQH400106769 (the **Licence**) and enjoys the benefit of an existing extended trading authorisation (**ETA**) with licensed trading hours enabling it to sell or supply liquor during the following times within the following areas:

Gaming Room and Cask Bar

Monday to Wednesday – 5:00am to 12:00am
Thursday to Saturday – 10:00am to 3:00am
Sunday – 10:00am to 10:00pm

All other areas within the licensed premises

Monday to Saturday – 10:00am to 12:00am
Sunday – 10:00am to 10:00pm

Takeaway Sales

Monday to Saturday – 5:00am to 12:00am
Sunday – 10:00am to 10:00pm.

[The Authority notes that recent amendments to licensing legislation prevent the sale or supply of liquor for consumption off licensed premises after 10:00pm, every day of the week. This rule

also applies to the sale of takeaway liquor sold in clubs and Hotels, including any takeaway sales made over the bar].

Pursuant to section 51(9)(b) of the *Liquor Act 2007 (Act)*, the Application seeks the variation of the existing ETA that attaches to the Licence. It is proposed that:

- (i) Licensed trading be conducted for an extra two (2) hours each night, from 12:00am to 2:00am in the following morning after Thursday through Saturday evening trading in the Restaurant, Dining/Bar and alfresco areas under the pavilion and in the south-western smoking terrace area of the Premises. At present those areas must cease licensed trading by 12:00am Thursday through Saturday
- (ii) Licensed trading may occur across all areas of the Premises on a Sunday evening until 12:00 midnight. At present the Premises must cease licensed trading in all areas at 10:00pm on a Sunday.

At its meeting on 25 June 2014, and after careful consideration of the material provided with the Application and the submissions made in relation to the Application, the Authority decided to *refuse* the Application under section 51(9)(b) of the Act.

Staff assisting the Authority informally notified you of the Authority's decision by email dated 2 July 2014. This letter serves to provide a formal record of and brief reasons for the decision to refuse the Application.

Liquor applications comprise a high volume aspect of the Authority's jurisdiction, and this letter provides a concise summary only of the key points arising from the material before the Authority and the Authority's rationale for refusing the Application.

MATERIAL BEFORE THE AUTHORITY

The Authority had before it the Application, the accompanying Category B community impact statement (**CIS**), and further submissions and other relevant material, including:

- Application – 15 November 2013
- Category B CIS document and supporting material – 14 November 2013
- Submission on behalf of the then Director General (now Secretary) of NSW Trade and Investment (**Director General**). The Director General "objects" to the Application and contends that the Applicant did not provide a copy of the Category B CIS as required by the legislation. The Director General notes that the Premises is located in close proximity to a residential area and requests that a standard "LA10" noise restriction be imposed as a condition upon the Licence should the Application be granted – 19 November 2013
- Letter from The Hills Shire Council (**Council**) providing a copy of Development Approval for use of the Premises – 20 November 2013
- Submission from Parramatta City Council advising that they do not object to the Application, subject to the observance of certain conditions in line with the conditions of consent imposed on 8 July 2013 by the Land and Environment Court – 20 November 2013
- Submission from NSW Police, noting that their submission is further to a previous 2012 objection to an extended trading application for the Hotel. Police note that submissions

were also made to the Land and Environment Court objecting to extended trading hours for the Premises, for the purposes of relevant planning legislation, by Council, local residents and Police. Police submit that they are still of the view that the "overall social impact" of granting the extended trading hours will be detrimental to the wellbeing of the local or broader community. Police submit in the alternative that should the Application be granted, certain further conditions should be imposed upon the Licence including, *inter alia*, the provision of security personnel, restrictions on the type of alcoholic beverages that may be sold after 12:00 midnight, compliance with noise emission measures and a lockout time of 1:00am – 17 December 2013

- Submission from Parramatta Community Services Centre, advising that this agency does not object to the proposed extension of trading hours at the Premises – 20 August 2013
- Submissions from the Public. Throughout the 30-day notification period, 30 submissions were received from persons within the local community objecting to the Application. The majority of these submissions raised generalised concerns including, *inter alia*, noise from patrons leaving the Premises, damage to property, empty bottles left on neighbours' lawns, fights in the street, intoxicated drivers, litter and property stolen from homes. The Authority notes that similar issues were previously raised after the Applicant sought to modify conditions of development consent number DA/108/2005 relating to trading hours granted by the Land and Environment Court on 23 August 2006
- Applicant's Plan of the Premises, outlining the proposed licensed area to have further extended trading
- Acoustic Compliance Testing – Renzo Tonin & Associates were engaged by the Applicant to undertake an acoustic assessment for the operation of the eastern smokers' courtyard of the Premises, and provide certification of noise compliance. The assessment concluded that noise emission levels from the eastern smokers' courtyard complied with the "Standard Noise Conditions (LA10 restriction)" imposed by the Authority at the nearest and most adversely affected residential location – 4 February 2010
- Acoustic Compliance Assessment – As a result of the acoustic assessment report from Renzo Tonin & Associates from 4 February 2010 being deemed insufficient by Council, The Acoustic Group Pty Ltd was engaged by the Applicant to conduct a further report. The Acoustic Group Pty Ltd concluded that the cumulative noise as a result of the current operations and the proposed extension will comply with the post-midnight noise limitation of the "LA10" noise restriction – 9 July 2012
- Complaint Management Plan for the Premises – March 2013
- Plan of Management for the Premises – May 2013
- Email from the Applicant to the Authority containing detailed further submissions in support of the Application and in response to submissions from the Office of Liquor, Gaming and Racing (OLGR), Police and community stakeholders – 14 May 2014
- Certificate of Advertising Application – 15 May 2014
- Historical socio-demographic and crime data for the City of Parramatta Local Government Area (LGA) as contained in the 2009 *Social Profile Report* published by the Office of Liquor, Gaming and Racing

- Information published by the Australian Bureau of Statistics (**ABS**) on its "QuickStats" website for the suburb of Winston Hills, based upon 2011 Census data
- Crime and alcohol related crime data for the City of Parramatta LGA current as of 2013 and crime maps for the suburb of Winston Hills showing the location of the Premises and the proximity of high, medium and low concentration "hotspots" for the recorded occurrence of *domestic violence related assault, non-domestic violence related assault, malicious damage to property* and *alcohol related assault* as published by the New South Wales Bureau of Crime Statistics and Research (**BOCSAR**) and publicly available on the BOCSAR website
- Details of all licensed premises within the City of Parramatta LGA obtained from Authority licensing records.

STATUTORY OBJECTS AND CONSIDERATIONS

In determining the Application the Authority has considered relevant provisions of the Act, including the objects and considerations prescribed by section 3 of the Act, which states:

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.*

Once an extended trading authorisation is in effect with respect to any licensed premises, section 51(9)(b) of the Act confers upon the Authority the power to vary or revoke that existing extended trading authorisation. When determining any such application, the Authority must consider section 51(9) of the Act, which states:

51 General provisions relating to licence-related authorisations

- (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 Director-General or the Commissioner of Police.*

PUBLIC INTEREST TEST

The Act does not expressly state the legal test or considerations to be applied when the Authority considers exercising its power to vary or revoke an existing extending trading authorisation under section 51(9)(b) of the Act.

Accordingly, the Authority must consider whether the proposed administrative action is in the public interest. The relevant "public interest" is informed by the statutory objects contained within subsection 3(1) of the Act and the statutory considerations provided by subsection 3(2) of the Act. The Authority makes this assessment with the benefit of the Application and all other relevant materials before the Authority.

The Authority notes that the Applicant has voluntarily prepared and submitted a Category B CIS document with the Application. The CIS provides the Authority with information about the proposal and the views of relevant stakeholders and other aspects of the local community in which the Premises is located. This includes, for example, the proximity of the Premises to sensitive facilities such as hospitals or health facilities, nursing homes, schools, and places of worship.

However, this Application is not of a type for which the production of a CIS is mandatory under section 48(2) of the Act; nor was the production of a CIS specifically required by the Authority. Accordingly, the Applicant was not required to satisfy the "overall social impact" test pursuant to section 48(5) of the Act. Nevertheless, the CIS includes information about the Premises and its environment that is relevant to the Authority's assessment of whether granting the Application is in the public interest, and that material has been considered by the Authority in the course of determining this Application.

Applicant Submissions in Support of the Application

Briefly, the Applicant's stated purpose for seeking an extension of licensed trading for an additional two (2) hours from 12:00am to 2:00am on Thursday, Friday and Saturday evenings in the Restaurant and Dining/Bar areas including the associated alfresco area under the pavilion and louvered roof and south-western smoking terrace, and an additional two (2) hours from 10:00pm to 12:00am on Sunday nights for the entire licensed area of the Premises is as follows:

- To provide an additional facility for existing patrons and persons within the local community to enjoy the numerous amenities provided at the Premises for an extended period of time on Thursday, Friday, Saturday and Sunday evenings, and
- Hotel management have experienced patron demand to remain at the Premises beyond 12:00am on Thursday, Friday and Saturday evenings and 10:00pm on Sunday evenings – particularly patrons who wish to enjoy other facilities at the Premises after finishing a meal.

In the CIS, the Applicant made the following more specific submissions in support of the Application:

- The Premises has undergone major renovations with modern styling to provide inviting, high quality and comfortable facilities for its patrons. The Premises is promoted as a family friendly venue
- The Premises caters to the local community, providing a range of facilities including The Windsor Bar, outdoor terrace, pavilions, bottle shop, gaming room, TAB, Sky Channel and accommodation, in addition to the award winning reputation enjoyed by the Premises for dining at the bistro/restaurant
- There is ample parking provided at the rear of the Premises for at least 350 patrons and the venue policy as to safe transport options includes a free taxi telephone call service

and courtesy bus service operating to transport patrons who wish to travel to destinations within a five (5) kilometre radius of the Premises

- The operators of the Premises have more than 50 years' combined experience within the Hotel industry and currently operate four (4) other Hotel businesses. The Applicant contends that each business is well run to ensure patrons are provided with high quality comfortable surrounds, together with a wide range of facilities to be enjoyed by the local community
- The Premises operates pursuant to a detailed Plan of Management which demonstrates the responsible management practices that have been implemented in order to ensure that impact on the amenity of the community is minimised and/or avoided. Key measures contained therein include, *inter alia*:
 - Entry to the south-western side of the Hotel is restricted after 12:00 midnight
 - The Caroline Chisholm Drive entrance/exit is closed at 12:00 midnight, except in the event of an emergency
 - The Premises offers a free taxi calling service
 - A minibus is available at the Premises to transport patrons from the Hotel on Thursday, Friday and Saturday nights from 10:00pm
 - Patrons are not permitted to enter the Premises between 1:00am and 3:00am (lockout period) except residents of the Premises and motel guests
 - The Premises utilises real-time CCTV equipment, which is in operation whilst the Premises is trading and until at least 30 minutes after cessation of trading
 - The Premises employs security personnel
 - The Premises provides signage to prevent patrons from attempting to take liquor in open containers off the Premises
 - Appropriate signage is in place requesting patrons to leave the Premises in a quiet and orderly manner
 - Security and staff are trained to take reasonable measures to prevent patrons leaving the Premises with open containers of liquor. The level of security presences is determined by the experience of the Hotelier, in that if between 75 and 150 persons are expected one (1) security guard is provided Sunday through Wednesday and two (2) are provided on 3:00am closing nights. If between 150 and 225 persons are expected two (2) guards are provided on Sunday through Wednesday and three (3) on 3:00am closing nights. If between 225 and 325 patrons are expected three (3) guards will be provided from Sunday to Wednesday and five (5) on 3:00am trading nights. When security are engaged their duties will include patrolling "nominated public roads adjacent to the Hotel" and the car park after 9.30pm until the last patron has left
 - Security personnel are engaged at the Premises to patrol both internally and externally to ensure that patrons do not congregate and cause disturbance
 - The Premises operates in accordance with OLGR noise criteria

- Live music and nightclub style entertainment will not be conducted after 12:00 midnight in the Restaurant and Dining/Bar areas
 - Security are trained to monitor the music and advise Hotel staff if it appears to be abnormally loud
 - During the trial period the licensee of the Premises will make arrangements on an "as-needs" basis when reasonably called upon by local Councils or NSW Police to hold community liaison meetings
 - The Applicant also provides a Plan of Management and Complaint Management practices for the operation of the Premises.
- All staff engaged in the sale and supply of alcohol will have completed a prescribed responsible service of alcohol (**RSA**) course. A register is maintained at the Premises with a copy of the RSA certificates and the details of any photo competency cards issued
 - Drinks restrictions have been implemented at the Premises including prohibitions between 12:00am and 3:00am on the sale and supply of any alcoholic beverage that contains more than 30 mL of spirits or liqueur, known as a "shot" and restrictions on maximum drink purchases of not more than four (4) alcoholic drinks by any person at any one time during the post-midnight period of trade. Sales of alcohol are to cease prior to the closing time of the Premises
 - Non-alcoholic beverages and free water are available at all times that the Premises operates. The Premises provides dining facilities on seven (7) days of the week
 - A lockout period applies to the Premises between the hours of 1:00am and 3:00am
 - Staff will request patrons to leave the area in a quiet and orderly manner
 - Security will continue to be engaged as per the Plan of Management to ensure that patrons do not linger or loiter in the vicinity of the Premises
 - An independent licensed security company shall be engaged to provide security at the Premises to undertake internal and external patrols of the Premises. Arrangements are to be made with the independent security company that when requested, additional security personnel shall be available at the Premises within one (1) hour of a request being made
 - Each night when security is on duty, personnel shall be assigned to patrol the nominated public roads adjacent to the site of the Premises, as well as the car park of the Premises. These patrols must commence no later than 9:30pm and must continue until all patrons have left the area patrolled. Patrols must occur at least twice each hour, with patrols being made at random. There is no requirement that areas be patrolled in any particular order
 - CCTV is to be installed to provide coverage of the driveway to the car park from Caroline Chisholm Drive; the driveway to the northern car park closest to the drive-in bottle shop, part of the northern car park within 30 metres of the entry to the beer garden from that car park; and part of the southern car park within 30 metres of the entrance to the Premises

- The Applicant notes that the Premises also has a Complaint Management Plan. Key measures include but are not limited to:
 - Nomination of the Applicant as a designated Complaints Person, who is to handle all complaints
 - Staff are instructed on how to deal with any complaints made by residents or local businesses
 - A process for dealing with complaints has been implemented to allow the Complaints Person to deal with all complaints effectively
 - Complaints are to be logged in a Complaints Diary and the complainant is to be informed of how the Premises intends to resolve the complaint
 - Complaints are to be dealt with in a proactive manner by asking the complainant if the solution offered is satisfactory
 - Follow up procedures are in place in order to ascertain if the solution to the complaint has been successful.

- The Applicant contends that the trial period of extended trading granted by the Land and Environment court will allow the operators the opportunity to exercise later trading hours for a period of 12 months. The Applicant submits that to continue the trading hours after the trial period, the relevant considerations include the performance of the operator in relation to compliance with the development consent conditions during the trial period, any substantiated complaints received and any views expressed by Police

- The Applicant contends that significant employment opportunities are provided by the Premises and the approval of extended licensed trading hours would "encourage development of the business" which "contributes positively to the overall economy of the local community"

- The Applicant notes that the Premises is already approved to trade to 3:00am on Thursday, Friday and Saturday in respect of certain areas of the Premises

- Previous acoustic testing undertaken in respect of this use has shown that the Premises complies with the relevant noise level criteria. The Applicant contends that the current use of the Premises will continue and the noise levels will "likely not" differ from the current noise levels at the Premises. The Applicant contends that this Application merely seeks for the *areas* to which the ETA relates to be expanded

- The Applicant submits that the Premises does not allow live or nightclub style entertainment or ticketed functions or events to be carried out after 12:00 midnight within the Restaurant and Dining/Bar area

- The Applicant notes that Parramatta City Council did not object to the Application in respect of the proposed extended trading hours of the Premises on the basis that the conditions imposed by the Authority upon the Licence are in line with the conditions imposed by the Land and Environment Court on 8 July 2013 regarding the development consent for extended trading hours. Should the Application be granted, the Applicant consents to the imposition of such conditions upon the Licence

- Regarding the public submissions received by members of the local community, the Applicant notes that the majority of the submissions raised similar generalised concerns including noise from patrons leaving the Premises, damage to property, empty bottles left on neighbours' lawns, fights in the street, intoxicated drivers, litter and property stolen from homes.
- The Applicant makes the following submissions in response to the objections raised by the local community:
 - Numerous measures were proposed by the operator to address the concerns of the resident objectors, and these have been imposed as conditions upon the development consent which the Applicant is willing to accept as conditions upon the Licence
 - Additionally, the operators have amended the Plan of Management to prevent disturbance to the amenity of the local community
 - The local community submissions focus on the same issues of noise and patron behaviour. These issues have previously been addressed by the operators in a "proactive" way, which allows the operation of the Premises not to detract from the amenity of the local community. The Applicant contends that this is supported by the absence of complaints and contemporaneous reports about the operation of the Premises from relevant agencies and authorities
 - The Applicant contends that the local submissions "appear to be informed" by media reports rather than by actual experience with the Premises
 - The alleged issues of fights and other serious incidents including assaults do not correlate with the information available to the Applicant. The Premises maintains an incident register and complaints register
 - The Applicant contends that the issues raised by residents are inconsistent with the incident and complaints registers maintained by the Premises and are not supported by Hotel records and the observations of the staff, management and security
 - Venues with a high incidence of alcohol related assaults and other violent incidents are required to operate under certain restrictions, on the basis that they are deemed "Level 1" or "Level 2" venues under the declared premises scheme for the purposes of schedule 4 to the Act. The Applicant submits that if the Premises were the subject of increased assaults and/or violent incidents as raised by the submission makers, the Premises would be deemed a "Level 1" or "Level 2" premises under the statutory declared premises scheme. The Premises has not been the subject of any such restrictions
- The Applicant provided the Authority with BOCSAR incident maps and trend graphs current as of 2013. The Applicant makes the following submissions in respect of this data:
 - The area surrounding the Premises is within the lowest category (0-825 per 100,000 persons) for the concentration of incidents of *alcohol related assault*. Since April 2010, the average trend for incidents of alcohol related assaults is lower than that for NSW, over the three year period

- The rate of incidents of *malicious damage* to property within the suburb of Winston Hills is currently stable. On the edge of the Hotel site is a low density hotspot for malicious damage which also covers the shopping centre. Between July 2012 to June 2013, the rate of malicious damage to property incidents in Winston Hills was **586.5** per 100,000 persons compared to the State wide rate of **1,113.8** per 100,000 persons
- The Winston Hills suburb has no deemed hotspot areas according to BOCSAR in relation to *non-domestic assaults*, as detailed by a 2012 map
- Small areas within the Winston Hills suburb which are deemed as hotspots for *domestic assault* are found on the border of the suburb and are not within close proximity to the Premises
- The Applicant submits that hotspots reflect crime density and not the incidence of crime in that area, and that the number of incidents of assault in the suburb of Winston Hills between April 2010 and March 2013 "falls within the lowest rate" per 100,000 persons and is lower than the State wide rate for the same period
- Between April 2012 and March 2013, the number of incidents of *domestic violence related assault* and *non-domestic violence related assault* in the suburb of Winston Hills "fall in the lowest categories" of the BOCSAR rate per 100,000 persons
- Between April 2010 and March 2013, the rate of *alcohol related assault* occurring within the suburb of Winston Hills is lower than the State wide rate
- Between April 2012 to March 2013, the rate of *alcohol related assault* occurring within the suburb of Winston Hills falls within the lowest rate category per 100,000 persons
- Between April 2011 and March 2012, the rate of *alcohol related domestic violence assaults* was **74.6** per 100,000 persons in Winston Hills compared to **140.8** for NSW as a whole. In the same period, the rate of *alcohol related non-domestic assaults* was **10.7** per 100,000 persons compared to **204.7** for NSW as a whole
- The Applicant contends that alcohol related violence is "significantly less prevalent" in the suburb of Winston Hills than in the rest of NSW
- The Applicant notes that the Premises is located within both The Hills Shire LGA and the City of Parramatta LGA and refers to crime data for both LGAs. In respect of The Hills Shire LGA, the Applicant submits:
 - That the recorded criminal incidents occurring in The Hills Shire LGA during 2012 occurred at premises other than licensed premises more frequently than the rate at which incidents were recorded as occurring at licensed premises
 - Both domestic and non-domestic violence related assaults occurred at licensed premises within the LGA **51** times, compared to **100** times at outdoor/public places and **295** times at residential dwellings
 - Overall, less than **10%** of assaults occurred on licensed premises within The Hills Shire LGA during 2012

- Incidents of harassment, threatening behaviour and private nuisance occurred **10** times at licensed premises, compared to **18** times at retail/wholesale premises, **26** times at an outdoor/public place and **211** times at a residential dwelling
- In respect of the neighbouring City of Parramatta LGA, the Applicant submits:
 - That there was a total of **121** recorded incidents of all combined types of assault occurring at licensed premises within the City of Parramatta LGA during 2012, compared to the State wide figure of **1,689** over the same period
 - Incidents of all combined types of assault occurred at residential dwellings **819** times, outdoor/public places **352** times, retail/wholesale premises **110** times and public transport facilities **91** times
 - Incidents of harassment, threatening behaviour and private nuisance occurred **33** times on licensed premises compared to **50** times at retail/wholesale premises, **46** times at office premises, **89** times at an outdoor/public place and **474** times at a residential dwelling
- The Applicant contends that the "socio-economic make-up" of the suburb that may be inferred from the statistics indicates that the residents of Winston Hills do not appear to be disadvantaged relative to the State average
- The Applicant attaches and the Authority notes a copy of *Thomas v Parramatta City Council* [2013] NSWLEC 25 June 2013.

Police Submissions

In a letter dated 17 December 2013, Police noted that their submission was advanced further to a previous submission in 2012 objecting to an extended trading application for the venue.

Police also refer to submissions they made to the Land and Environment Court by Council, local residents and Police objecting to extended trading hours for the Premises. Police do not resubmit those objections in this submission, but confirm that Police are still of the view that the overall social impact of varying the ETA will be detrimental to the wellbeing of the local or broader community.

Police express concern that use of the relevant areas of the Premises into the early hours of the morning may cause those areas to "take on" the character and the types of entertainment commonly provided at nightclubs, at which Police submit the primary focus is not food but rather alcohol.

Police submit that the following adverse incidents in respect of the operation of the Premises have been detected in the 12 months leading up to the making of this Application:

- Intoxicated male person – failure to leave licensed premises when required (14.12.2013 at 11:20pm)
- Licensing audit – 16 breaches detected primarily for signage offences (30.11.2013)
- Assault – allegation that a patron was assaulted by a security guard, victim well affected by liquor (15.11.2013)
- Domestic assault – parties moderately affected by liquor (07.09.2013)

- Intoxicated male person – failure to leave licensed premises when required (01.09.2013 at 1:00am)
- Drug dog operation – Cannabis x 2 located in the beer garden of the Premises (10.10.2013).

Police also provide internal Alcohol Related Crime Information Exchange (**ARCIE**) data for the Premises regarding acts of violence upon licensed premises. Police note that this data does not include incidents of malicious damage, noise complaints or street violence (occurring off the Premises). On the basis of the ARCIE data, Police note that:

- For the period between September 2013 and November 2013, the Premises was assessed as being of "low" risk for assault on premises
- For the period between June 2013 and August 2013, the Premises was assessed as being of "low" risk for assault on premises
- For the period between March 2013 and May 2013, the Premises was assessed as being of "medium" risk for the occurrence of assault on premises.

Police state that while submissions from residents in the community have raised general concerns relating to, *inter alia*, damage to property, empty bottles left on lawns and fights in the street, it is difficult for Police to quantify these types of disturbance problems – while these calls for service are usually retained by the Police computer aided dispatch (**CAD**) system, they do not appear on the ARCIE data for licensed premises.

Police also refer to *Prescribed Concentration of Alcohol and Last Place of Consumption Report* for the Parramatta Local Area Command (**LAC**) for the period between December 2012 and November 2013.

On the basis of this data, Police note that of the 16 Hotels within the Parramatta LAC, The Winston was second on the list of licensed premises where alcohol was last consumed by drivers in prescribed concentration of alcohol (**PCA**) offences.

Police make the alternative submission that should the Application be granted by the Authority, the following conditions be imposed upon the Licence:

- When security personnel are on duty, they must conduct patrols of the public roads adjacent to the site of the Premises, as well as the car park of the Premises. Patrols must occur at least twice each hour with patrols being made at random
- Service of alcohol is to cease 30 minutes before closing time
- Between 12:00 midnight and 3:00am, any drink that contains more than 30 mL of spirits or liqueur and that is designed to be consumed rapidly (commonly referred to as a "shot") must not be sold or supplied at the Premises
- Between 12:00 midnight and 3:00am, no more than four (4) alcoholic drinks may be sold or supplied at the Premises to the same person at any one time
- The provision of security officers (licensed under the *Security Protection Industry Act 1997*) shall be in accordance with standard operating procedure as amended from time to time. These officers shall be equipped with effective "Two-Way" communication with the CCTV controller and management

- The licensee shall not allow the queuing of patrons attempting to enter the Premises to interfere with the free movement of pedestrian traffic or to hinder or obstruct the free flow of traffic through the car park
- That all alcohol served for consumption on the Premises will be served in opened vessels and no opened vessels containing alcohol are to be removed from the licensed boundaries of the Premises
- Immediately after the person in charge of the Premises becomes aware of any incident involving an act of violence causing a visible injury to a person on the Premises, the person in charge must:
 - Take all practical steps to preserve and keep intact the area where the act of violence occurred
 - Retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by NSW Police
 - Make direct and personal contact with the Police Local Area Commander or his or her delegate, and advise the Commander or the delegate of the incident and
 - Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred
- The Licensee must not permit patrons to enter the Premises after 1:00am – the lockout period
- The Premises must operate in accordance with the "LA10" noise conditions as required by condition 39 of DA/108/2005 and condition 12 of DA/1899/2005
- The security gate and main door leading into the Dining Bar from the southern car park are to be kept closed at all times during trading hours (except in case of emergency)
- No live or nightclub style entertainment may be conducted after 12:00 midnight in the Restaurant and Dining/Bar and only piped or background music may be played
- A minibus shall be available at the Premises to transport patrons from the Premises on Thursday, Friday and Saturday nights from 10:00pm.

Applicant Further Submissions

On 14 May 2014, the Applicant provided detailed further submissions to the Authority in response to the submissions from the Director General and Police. Briefly, in response to the submission from the Director General, the Applicant made the following observations and contentions:

- Acoustic testing in respect of the Premises has shown that the Premises complies with the relevant noise conditions. The Applicant does not oppose the imposition of the standard "LA10" noise condition upon the Licence
- The conclusion that the Premises is assessed to be of "high" risk is "totally inconsistent" with the objective measure of risk identified under the heading "Compliance History", where it is noted that sufficient alcohol related incidents have not been attributed to the

Premises to meet the threshold of the declared premises scheme for the purposes of schedule 4 to the Act at any point during the operation of the scheme

- The OLGR assessment raised concerns regarding the compliance history of the venue, detailing an onsite inspection in February 2009 in relation to the licensee's failure to keep records of prizes won via the "progressive" gaming machines/system. However, the Applicant submits that the Director General's report does not note any subsequent warning letters or breaches since 2009, which the Applicant submits demonstrates that the Premises has been compliant with the relevant legislation for over five (5) years
- The Applicant contends that the breaches identified are merely technical gaming breaches and do not suggest any "systemic pattern of non-compliance or poor management" from the operators or any other matters which could reasonably be interpreted as indicative of any risk of alcohol related harm occurring if the Application were granted.

In response to the alleged acts of violence raised in the Police submission dated 17 December 2013, the Applicant made the following observations and contentions:

- The Police submission details that an intoxicated patron failed to leave the licensed premises when required on 14 December 2014. The Applicant contends that the patron was leaving the Premises but became "distracted" by female patrons in attendance at the Premises. The patron was verbally insulted by a female patron and security staff intervened. Police became involved by reason of their presence onsite
- In relation to the licensing audit, the Police submission notes that the alleged breaches detected were primarily for signage offences. The Applicant confirms that Police walked through the Hotel and that the majority of the gaming help contact cards required by gaming legislation were placed on the wrong side of the gaming machines. The Applicant states that the same signs are used on all of the machines. The Applicant contends that upon receiving an infringement notice, the Applicant paid the penalty as a "utilitarian commercial decision taken in circumstances where there was no admission of liability"
- In relation to the alleged assault by a security officer, this is disputed by the Applicant as "inconsistent" with records maintained by the Applicant. The Applicant contends that a manager radioed security as a result of a male patron being identified as intoxicated. A security officer attended the area and asked the male to leave the Premises. The male became aggressive and refused to leave the Premises. A second security guard assisted and the male was escorted by the two guards towards the main stairs of the Hotel, using limited force as a result of the male's aggressive behaviour. The male was walking backwards towards the main stairs, looking at the security guards. When the male was near the top of the stairs he turned and fell down the stairs without any interference from the two guards in question. The male accused the guards of pushing him down the stairs. The Hotel cooperated with Police and CCTV footage was reviewed and provided to Police, indicating that security personnel had not pushed the male down the stairs
- In relation to the domestic assault incident, the Applicant notes that two female patrons became involved in an argument and subsequent physical altercation. Security at the Premises attempted to separate the female patrons, while a male grabbed one of the security officers. Security separated the patrons. One group was escorted outside the Premises, while the second group remained inside until it was confirmed that the first group had left the Premises. A male patron produced an implement and this was confiscated. Police were called and attended the Premises

- In relation to the intoxicated male patron failing to leave the Premises on 1 September 2013, the Applicant notes that the male refused to leave the Premises when requested to do so, having been identified as showing signs of intoxication. The male became aggressive towards security and was grabbing at the security guards' licences. The male slipped down the stairs when leaving the Premises. Security asked if the male wanted a taxi on numerous occasions, but he refused. Security escorted the patron from the Premises, who attended his car. Security advised the patron not to drive. Police attended the Premises and spoke to security guards and management. Police reviewed the CCTV footage and obtained statements from witnesses of the incident
- In relation to the drug dog operation, cannabis was found in the garden bushes near the main stairs of the Premises. Management assisted Police and CCTV footage was reviewed, depicting an unknown male approaching the bushes and then entering the Hotel. Police searched the Premises with drug dogs and failed to locate the male in question. Management assisted Police during the operation.

In response to the gaming breaches identified by Police, the Applicant made the following observations and contentions:

- The nature of the gaming breaches identified is merely "technical" and any other incidents were all dealt with appropriately by management and security staff at the Premises. The Applicant submits that these incidents do not suggest any "systemic pattern of non-compliance or poor management"
- The gaming breaches should be considered as "irrelevant" when assessing the likelihood of alcohol related violence increasing or negative impacts on the community occurring as a result of increasing the licensed trading hours of the Premises.

In response to the *Prescribed Concentration of Alcohol and Last Place of Consumption Report* provided by Police, the Applicant made the following observations and contentions:

- The Applicant submits that the data "appears to show" that of the persons who came under Police notice for PCA offences between December 2012 and November 2013, only "4 or 5" of the total nine (9) persons are likely to have actually attended the Premises
- The Applicant notes that as detailed in the Plan of Management, during the 12 month trial period, the Premises will provide a minibus to transport patrons from the Hotel to other places within a five (5) kilometre radius of the Premises on Thursday, Friday and Saturday evenings from 10:00pm until all patrons wishing to use the service have been taken from the Premises
- The Applicant contends that Hotel management staff are not readily able to prevent PCA offences from taking place, and by providing safe transport options the hotel is taking all reasonable steps to prevent such offences.

In response to the Police concern that an area of the Premises may take on the character of a nightclub where the primary focus is not food but rather alcohol, the Applicant made the following submissions:

- There is no basis for the concern raised by Police as a result of the restrictions in place pursuant to the modifications of DA/108/2005 as granted by the Land and Environment Court

- The Premises is restricted by the conditions on the development consent, which prevent it from providing nightclub style entertainment.

Submissions from the Public

Throughout the 30-day notification period, 30 submissions were received from persons within the local community objecting to the Application. The majority of these submissions raised issues of noise from patrons leaving the Hotel, damage to property, empty liquor bottles left on the lawns of persons living in the neighbourhood, fights occurring in the streets, intoxicated drivers and property stolen from homes. Some of these submissions from local residents also provided photographic evidence of property said to be damaged by patrons of the Premises. They are not "pro forma" or petition style responses but range in form and detail and are mostly made by local residents.

REASONS

The Authority notes that the Land and Environment Court has determined, for the purposes of planning legislation, to permit use of the relevant areas for the hours proposed by the Application and that the Restaurant and Dining/Bar area (including the associated alfresco area under the pavilion and louvered roof) and the south-western smoking terrace until 2:00am the following morning on Thursday, Friday, and Saturday evenings for a 12 month trial period. The Authority notes that the proposed extension of Sunday trading until 12:00 midnight is also permitted by the development consent.

While the consent authority and/or the Land and Environment Court considers a development application for the purposes of planning legislation, the Authority must make its own assessment of a liquor application for the purposes of liquor legislation.

The Authority notes, as evident from the GLS record, that the Premises is already licensed to trade until 3:00am the following morning on Thursday, Friday and Saturday evenings in Cask Bar and Gaming Room areas of the Premises.

The Authority considers that should the trading hours be varied as proposed, it is more likely than not that the Premises will have greater capacity to accommodate patrons in the proposed further areas of the Premises during later hours.

The Authority is satisfied if the Application is granted, members of the community who patronise this hotel will be able to receive the licensed entertainment services throughout a greater area of the Premises and for a longer duration during extended trading hours.

The Authority notes that an object of section 3(1)(a) of the Act is to regulate the sale, supply and consumption of liquor in a manner that is consistent with the "expectations, needs and aspirations" of the community.

The Applicant has reported and the Authority accepts that some patrons have expressed a desire to patronise the venue during later hours but the Applicant has provided little by way of independent evidence or analysis of a broader *community* expectation, need or aspiration for expanding the late trading capacity of the Premises in the manner proposed by the Application.

It is an object of section 3 (1)(b) to promote the *balanced* development of the liquor industry. However, the Authority is satisfied that the public interest in respect of the development of the liquor industry is already substantially delivered by the existing licensed trading hours in respect of the relevant community – being residents of Winston Hills and neighbouring

suburbs. The Authority is also satisfied from its licensing records that the relevant community has access to other late trading venues The Hills Shire LGA.

The Authority is not persuaded from the Application and submissions that there is anything particularly unique about the kind of entertainment and hospitality services on offer by the Premises, being the provision of late night liquor, gaming and other gambling services. That is not a criticism of the licensed business, but recognition that *this* licensed business provides the same type of hospitality services provided by many other "full" Hotel businesses or registered Clubs, including in The Hills Shire LGA, that provide late trading on a Sunday evening.

The Authority considers that a decision to not further extend the already long trading hours of the Premises is a decision that would better promote the *balanced* development of the industry.

The Authority is required by section 3(2)(c) of the Act to consider the impact of its decision making upon the amenity of community life. The Authority is satisfied that granting the Application and expanding the late night operation of the Premises will more likely than not encourage patrons arriving and departing from the Premises, who may exhibit varying degrees of intoxication, to contribute to noise and other forms of alcohol related adverse impacts on local amenity either on the Premises or in neighbouring streets of Winston Hills on Thursday, Friday, Saturday and Sunday nights and potentially into the early hours of Monday morning.

While such alcohol related disturbances may fall short of criminality, the Authority is satisfied nevertheless that the conduct of patrons migrating to or from the Premises during extended trading hours is more likely than not to adversely impact the amenity of the neighbourhood in a number of appreciable ways – for example, groups of patrons talking loudly, laughing, screaming, moving to and from the Premises on foot, hailing taxi transport and getting in and out of parked cars.

These adverse impacts may be an accepted incident of modern life when they occur earlier in the evening, but they become of relatively greater concern when assessing the public interest and the need to ensure that the sale or supply of liquor does not detract from the amenity of community life.

Concern as to likely social impact is elevated when the proposed extension of licensed trading hours will occur, as in this instance, on Sunday night – at a time when most other licensed and non-licensed businesses have closed and the extensive residential areas surrounding the Premises are relatively quiet.

The Authority accepts, on the balance of probabilities and on the basis of submissions from Police and the 30 submissions from local residents, that residents of Winston Hills in the areas immediately surrounding the Premises are already exposed to the impacts of late licensed trading from this licensed business – until 3:00am on Thursday, Friday and Saturday evenings. In the Authority's experience 30 individual written submissions is a substantial response to the notification of a liquor application.

The Authority has taken note of the location of the Premises and its reasonably close proximity to extensive neighbouring residential areas. Given the *type* of licence utilised by the Premises (a "full" Hotel), the substantial *scale* of the venue and the fact that substantial areas of the Hotel already provide very late trading licensed entertainment for the community that it serves – the Authority is *not* satisfied that further extending the late trading hours of the Premises is in the public interest, given the adverse impact that further licensed trading is likely to have over time upon local residential amenity.

The availability of other licensed venue options does necessarily diminish the potential benefits offered to the relevant community that is most likely to benefit from the grant of this Application in respect of a local Hotel – that is primarily the community located within Winston Hills and in neighbouring suburbs.

The Authority is satisfied that the likely result of allowing the Premises to serve liquor across a greater area of the venue on Thursday, Friday and Saturday evenings and to engage in later trading on Sunday will not only to accommodate those patrons who are already on the Premises, but to attract further patronage late in those evenings. With greater patron capacity and later extended trading hours comes an increased capacity for the Premises to accommodate persons who are tired and/or have been consuming alcohol for a prolonged period – either on the Premises or at other venues before migrating to the Premises.

The Authority notes that the Plan of Management submitted with the Application includes a lockout period which applies to the Premises between the hours of 1:00am and 3:00am. However, if the Application is granted, the Authority is satisfied that the Premises is still likely to accommodate a greater number of patrons arriving at the Premises between 12:00am and 1:00am and this is more likely than not to have a negative impact upon local residential amenity.

In respect of the proposal for the Premises to engage in licensed trading for a further two (2) hours on a Sunday evening, the Authority is satisfied that the likely effect of this will be not only to accommodate those patrons who are already on the Premises, but to attract further patronage late on a Sunday evening beyond 10:00pm, potentially contributing to the adverse amenity impacts already identified by local residents. If the Application were granted, it would be open for patrons to arrive at, utilise and leave the Premises on a Sunday up to 12:00 midnight, whereas presently licensed trading must cease at 10:00pm.

The Authority accepts the Applicant's submission that overall, The Hills Shire LGA performs quite well for alcohol related crime, compared to the figures for New South Wales as a whole. However, the Authority notes that BOCSAR data for 2013 disclosed that the peak times for the occurrence of *alcohol related assault* within The Hills Shire LGA were on Saturday and Sunday mornings between 12:00am and 6:00am, and an elevated proportion of these events occurs on Sunday evenings between 6:00pm and 12:00 midnight – which are the very times during which the Applicant seeks to expand its current capacity to engage in licensed trading.

The Authority is satisfied that granting the Application would likely provide benefits to the individual licensed *business* by way of increased custom and additional revenue, with some modest extension of the hours of employment for staff of the business, which may benefit employees of the Premises.

However the additional cumulative benefits to the relevant *community* (primarily located within Winston Hills and neighbouring suburbs) from expanding the ETA in a spatial and temporal sense are constrained in light of the extended trading authorisation already available to parts of the Premises and the availability of other late trading licensed entertainment options, including registered Clubs and Hotels, located elsewhere in Winston Hills and nearby suburbs.

The Authority notes and accepts that the Premises offers a car park and that the operators of the Premises have more than 50 years' combined experience within the Hotel industry and currently operate four (4) other Hotel businesses. The Authority notes and accepts that the Applicant has a detailed Plan of Management and has engaged security staff to work on the Premises to assist the management of patrons, particularly in the lead up to closing time, including some voluntary initiative to patrol the car park and neighbouring street locations. The Authority notes that the Premises also offers a minibus for local patrons, which the Authority

considers is a meaningful measure to reduce adverse impact on local amenity and the risk of drink driving.

However, the Authority is not satisfied that these factors alone would enable staff at the Premises to effectively monitor and respond to the range of amenity impacts that are likely to arise from patrons arriving and departing the Premises during late hours – which may only become apparent some distance away from the immediate vicinity of the Premises and in other more distant residential areas of the local community.

The Authority does not accept the Applicant's contention that granting the Application will not have any additional negative impact on the local community. As a licensed venue with a maximum patron capacity greater than 325, the Premises is a relatively large scale licensed business. Within this large venue the proposed areas subject to a further extension of late licensed trading are substantial.

Police have identified some acts of violence and anti-social conduct on the Premises in the 12 months leading up to the Application. They include two alleged assaults on premises and two incidents where Police were required to remove intoxicated patrons failing to quit the licensed premises.

While there is not a problematic record for the occurrence of violence or disturbance on the Premises, the Police submission discloses 16 detected contraventions of licensing requirements, mostly involving signage.

Those infractions, while of a technical nature, nevertheless provide some cause for concern as to the Hotel's record for regulatory diligence. Those incidents diminish, to some extent, the Authority's confidence that exposing this licensed business to yet further higher risk trading is in the public interest – given that late trading imposes additional compliance burdens upon management and staff when ensuring compliance with *all* licensing obligations, including technical requirements such as signage or more substantive risk management obligations.

The Authority is satisfied, on the basis of the Police submissions, that patrons of the Premises feature relatively prominently in local crime data retained by the Parramatta LAC in respect of the commission of prescribed concentration of alcohol offences.

Drink driving is a particularly troubling form of alcohol related misconduct and a substantial risk to public amenity and public safety. The Authority considers that any Hotel that trades late into the evening is more likely to be exposed to a minority of patrons who have consumed liquor over a longer period and who are over the legal limit to drive, yet risk driving anyway. The Authority notes that the Applicant has taken measures, including the operation of a courtesy bus, aimed at ameliorating the problem of drink driving. While this type of misconduct is ultimately in the hands of patrons, the Authority considers it more likely than not that further extending the late trading capacity of *this* business will, over time, further expose the community to the demonstrated tendency of a problematic minority of patrons of *this* hotel to engage in drink driving.

The Authority has considered the Applicant's submission that the regulatory issues noted by Police have previously been addressed by the operators in a proactive way, which allows the operation of the Premises not to detract from the amenity of the local community.

However, the fact that 30 public submissions have been made by local residents in opposition to this Application describing what the Authority is satisfied are credible problems associated with adverse impact on local amenity of patron misconduct satisfies the Authority that the

current operation of the Premises and conduct of its patrons is already having a discernible adverse impact upon local amenity.

The Authority considers that the preferable course, in the public interest, is *not* to further expand the scope for those kinds of impacts to occur in neighbouring residential areas during late hours.

CONCLUSION

In conclusion, the Authority is not satisfied that the proposed variation of the extended trading authorisation is in the public interest. As a result, the Authority has refused the Application under section 51(9)(b) of the Act.

In making this decision, the Authority has had regard to all of the objects and considerations prescribed by section 3 of the Act, but has given weight to subsection 3(2)(a) – the need to minimise harm associated with misuse and the abuse of liquor (including harm arising from violence and other anti-social behaviour) and subsection 3(2)(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.

Arrangements will now be made for the refund of any refundable component of the Application Fee. If you have any enquiries about this matter please contact the case manager, Mike Freeman via mike.freeman@ilga.nsw.gov.au or alternatively call (t) +61 2 9995 0703.

Yours sincerely



Micheil Brodie
Chief Executive
for the **Independent Liquor and Gaming Authority**

28 August 2014

