



Mr Warwick Caisley  
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16 February 2023

Dear Mr Caisley

<b>Application No.</b>	1-7986873441
<b>Applicant</b>	Mr Jason Keith Gavin
<b>Licence number</b>	LIQH440019002
<b>Licence name</b>	Huntlee Tavern
<b>Premises</b>	3 Empire Street Branxton NSW 2335
<b>Application for</b>	3-hour gaming machine shutdown period on weekends and public holidays pursuant to section 40 of the <i>Gaming Machines Act 2001</i>
<b>Current gaming machine shutdown period</b>	Monday to Sunday 4:00 am – 10:00 am
<b>Proposed gaming machine shutdown period</b>	Monday to Friday 4:00 am – 10:00 am Saturday, Sunday, and public holidays 6:00 am – 9:00 am

**Decision of the Independent Liquor & Gaming Authority  
Application for a 3-hour gaming machine shutdown period on weekends and public holidays – Huntlee Tavern**

The Independent Liquor & Gaming Authority ('Authority') considered the application above, and decided on 15 December 2021 to **approve** the application pursuant to section 40 of the *Gaming Machines Act 2001*, subject to imposing conditions as set out in Schedule 1.

**Statement of reasons**

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is not required to provide reasons for this decision. In this instance, however, the Authority has decided to provide reasons for this decision due to the Premises not trading past 1:00 am.

The statement of reasons is attached at the end of this letter.

Yours faithfully

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

# STATEMENT OF REASONS

## DECISION

1. On 12 May 2021, Mr Jason Gavin ('Applicant') lodged with Liquor & Gaming NSW ('L&GNSW'), for determination by the Independent Liquor & Gaming Authority ('Authority'), an application ('Application') for a 3-hour gaming machine shutdown period on weekends and public holidays for the premises at 3 Empire Street, Branxton NSW 2335 ('Premises').
2. The Authority first considered the Application at its meeting on 15 December 2021 and decided to grant the Application pursuant to section 40 of the *Gaming Machines Act 2001* ('Act').
3. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the Act, as well as the requirements of the Minister's 3-hour Shutdown Period Guidelines ('Minister's Guidelines').
4. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is not required to provide reasons for this decision. The Applicant was, however, notified of the decision via email on 23 December 2021.

## MATERIAL CONSIDERED BY THE AUTHORITY

5. The Authority has considered the Application and all submissions received in relation to the Application.
6. The Authority is satisfied that procedural fairness was afforded to the Applicant.
7. A list of the material considered by the Authority is set out in Schedule 2.

## LEGISLATIVE FRAMEWORK

8. The Authority has considered the Application in the context of sections 3 and 40 of the Act:

### 3 Objects of Act

(1) The objects of this Act are as follows—

- (a) to minimise harm associated with the misuse and abuse of gambling activities,
- (b) to foster responsible conduct in relation to gambling,
- (c) to facilitate the balanced development, in the public interest, of the gaming industry,
- (d) to ensure the integrity of the gaming industry,
- (e) to provide for an on-going reduction in the number of gaming machines in the State by means of the tradeable gaming machine entitlement scheme.

(2) The Authority, the Minister, the Secretary, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under this Act.

(3) In particular, due regard is to be had to the need for gambling harm minimisation when considering for the purposes of this Act what is or is not in the public interest.

### 40 Approval of 3-hour shutdown period on weekends and public holidays

- (1) The Authority may, on application by a hotelier or club, approve of the hotel or the premises of the club having, with effect on and from 1 May 2003 or from any time after that date, a shutdown period of between 6 am and 9 am on each day that is a Saturday, Sunday or public holiday (***the 3-hour shutdown period***).

- (2) If the 3-hour shutdown period on a Saturday, Sunday or public holiday is approved for the time being in respect of a hotel or the premises of a club, the hotelier or club must ensure that each approved gaming machine that is kept in the hotel or on the premises of the club is not operated for the purposes of gambling between 6 am and 9 am on that day.

Maximum penalty—100 penalty units.

- (3) The Authority's approval of a hotel or club premises having the 3-hour shutdown period may be given only if—
- (a) the Authority has taken into consideration such guidelines as may be approved by the Minister for the purposes of this section, and
  - (b) the Authority is satisfied that the hotelier or club has complied with such harm minimisation requirements as are prescribed by the regulations for the purposes of this section.

- (4) (Repealed)

9. The Authority has also taken into consideration the Minister's 3-hour Shutdown Period Guidelines ('Minister's Guidelines') in considering whether to approve the application. The Minister's Guidelines set out the circumstances under which Authority approval may be given, requiring the Authority to be satisfied that (amongst other things):

- 9.1 The venue falls within an area that usually attracts tourists; or
- 9.2 The venue falls within an area where other hospitality and entertainment venues are open to 6:00 am on Saturdays or Sundays or public holidays; or
- 9.3 Prior to 2 April 2002, the venue had a history of remaining open past 4:00 am on Saturdays or Sundays or public holidays.

10. For the purpose of this decision, it is not necessary to consider, and the Authority has not considered, whether the other criteria for approving the Application have been met.

## KEY FINDINGS

11. In considering whether the Application satisfies the requirements specified in the Minister's Guidelines, the Authority notes the following submissions from the Applicant:

- 11.1 Correspondence with Liquor & Gaming NSW ("L&GNSW") dated 9 August 2021, which indicates the Applicant relies on clause 1.1 of the Minister's Guidelines, and contends that the venue falls within an area that usually attracts tourists.
- 11.2 Material lodged with the Application in relation to clause 1.1 of the Minister's Guidelines, in which the Applicant contends that the venue falls in an area that usually attracts tourists. Specifically, the Applicant references the following tourist attractions, being local vineyards, within the vicinity of the Premises:
  - 11.2.1 Stomp! Wines
  - 11.2.2 Peterson House Hunter Valley Winery
  - 11.2.3 De Bortoli Wines
- 11.3 Material lodged with the Application in which the Applicant submits the Premises is located at the gateway to the Hunter Valley vineyards, which is a major tourist destination in NSW. Further, this material indicates that 1,465,532 tourists attended the Hunter Valley wine region in 2016.
- 11.4 The Premises does not trade past 1:00 am, with its trading hours being:
  - 11.4.1 Monday to Wednesday 7:00 am to 12:00 am midnight
  - 11.4.2 Thursday to Saturday 7:00 am to 1:00 am
  - 11.4.3 Sunday 7:00 am to 12:00 am midnight.

12. In considering whether an application satisfies the requirements specified in the Minister's Guidelines, the Authority notes that:
- 12.1 The Minister's Guidelines do not define what comprises an "area" for the purposes of applying clauses 1.1 and 1.2. Section 40 of the *Gaming Machines Act 2001* ('Act') is also silent on this matter.
  - 12.2 Since the Minister's Guidelines were issued, Local Government Areas ('LGAs') have been consolidated into geographically broader areas as a result of the 2016 Council amalgamations. LGAs are now considered by the Authority to be too geographically and demographically diverse to provide any genuinely "local" character, and accordingly are no longer appropriate to define the relevant "area" as contemplated by the Minister's Guidelines.
  - 12.3 Following amendments to gaming legislation in 2018, the Act has moved from an LGA-based approach for classifying gaming venues to an SA2-based approach, particularly for the purposes of the classification of areas under section 33 into Band 1, Band 2 or Band 3 statistical areas.
  - 12.4 Accordingly, the Authority considers that relying on a definition of "area" (for metropolitan regions) that includes the SA2 in which the subject Premises is located, the suburb in which the subject Premises is located, and premises or venues etc that are within a one-kilometre radius of the subject Premises, is the preferable approach to applying the Minister's Guidelines.
  - 12.5 The Authority notes that this aligns with the approach currently taken with regard to gaming-related considerations as required under the Act, while also providing flexibility to take into account an application's individual circumstances and geographic location.
13. With regards to clause 1.1 of the Minister's Guidelines, the Authority notes the Applicant relies upon 3 tourist attractions located in the vicinity of the premises. Of the attractions cited, one is located within 9.9 kilometres of the Premises and the other two venues are located within 13.2 and 13.5 kilometres of the Premises. All of these tourist attractions are located within the same SA2 as the Premises.
14. Clause 1.1 of the Minister's Guidelines states that the Authority's approval may be given if the Authority is satisfied that '*The venue falls within an area that usually attracts tourists*'. Based on the material at hand, the Authority is satisfied that the Premises falls within an area that usually attracts tourists.
15. Additionally, the Authority noted the risk factors around Branxton, but was of the view that they were not sufficient to warrant a refusal. The Authority also noted that the Premises does not trade past 1:00 am and that the broad application of a strengthened Gaming Plan of Management will capture the existing post-midnight trade on Thursdays to Saturdays when the Premises trades past 12:00 am midnight. Having regard to the current approved trading hours of the premises, granting the application will enable an additional two hours of gaming on weekends and one hour on public holidays. In this instance, the Authority considers that the Applicant has satisfied the requirements of the Minister's Guidelines.
16. Accordingly, the Authority approves the Application pursuant to section 40 of the Act.

Yours faithfully



Murray Smith  
**Deputy Chairperson**

**Schedule 1 – Licence condition to be imposed  
Huntlee Tavern**

1. Gaming Plan of Management

The premises is to be operated at all times in accordance with the Gaming Plan of Management dated November 2021 as may be varied from time to time after consultation with the Independent Liquor & Gaming Authority. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor & Gaming NSW inspector, or any other person authorised by the Independent Liquor & Gaming Authority.

## **Schedule 2 – Material considered by the Authority Huntlee Tavern**

### **Application material**

1. Completed Application and associated annexure dated 9 April 2021.
2. Gaming Plan of Management documents for the Premises, titled “Gaming Plan of Management Huntlee Tavern November 2021” and dated November 2021.

### **Other relevant information**

3. Correspondence between L&GNSW staff and the Applicant between 2 June 2021 and 24 November 2021 in relation to the assessment of the Application.
4. Contentious Issues Brief – Gaming machine shutdown variations and managing gambling related harm dated 12 July 2021.
5. Liquor Licence Document LIQH440019002 Huntlee Tavern dated 14 October 2021.
6. Gaming Plan of Management Huntlee Tavern dated November 2021.
7. Current Gaming Data Report for Huntlee Tavern dated 24 November 2021.
8. Gaming Data Report for Huntlee Tavern Pre-COVID dated 24 November 2021.
9. Ministerial Guidelines for 3-hour shutdown period.
10. Extract from the Applicant’s CIS submitted during the Hotel Licence application process, undated.