



Civil and Administrative Tribunal
New South Wales

Case Name: Scott-Mackenzie v Independent Liquor and Gaming Authority

Medium Neutral Citation: [2020] NSWCATAD 108

Hearing Date(s): 16-19 December 2019; 20 December 2019 (final submissions)

Date of Orders: 21 April 2020

Decision Date: 21 April 2020

Jurisdiction: Administrative and Equal Opportunity Division

Before: A Britton, Principal Member

Decision: (1) I have decided that the correct and preferable decision is to vary the decision made by the Authority on 24 October 2018 by substituting Condition 8, with the following condition:

The licensed premises must not trade during the period ninety (90) minutes before a first grade NRL Game commences at the Southern Cross Stadium (located at 461 Captain Cook Drive Woollooware) until ninety (90) minutes after the Game finishes.

Catchwords: ADMINISTRATIVE REVIEW — grant of liquor licence — whether the overall social impact of the licence ... will not be detrimental to the well-being of the local or broader community

Legislation Cited: Liquor Act 2007 (NSW)
Local Government Act 1993 (NSW)
Administrative Decisions Review Act 1997 (NSW)

Cases Cited: Smith v Independent Liquor and Gaming Authority [2018] NSWCATAD 224

Aldi Foods Pty Ltd v Independent Liquor and Gaming
Authority [2019] NSWCATAD 26

Texts Cited: None cited

Category: Principal judgment

Parties: James Alexander Scott-Mackenzie (Applicant)
Independent Liquor and Gaming Authority
(Respondent)

Representation: Counsel:
S Clay SC (Applicant)
J Davidson (Respondent)

Solicitors:
Back Schwartz Vaughan Lawyers (Applicant)
Crown Solicitor (Respondent)

File Number(s): 2019/00064933

Publication Restriction: Nil

JUDGMENT

- 1 A shopping centre is currently being developed near Shark Park, the home ground of the Cronulla Sharks National Rugby League (NRL) team. On the foreshore of Woollooware Bay, Woollooware, the development will include residential and retail precincts (the Precinct). A take-away liquor store under the Dan Murphy's banner (the Store), operated by the Woolworths Group Limited, will be one of the many retail stores in that development. The Store will be located about 100m from the nearest entrance to Shark Park (the Stadium). Dan Murphy's stores boast "the Lowest Liquor Price Guarantee".
- 2 In January 2019, the Independent Liquor and Gaming Authority (the Authority) granted an application to operate a "packaged liquor" licence (the Licence) in the Precinct to Woolworths' employee, Mr James Alexander Scott-Mackenzie. For convenience, in these reasons I will refer to Mr Scott-MacKenzie as "Dan Murphy's".
- 3 The Authority imposed a number of conditions on the Licence, including that the licensee not trade on any day on which a First Grade NRL game is being played at the Stadium, for the two hours before the game begins and two hours

after the end of the game (Condition 8). In addition, the licensee is to cease trading two hours before the gates open on any "Fight Night" held at the Stadium (Condition 9).¹ Dissatisfied with those conditions, Dan Murphy's has applied to the NSW Civil and Administrative Tribunal (NCAT) for review of the Authority's decision (the Application).

- 4 To grant a packaged liquor licence, the Authority, and the Tribunal on review, must be satisfied "that the overall social impact of the licence ... will not be detrimental to the well-being of the local or broader community": s 48(5) *Liquor Act 2007* (NSW). In reviewing the Authority's decision, the primary issue to be determined is whether, as Dan Murphy's contends and the Authority disputes, the overall social impact of granting Dan Murphy's a packaged liquor licence would not be detrimental to the well-being of the local or broader community with the inclusion of the suite of conditions proposed by Dan Murphy's as detailed below.
- 5 In the intervening period between the conclusion of the hearing and the determination of the Application, COVID-19 hit Australia. This has affected the operation of the NRL and may affect the development of the Precinct. Nonetheless, for the purpose of determining the Application, I have not addressed the likely impact of the pandemic on the issues that fall to be determined in the Application.

The proposed amended conditions

- 6 In the course of these proceedings, Dan Murphy's withdrew its objection to Condition 9. In addition, each party revised their respective positions in relation to Condition 8.
- 7 The Authority continues to seek a restriction on the hours that the Store is permitted to trade on days that First Grade NRL games are played at Shark Park (Game Days). However, the Authority now seeks a reduced period during which the Store will not be permitted to trade. It proposes that that period commence ninety minutes before the Game and end ninety minutes after the

¹ The Authority's decision is set out in full at Annexure A to these reasons

end of the Game. In these reasons I will refer to that proposed condition as “Revised Condition 8”.

8 Dan Murphy’s continues to oppose any restriction on trading hours. In lieu of Revised Condition 8 it urges the Tribunal to impose the following alternative conditions, to apply on Game Days:

- (1) no sale of single-serve beers, ciders and ready to drink mixes (RTDs) or any spirits which have a volume of 250ml or less;
- (2) signage at the front of the Store advising customers of bag searches when entering the Stadium and the prohibition of taking liquor into the Stadium and drinking in public places;
- (3) additional security, commencing one hour before a First Grade NRL game at the Stadium until one hour after that game ends, or until the Store closes, whichever occurs first, specifically the engagement of:
 - (a) two “User Paid Police” ²(the Security Team) to continuously patrol the area being the immediate vicinity of the Store (the Security Patrol Area);
 - (b) one security officer (not being a User Paid Police officer) to be permanently stationed at the principal entrance to the licensed premises (whose principal tasks are to check ID and refuse access to the premises by intoxicated, violent, quarrelsome or disorderly persons);
- (4) the Store must close no later 8:00 pm.

9 The revised conditions proposed by each party are set out at Annexure B (conditions proposed by the Authority) and Annexure C (conditions proposed by Dan Murphy’s) to these reasons.

Statutory framework

10 The objects of the *Liquor Act* include regulating the sale, supply and consumption of liquor “in a way that is consistent with the expectations, needs and aspirations of the community”: s 3(1)(a). Section 3(2) provides that “[i]n order to secure the objects of this Act, each person who exercises functions

² Where policing services are provided at the request of an organiser of a sporting event among other activities, the NSW Commissioner of Police is entitled to demand payment for the provision of those services s208 of the Police Act 1990 (NSW). See also https://www.police.nsw.gov.au/__data/assets/pdf_file/0003/9066/Cost_Recovery_and_User_Charges_Nov_2019.pdf). Police officers providing policing services under that arrangement are referred to in these reasons as “User Paid Police” or “User Charge Police”.

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."

11 The *Liquor Act* makes it an offence to sell liquor to a person unless the seller is a person who is authorised by licence to do so: s 7. The types of licences that may be issued under that Act include packaged liquor licences. A "packaged liquor licence" authorises a licensee to sell liquor from particular premises in sealed containers for consumption away from the licensed premises: s 29.

12 Section 45(1) of the *Liquor Act* states that 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 must not grant a licence unless the Authority is satisfied of the matters listed in s 45(3) of the *Liquor Act*:

- (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.

13 The Authority found that Dan Murphy's satisfied each of these criteria. In addition, the Authority found that that Dan Murphy's satisfied the procedural and trading requirements of ss 11A, 12 and 40 of the *Liquor Act*, and that if Dan Murphy's were to be granted a licence, liquor would be sold in accordance with the authorisation conferred by that licence: s 29 of the *Liquor Act*.

- 14 Section 48(1) provides that 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 whereby the Authority is made aware of the views of the local community: s 48(1)(a) and s 48(1)(b). Where, an application is made for a packaged liquor licence that application must be accompanied by a "community impact statement": s 48(3).
- 15 Section 48(5) of the *Liquor Act* is central to this Application and provides:
- (5) The Authority must not grant a licence ... 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.
- 16 Pursuant to s 57 of the *Liquor Act*, the Authority has issued Guideline 6, "Consideration of social impact under section 48(5) of the Liquor Act 2007" (the Guideline). The Guideline is not a "relevant Government policy". Therefore the Tribunal is not obliged to give effect to the Guideline in exercising the discretion to grant, or to refuse to grant, the licence to Dan Murphy's. However, the Tribunal may have regard to that Guideline: s 64 of the *Administrative Decisions Review Act 1997* (NSW). See *Smith v Independent Liquor and Gaming Authority* [2018] NSWCATAD 224 ("*Smith*") at [27]; *Aldi Foods Pty Ltd v Independent Liquor and Gaming Authority* [2019] NSWCATAD 26 at [16].
- 17 Paragraph 11 of the Guideline summarises the task the Authority is required to undertake in applying s 48(5):
- The Authority is required to:
 - (a) assess the overall social impact of a licence, authorisation or approval being granted, and
 - (b) determine whether it is satisfied that that impact will not be detrimental to the well-being of the community.
- 18 In *Smith* at [30] the Tribunal accepted the above as a "correct statement of the law" and concluded that the phrase "overall social impact" suggests that both positive and negative social impacts are to be taken into account. I agree.

- 19 Paragraph 13 of the Guideline sets out a non-exhaustive list of factors that the Authority will consider when making an assessment of the “overall social impact” of the proposed licence:
- (a) the type of proposed licensed premises applied for;
 - (b) the scale of the proposed licensed premises;
 - (c) the trading hours of the proposed licensed premises;
 - (d) the location of the proposed licensed premises, including the existing density of licences in the local or broader community "and what cumulative social impact the addition of a further premises of the type, scale and with the trading hours proposed is likely to have upon those communities - by reference to such issues as transport problems, overcrowding of footpaths, increased pedestrian traffic, littering, noise pollution and the prevailing exposure of the local and broader communities to relevant types of anti-social behaviour and crime, including the proximity of any 'hot spots' for the occurrence of such incidents and the nature of the surrounding buildings or activities
 - ...;
 - (e) whether any specific measures will be implemented, over and above those required by legislation, that may contribute to reducing potential social detriment.
- 20 Paragraph 17 of the Guideline states that the Authority need not confine its assessment of the overall social impact of a relevant application to the material it must have regard to listed in paragraphs 14-16 of the Guideline, relevantly, the community impact statement (CIS) and any submissions and reports received by the Authority and any other “relevant matter the Authority is made aware of during the application process” (see s 48(5)). Paragraph 18 states that the Authority may consider "domestic or international research on the association between high alcohol outlet density or outlet clustering and adverse social outcomes, including but not limited to rates of alcohol-related crime and anti-social behaviour ... and reported rates of public drunkenness". Other material that may be considered includes recent crime statistics and analysis (paragraph 20) and licence density and clustering data and information about the type, location and diversity of other licensed premises in the local and broader communities (paragraph 22).

Onus of proof

- 21 Neither party bears a legal burden of proof and matters of fact in dispute are determined on the balance of probabilities: see *Smith* at [25].

Background facts

Games played at Shark Park

- 22 Each year, 12 First Grade NRL games (the Games) are played at Shark Park. Over the past couple of years crowds of between 6,000 and 19,000 have attended First Grade NRL games played at Shark Park. The Games run for about 80 minutes with a 10 minute half time.

The Store

- 23 Described by Dan Murphy's as a large-format "destination" store, housed within a "state of the art" building, the Store will be approximately 12,000 square metres in size. Dan Murphy's describes the Store as a large-format "destination" store, housed within a "state of the art" building. The Store will offer a wide range of alcoholic beverages. In addition, the Store will offer customers the "Lowest Liquor Price Guarantee", which according to its website means: " [Dan Murphy's] beats all my competitors every month, every week, every day, every hour, on every price, on every product, on every bottle...".

Proximity to other licensed premises

- 24 With the introduction of the Store, three licensed venues will be operating within a 150m radius of the Stadium on Game Days: the Store, the Stadium and the Cronulla Sutherland Leagues Club. That Club is located about half-way between the Stadium and the Store. In addition, it is likely that a number of licensed restaurants and cafes will operate in the Precinct.
- 25 The nearest packaged liquor licence to the Store is BWS, Woollooware, located about 1.2km from the Store. The BWS store is located about 200m from Woollooware train station and is not on the most direct walking route from that station to the Stadium. Walking to the Stadium via BWS Woollooware adds about another 100m to that route.
- 26 Since May 2019, following concerns raised by NSW Police, BWS Woollooware does not sell single-serve alcoholic drinks on Game Days. The "ban" applies throughout the day. It does not apply to the sale of multipacks of single-serve drinks.

- 27 A Dan Murphy's liquor store is located in Caringbah, a four minute (2.4km) drive from the Store. Woollooware Golf Club holds a liquor licence and is located about 1.5km from the Store.

Restrictions on alcohol sales in the Stadium

- 28 On Game Days, multiple bars operate throughout the Stadium. The bars open two hours before the start of the Game and close 20 minutes before full time. The Stadium's liquor licence is subject to several conditions, including that a limit of four alcoholic drinks can be served to any person until the end of half time, and thereafter two alcoholic drinks. In parts of the Stadium only mid-strength beer is served.

The Woollooware Alcohol Free Zone

- 29 In 1996, the Sutherland Shire Local Council declared an "alcohol free zone", defined to include the public roads "between Woollooware Railway Station and the 'Sharks' licence club and playing field complex" (the Woollooware Alcohol Free Zone (WAFZ)). BWS Woollooware falls within that Zone.
- 30 The *Local Government Act 1993* (NSW) authorises police officers to seize alcohol from a person observed to be, or reasonably believed to be, drinking alcohol in the WAFZ and, in addition, to dispose of that alcohol, by among other things, tipping the seized alcohol out of its container: s 642 of the *Local Government Act*. The practice of police seizing and tipping alcohol out of a container or directing a person consuming alcohol to do so, is referred to in these reasons as "tip outs".

Getting to and from the Stadium

- 31 Most patrons walk or drive to the Stadium. Public transport is also available. Patrons arriving by train alight at either Woollooware or Cronulla stations. Woollooware is the closest train station to the Stadium. A shuttle bus runs between Woollooware and Cronulla stations and the Stadium on a constant loop, commencing two and half hours before the beginning of the game and ceasing one hour after the Game. In addition, the Stadium is serviced by several bus routes.

Security and police presence on Game Days

- 32 There is significant police and security presence on Game Days. The Stadium engages about 100 security personnel and 20 User Paid Police to manage the crowd and associated traffic. In addition, licencing police are usually in attendance.

Eviction of patrons from the Stadium

- 33 During the 2018 and 2019 NRL seasons a total of just under 30,000 patrons attended games at Shark Park. The number of patrons evicted from NRL First Grade games played during those seasons ranged from 1 (0.01% of the total crowd) to 25 (0.18% of the total crowd). An average of 13 patrons were evicted from each Game. About half of the Games commenced on or after 6:00 pm, the remainder commenced at varying times in the afternoon, from 2:00 pm. The eviction rate at afternoon games tends to be lower than at evening games.
- 34 Evicted patrons are not permitted to re-enter the Stadium. Nor is any patron who leaves the Stadium, irrespective of the reason for leaving.

Bag searches

- 35 Patrons are not permitted to take alcohol into the Stadium. On entering the Stadium, patrons are required to submit to bag searches conducted by Stadium security personnel. The conflicting evidence about the effectiveness of those searches is considered below.

Authority's decision to grant a licence to Dan Murphy's with conditions

- 36 On 24 October 2018, following an application made by Dan Murphy's, the Authority granted a packaged liquor licence (the Licence), subject to nine conditions. These include Conditions 8 and 9, outlined at [3] above.
- 37 In its reasons for decision published on the Authority's website on 1 February 2019, the Authority identified at [37] the "relevant question" it was required to answer as being whether "it can reach a positive state of satisfaction, as required by section 48(5) of the Act, that the overall social impact of granting the Licence will not be detrimental to the well-being of the local or broader community". The Authority identified the community of Woollooware as the relevant local community and the community of the Sutherland Shire Local

Government Area (LGA) as the relevant broader community. The Authority concluded at [39]:

[H]aving regard to the nature and scale of the proposed licensed business, and the prevailing circumstances in the relevant communities, the Authority is unable to reach the requisite state of satisfaction without imposing the trading restrictions on Game Days and Fight Nights.

- 38 The Authority stated that in considering the Application, it took into account the accompanying community impact statement, the submissions received in relation to the Application together with the Liquor & Gaming NSW (L&GNSW) liquor licensing records and data published by the Bureau of Crime Statistics and Research (BOCSAR), NSW Department of Health, and Australian Bureau of Statistics (ABS).
- 39 The Authority identified the following “positive social impacts” if the Application was granted:
- (a) Relatively low density of retail packaged liquor outlets in this locality, although that would increase with the grant of the Licence;
 - (b) The suburb of Woollooware is undergoing substantial residential and commercial development, and the anticipated population growth as a result of the development may create additional demand for packaged liquor;
 - (c) Increased convenience and range of liquor choices for consumers;
 - (d) The Sutherland Shire LGA recorded lower than average rates of alcohol attributable deaths and alcohol attributable hospitalisations;
 - (e) Woollooware and Sutherland Shire LGA ranked among the most advantaged suburbs and LGAs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage; and
 - (f) The levels of alcohol-related domestic violence and health issues in the communities of Woollooware and Sutherland Shire LGA do not raise “immediate concerns”.
- 40 Under the heading “negative social impacts”, the Authority accepted at [25] that on the basis of the available data, including the relevant BOCSAR data, the levels of alcohol-related domestic violence and health issues in the communities of Woollooware and Sutherland Shire LGA “do not raise immediate concerns”. In addition, the Authority accepted that the available

material did not include any information to indicate “any significant socio-economic disadvantages in these communities”. Nonetheless, the Authority found the high level of “alcohol-related non-domestic violence, malicious damage to property and alcohol-related disorderly conduct in Woollooware to raise concerns in relation to the potential negative social impact of granting the Licence”.

- 41 The Authority stated at [22] that the relevant BOCSAR data for the year to December 2017 revealed that:
- (a) The rates of alcohol-related non-domestic assault, malicious damage to property and alcohol-related disorderly conduct in Woollooware were considerably higher than the NSW State average;
 - (b) Sutherland Shire LGA recorded a higher than average rate of alcohol-related disorderly conduct, and lower than average rates of alcohol-related non-domestic assault and malicious damage to property;
 - (c) Both Woollooware and Sutherland Shire LGA recorded lower than average rates of alcohol-related domestic assault;
 - (d) The Store was located within a medium-density hotspot for incidents of malicious damage to property, and not located within or near any hotspots for domestic assault; and
 - (e) There were no hotspots in Woollooware for incidents of non-domestic assault or alcohol-related assault.
- 42 The Authority acknowledged that Dan Murphy’s was an experienced operator of large packaged liquor facilities, has a range of developed measures to facilitate responsible liquor supply and patron management practices and that no objections to the Application had been received from members of the public or institutional stakeholders, apart from the NSW Police. Nonetheless, the Authority concluded that Conditions 8 and 9, which it described as “unprecedented”, were appropriate for the following reasons:
- (a) The large scale and long trading hours proposed for the Store and its location in close proximity to the Stadium, making it the most accessible packaged liquor facility to the Stadium's attendees;
 - (b) Each Game Day attracts more than ten thousand people to the Stadium. While the Authority has been advised that the Club is no longer hosting Fight Nights, it remains open for Fight Nights to be hosted at the Stadium in future;

- (c) The higher than average rates of alcohol-related non-domestic assault, alcohol-related disorderly conduct and malicious damage to property in Woollooware and some of its neighbouring suburbs that are close to the Store; and
- (d) The observations made by police and a local resident who wrote to the Stadium in relation to ongoing post-game offences and anti-social behaviour, such as malicious damage to residential property, littering of bottles and public urination in areas surrounding the Stadium. According to police, the local resident and the Stadium, these problems have required constant presence by police and security officers to patrol nearby streets before, during and after Games.

NSW Police submissions

- 43 No individual made a submission to the Authority about the Application. The only organisation to do so was NSW Police. In a detailed submission opposing the Application dated 22 March 2018, Licensing Supervisor, Sutherland Shire Police Area Command, Sergeant Darrin Thompson noted that despite “numerous conditions” imposed on the licences held by both the Leagues Club and the Stadium, on Game Days “significant and on-going” problems continued to be experienced, citing as examples:
- Damage to property, vehicles, plants and letterboxes;
 - Litter strewn in residential areas; and
 - Patrons consuming alcohol while walking to the Stadium from Woollooware train station, despite the existence of the WAFZ and transit police being rostered to confiscate alcohol.
- 44 Sergeant Thompson submitted that the introduction of the Store will further intensify these problems. He argued that it will be “extremely convenient” for patrons to purchase alcohol from the Store and smuggle it into the Stadium and/or to purchase alcohol at the end of the Game. In his view, the close proximity of the Store to the Stadium, together with the significant price differential between alcohol sold at the Store and alcohol sold at the Stadium will make it attractive for patrons to attempt to smuggle alcohol into the Stadium. Referring to his long experience of policing large venues, including sporting stadiums, he asserted that alcohol gets past security checks “no matter how many bag searches are conducted”; it seems to be “a rite of passage”.

- 45 Sergeant Thompson expressed disagreement with many of the contentions contained in the CIS submitted by Dan Murphy's to the Authority, including that:
- **Woollooware is a low risk for increased rates of alcohol-related harm or adverse social impacts.** Sergeant Thompson pointed out that the grant of the Licence will increase the packaged liquor licence density per 100,000 of population to 50.480, "well above" the 33.555 State average; and
 - **The statistical evidence confirms that the Woollooware community has demonstrated an "ability to consume alcohol responsibly".** Sergeant Thompson points out that on Dan Murphy's own data (YTD Sep 2017), the rates for Alcohol-Related Assaults (all assaults), Alcohol-Related Assaults (non-domestic), Alcohol-Related Assaults (police) and Incidents of Malicious Damage to Property were above the State average.
- 46 In May 2018, the Authority invited Dan Murphy's and NSW Police to comment on two proposed conditions, which were substantially the same as Conditions 8 and 9. In submissions made on 18 June 2018, NSW Police agreed that those conditions would minimise some of the social impacts of the proposal, but maintained that even with these conditions the likely overall social impact of the Licence would be detrimental to the well-being of the local and broader community.

Reports prepared by Mr Patrick Paroz

- 47 At the request of Dan Murphy's, former NSW Police Local Area Commander, Mr Patrick Paroz, prepared reports dated 21 April 2018 and 5 September 2018, which Dan Murphy's submitted to the Authority in support of its Application. In these proceedings Mr Paroz swore affidavits on 24 June 2019 and 6 November 2019 and prepared a series of reports responding to material filed by the Authority. In addition, Mr Paroz gave oral evidence. Mr Paroz served as a police officer for over three decades, holding senior roles, including Commander of the NSW Police Alcohol Licensing Enforcement Command (2010-2016). Since retiring in 2016 Mr Paroz has worked as a consultant.
- 48 Dan Murphy's asked Mr Paroz to assess the likelihood of an increase in alcohol-related harm on Game Days and Fight Nights as a consequence of the introduction of the Store. In conducting that assessment, among other things, Mr Paroz reviewed material from a wide range of sources, including the original submission made by NSW Police to the Authority, subsequent affidavits

prepared by Sergeant Thompson, material relied upon by NSW Police, including the 2017/2018 COPS (Computerised Operational Policing System) reports, and statistical data from BOSCAR and other authoritative sources. In addition, Mr Paroz conducted nine “site audits” for the purpose of observing the behaviour of patrons before, during and after Games (two in 2018, five in 2019).

- 49 Mr Paroz concluded that it is unlikely that there will be any increase in existing alcohol-related crime, social disturbances and amenity issues on Game Days and Fight Nights as a result of the introduction of the Store. He contended:
- The BOSCAR data reveals that there are no existing hotspot locations for alcohol-related crime “anywhere near the Stadium” or the Store;
 - While that data reveals evidence of malicious damage to property in the Sutherland Shire, it is apparent that the hotspot locations are closely aligned with the train lines running through the Shire. It is “highly unlikely” that these incidents are in any way associated with Stadium sporting events or sale of alcohol from packaged liquor stores;
 - There is little evidence of alcohol-related incidents in the suburb of Woollooware recorded on the COPS database. Of the recorded incidents, few occur on Game Days or have any connection with NRL games;
 - There is no evidence that public drinking is a concern to the Local Area Command;
 - There is no evidence that the purchase or consumption of packaged liquor prior to, during or after NRL games currently contributes to the small number of alcohol-related crimes recorded on the COPS database or reported incidents at the Stadium;
 - The number of people evicted from the Stadium is “meaningfully low”, ranging from 0.02% to 0.25% of the total crowd;
 - The “very low risk” posed by patrons purchasing and consuming alcohol while travelling to, and departing from, the Stadium will be considerably mitigated by the measures proposed by Dan Murphy’s;
 - Because the Store will be located in a busy retail precinct, patrons will have less opportunity to covertly purchase and consume alcohol than patrons attending BWS Woollooware. In addition, the Store will not be visible to patrons walking to the Stadium;
 - Given its location, it will be “somewhat inconvenient” for patrons to visit the Store after a game;
 - There is no evidence that patrons frequent BWS Woollooware for the purpose of purchasing and consuming alcohol prior to NRL games;

- The Stadium and the Leagues Club successfully manage large crowds of people on Game Days. The vast majority of patrons leave immediately after the game in an orderly manner; and
- There is no evidence that large number of patrons visit the Leagues Club after the Game.

Public drinking on Game Days

50 A disputed factual issue in these proceedings is whether, as contended by NSW Police and disputed by Dan Murphy's, there is evidence of "high levels" of public drinking in the vicinity of the Stadium on Game Days.

Observations made by Mr Paroz

51 As noted above, Mr Paroz contends that there is little evidence of public drinking in the vicinity of the Stadium on Game Days. He points out that the 2017 and 2018 COPS records relied upon by NSW Police (the COPS material) contain no reports of alcohol being consumed in the WAFZ. He contends that that is consistent with the BOCSAR and ARCIE (Alcohol Related Crime Information Exchange) data together with his own observations. He states that he observed patrons consuming alcohol in the WAFZ on only two of the nine site visits he conducted in 2018 and 2019..

52 Mr Paroz's reported observations are in marked contrast to those made by Sergeant Thompson and Social Planner, Dr Judith Stubbs. A report prepared by Dr Stubbs at the request of the Authority is discussed below.

Observations made by Dr Stubbs

53 In August 2019, Dr Stubbs attended a First Grade NRL game at the Stadium between the Sharks and South Sydney Rabbitohs. She claims that during that visit she observed people "drinking openly and freely" in the WAFZ, and in close proximity to the Stadium. She reported observing:

Before the game

54 Two young men travelling by train from Sutherland to Woollooware carrying what appeared and later drinking from large bottles of alcohol in brown paper bags;

55 Three middle-aged Sharks supporters alighting from that train carrying at least two bottles of wine and a six-pack of stubbies, and taking this on the shuttle bus running between the station and the Stadium;

56 Three young women waiting for the shuttle bus drinking Vodka Cruisers and taking their open drinks onto that bus; and

57 Two people waiting for the shuttle bus drinking VB stubbies.

One hour before the game

58 Two young men standing in the queue to the Stadium Box Office openly drinking cans of beer, with a group of police officers about 50 metres away;

59 A middle-aged man and a group of five people drinking beer while walking past a group of police officers;

60 Two young women “openly drinking” a can of UDL in the queue to the entrance of the Stadium;

61 A group of three young men drinking stubbies inside the Parkview Truck entry to the Stadium, one “downing” their drink;

62 A man drinking a long neck beer about 20m from police officers; and

63 Three people drinking beer before entering the Stadium.

After the game

64 One man, who appeared to be inebriated, drinking a cup of beer after being instructed by a security guard to “tip out”;

65 Seven young men drinking from plastic cups of beer, walking away from the Stadium.

Observations made by Sergeant Thompson

66 Sergeant Thompson has attended 20 First Grade NRL games at the Stadium. He was on duty on the evening Dr Stubbs conducted her observations. In an affidavit sworn on 9 August 2019, Sergeant Thompson detailed his observations of public drinking that evening, which were broadly consistent with those recorded by Dr Stubbs. In addition, he states that on that evening:

- (1) He and his colleagues observed alcohol-related litter in the vicinity of and in streets near the Stadium;
- (2) 25 people were ejected from the Stadium and about the same number from the Club; and
- (3) The Police Commander on duty that evening told him that crowd behaviour was “poor”.

- 67 In cross-examination Sergeant Thompson agreed that the only COPS entry he made on 3 August 2019 between 6:35 pm and 8:00 pm was a “move on” order issued to two intoxicated patrons.

BWS Woollooware

- 68 In an affidavit sworn on 1 November 2019, the licensee and manager of BWS Woollooware, Mr Jaye Rodger, stated that the incidence of public consumption of alcohol on Game Days is “quite low”, in single digits. He stated that since BWS introduced the ban on the sale of single-serve drinks in May 2019, he and his staff have had more conflict and difficulty with customers purchasing alcohol for the “obvious intention of consuming anywhere other than the Stadium”. In oral evidence he stated that that conflict and difficulty was heightened in the couple of hours before the start of the Game. He agreed that unless disclosed by the customer, neither he nor his staff would know whether that customer intended to consume the purchased alcohol at the Stadium or at some other place.
- 69 In addition, referring to the photographs taken by Sergeant Thompson of alcohol-related litter in and around the WAFZ on 3 August 2019, he stated that BWS did not stock some of the brands of alcohol depicted in those photographs.

Effectiveness of bag searches conducted at entry to the Stadium

- 70 The parties agree that a small number of patrons smuggle alcohol into the Stadium. The difference between them is of one of degree and relates primarily to whether the introduction of the Store will lead to a material increase in that practice.
- 71 In his first report dated 21 April 2018, responding to NSW Police claims that “it will be extremely convenient for patrons to smuggle alcohol into the Stadium”, Mr Paroz asserted that there was no evidence of patrons purchasing alcohol from BWS Woollooware and smuggling it into the Stadium. Referring to his observation of two Game Days in 2018, he stated that of the very small numbers of patrons who walked past the BWS store, none entered to purchase alcohol. He stated that it is therefore difficult to understand on what basis it could be contended that the Store poses a greater risk than BWS Woollooware.

- 72 In addition, referring to the conditions imposed on the Stadium's licence requiring that bags be searched on entry and drink containers confiscated, Mr Paroz asserted that the current screening measures were effective. He wrote that at the two evening games he observed in 2018, a minimum of four security personnel were positioned at each entrance conducting bag searches of all patrons. He observed many bottles, which appeared to be plastic water bottles, being confiscated. He stated that he saw no evidence of police supervising these searches, despite the concerns about alcohol smuggling expressed by NSW Police to the Authority.
- 73 Mr Paroz brought the statement made by NSW Police about the purported prevalence of smuggling to the attention of the licensee of the Stadium, Mr Tim McAteer. Mr McAteer responded: "[I] strongly disagree that patrons are smuggling alcohol into the Stadium on Game Days...The police have not raised with us ... the issue of alcohol allegedly being smuggled into the Stadium ... it is not an issue for us". Mr McAteer is the CEO of the Leagues Club and the holder of the licences which permit the Club and the Stadium to serve alcohol.
- 74 In a subsequent report, responding to the assertion made by Sergeant Thompson and Dr Stubbs that it was "relatively easy" to circumvent the searching process, Mr Paroz pointed to his experience of attempting to smuggle alcohol into the Stadium on two Game Days, for the purpose of testing that assertion. On each occasion when he attempted to enter the Stadium, security personnel searched his bag and detected the alcohol (two 355ml bottles of beer). On the second day, when given the option of either disposing of the detected alcohol or returning it to his car, he took the latter option, and then attempted to gain entry via another entrance to the Stadium without disposing of the alcohol in his bag. Mr Paroz observed that he was followed by security personnel as he moved to the next entrance. The alcohol was again discovered, and, on this occasion confiscated. Mr Paroz was surrounded by five security personnel and refused entry to the Stadium.

- 75 In cross-examination Mr Paroz agreed that the alcohol had not been well hidden in his bag and apart from the bottles of beer that there were few items in his bag.
- 76 Sergeant Thompson stated that since commencing as Licensing Supervisor in the Sutherland Shire Police Area Command in 2017, he had observed that the searches undertaken by security personal were cursory in nature. In most cases, patrons' bags were not opened and inspected but merely felt from the outside. In addition, he pointed out that patrons are neither strip searched nor patted down. He asserted that spirits can easily be disguised among other liquids.
- 77 Mr Paroz agreed with the proposition that the only effective way to determine whether liquor was disguised in a liquid would be to taste it.

COPS reports

- 78 A further issue in dispute between the parties is what conclusions can reliably be drawn from the 2017 and 2018 COPS records, in relation to the incidence of public consumption of alcohol, alcohol-related offences and anti-social behaviour on Game Days.
- 79 As discussed above, Mr Paroz contends that that material does not support NSW Police claims about alcohol-related harm on Game Days. Commenting on tables prepared by NSW Police and submitted to the Authority, headed "Incidents that occurred in the Cronulla and Woollooware area" for the periods March 2017 to August 2017 (the 2017 Table) and March 2018 to August 2018 (the 2018 Table), Mr Paroz contends that to the "inexperienced observer" those tables could create the "false impression" that there are "significant crime and anti-social behaviour incidents" associated with NRL games played at the Stadium. He contends that that impression is not borne out by his review of the COPS records on which those tables are said to be based.
- 80 According to Mr Paroz, of the 190 incidents, or 130 "events" (a single event can give rise to multiple incidents) listed in the 2017 Table:
- 29 events were recorded as occurring in Woollooware on Game Days of which 26 might be attributable to the Leagues Club or an NRL game played at the Stadium. They consist of: assault (6), offensive language/behaviour (5),

malicious damage (2), intoxicated person (3), affray (2), stealing (3), resist officer (1), move-on directions (5), person search (6), drug possession (2) and “unknown” (1);

- Of those 29 events, 6 occurred outside the “relevant period” (two hours before the commencement of and two hours after the end of the Game) but were included by Mr Paroz because they occurred at or close to the Leagues Club; and
- None related to “consume alcohol in an alcohol free zone”.

81 With respect to the 2018 Table, according to Mr Paroz of the 86 events (107 incidents):

- 10 events are a record of Police Operations on Game Day, and include comments to the effect, “the crowd was well behaved/generally well behaved”;
- 20 events (28 incidents) were recorded as occurring in Woollooware on Game Days;
- Of those 20 events, 16 might be attributable to the Cronulla Leagues Club or an NRL game played at the Stadium. They consist of: assault (3), offensive language/behaviour (4), resist arrest /hinder police (3), possess drug (1), possible drug located (1), minor obtain or consume alcohol (2), fail to quit licensed premises (1), person search (2), travel without train ticket (1) and “move on’ directions (7);
- Of those 16 events, 5 occurred outside the relevant period but were included by Mr Paroz because they occurred at or close to the Leagues Club; and
- None relate to “consume alcohol in an alcohol free zone”.

82 In addition, Mr Paroz pointed out that none of the relevant COPS events record police identifying, witnessing or taking any action in relation to public drinking, alcohol-related offences or anti-social behaviour.

83 In cross-examination Mr Paroz agreed with the proposition that a COPS record is only created when police attend, or a person reports, an incident. In addition, he agreed with the proposition that while police have various powers in relation to the consumption of alcohol in an alcohol-free zone, including to confiscate and to tip out alcohol, drinking alcohol in an alcohol-free zone does not constitute an offence. In addition, he agreed that while it may be best practice to record incidents of alcohol consumption in an alcohol-free zone, lack of time and resources mean that this does not always occur.

84 In his affidavit sworn on 9 August 2019, Sergeant Thompson addressed Mr Paroz’s analysis of the COPS material, rejecting the charge that the Tables are

misleading. He stated they were prepared to give the Authority a “snap shot” of the type and nature of incidents occurring on Game Days.

- 85 Commenting on Mr Paroz’s observation of there being no recorded incidents of people consuming alcohol in the WAFZ, Sergeant Thompson stated that he has ordered tip-outs on numerous occasions and observed his colleagues to do the same throughout NRL seasons. He explained that because of resourcing issues, tip outs are not routinely recorded in COPS reports. In addition, he stated that a COPS record is a summary of the event or incident and does not “fully explain” the contribution of alcohol consumption to the subject violent or anti-social behaviour.
- 86 In cross-examination he agreed that on 3 August 2019 he made no entries in COPS, despite claiming to have seen significant evidence of public drinking in the WAFZ.

Post-game environment

- 87 A further issue in dispute between the parties is the current incidence of post-Game alcohol-related harm.
- 88 Mr Paroz described police management of the crowd exodus as “excellent”, with the vast majority of patrons leaving immediately after the Game in an orderly manner. Mr Paroz states that his observation of post-Game crowd behaviour being “very orderly” is consistent with the 2017 and 2018 COPS records and the minutes of the September 2017 meeting of the Miranda Local Area Liquor and Gaming Accord, which record that “the Sharks’ alcohol management strategy has had a dramatic effect on improved crowd behaviour”.
- 89 In addition, Mr Paroz contends that there is no evidence of large numbers of patrons moving on to the Leagues Club after Games, citing in support the small number of User Paid Police deployed to the Leagues Club after Games. On each Game Day in 2018, about 18 User Paid Police were engaged to patrol the Stadium, of which between two to four were deployed to the Club at the end of the Game. Mr Paroz contends that had large numbers of patrons gone on to attend the Leagues Club after the Game, as the police suggested, it would be

expected that this would be reflected in a greater number of User Paid Police being deployed to the Club.

90 Mr Paroz contends that this conclusion is consistent with the COPS reports of incidents relating to the Leagues Club for the period March 2018 to August 2018. Mr Paroz reviewed those reports and found that of the 58 reported incidents (38 events):

- 27 relate to verbal warnings issued by the police, of which 10 were issued to security personnel for failing to display their security licence;
- Some relate to incidents which occurred outside the Club, including the Club carpark and the area between the Club and the Stadium; and
- 14 relate to infringement notices issued to patrons under s 77 of the *Liquor Act*, which gives police officers (and others) the power to refuse to admit to, or to turn out of, licensed premises any person who is intoxicated, violent, quarrelsome or disorderly. According to Mr Paroz, given that 128,000 people attended Game Days in 2018, 14 people being asked to leave the Club because they displayed signs of intoxication is not a “cause for concern”.

91 Sergeant Thompson agrees that patrons disperse quickly after Games. However, he claims that a number who have consumed alcohol at the Stadium go on to consume alcohol at other venues. He rejects Mr Paroz’s assessment that only a small number of patrons go on to the Leagues Club after the Game pointing out:

- (1) The number of User Paid Police deployed in the Leagues Club was increased from two to four at Saturday night games in 2018 in order to deal with alcohol-related issues amongst patrons;
- (2) Six security guards are stationed at the Leagues Club to manage people leaving NRL games and continuing on to the Leagues Club. Multiple people were refused entry to the Leagues Club on a typical Game Night due to intoxication; and
- (3) Recorded incidents of removal from the Leagues Club record only those incidents in which police issue penalty notices for “failure to leave”, but not the multiple instances where an intoxicated patron complies with a request to leave the Club.

92 In addition, he points out that at the 3 August 2019 Game Day:

- He observed 40 people being refused entry to the Leagues Club on account of intoxication; and
- About 25 people were ejected from the Leagues Club.

Newgate Australia Survey

93 At the request of the Authority, consultant, Newgate Australia, surveyed residents in the area surrounding the Stadium concerning their observations of people drinking take-away alcohol, alcohol-related litter and excessive noise or offensive conduct in and around their homes or surrounding streets on Game Days and Fight Nights. In August 2018, Newgate surveyed 150 people in the area surrounding the Stadium. Of the 104 responses received:

- (1) 50% of respondents stated they observed people in the locality drinking packaged liquor, generally travelling to the Stadium;
- (2) Around 35% of respondents reported "excessive noise and offensive conduct". Comments by respondents indicate that this has recently improved but urinating in public, damage to properties and vandalism of cars continues; and
- (3) Around 60% of residents reported problems with litter related to packaged liquor. Comments by respondents indicate that the situation has improved for residents in major streets with the placement of rubbish bins, but that this has not assisted residents in surrounding smaller streets.

Expert opinion

94 Each party commissioned an expert in the field of social planning to prepare a report for the purpose of these proceedings. At the request of the Authority, Dr Stubbs prepared a Community Impact Statement dated 19 August 2019. At the request of Dan Murphy's, Professor Roberta Ryan prepared a report dated 9 November 2019. In addition, Dr Stubbs and Professor Ryan gave oral evidence. Each expert is respected in the field of social planning, including alcohol-related issues, and each has an impressive record of academic research.

Dr Stubbs

95 In Professor Stubbs' opinion, the introduction of the Store is likely to lead to an increase in alcohol-related harm in the local community, that is, alcohol-related violence, malicious damage, drunkenness, anti-social behaviour and pedestrian/car crashes, with the most serious effects being within the Stadium, the adjacent Club and the environs of the Stadium. In her view, without Conditions 8 and 9, the introduction of the Store would "dramatically change" the pre-Game and post-Game environments.

- 96 Dr Stubbs contends that positioning three large licensed premises within a 150m radius — the Leagues Club, the Stadium and the Store — is likely to lead to an increase in alcohol-related harm. In her view, the following factors are likely to contribute to that increase: the nature of Game Days, the demographic attracted to Games played at the Stadium, the emotionally charged atmosphere of those Games, the physical environment of the site, including crowding after Games, queues to enter the Leagues Club, and the large carpark adjacent to the Leagues Club (to be shared with the Store)
- 97 In Dr Stubbs' view, the opening of the Store will "significantly alter" the pre-Game environment by increasing the incidence of "preloading" — the practice of drinking before attending an event for the purpose of getting drunk. Increased preloading, according to Dr Stubbs, carries risks of increased violence and anti-social behaviour and would provide a challenge for the effective implementation of the Responsible Service of Alcohol (RSA) measures. In addition, she contends that the increased opportunity for pre-Game alcohol purchase afforded by the opening of the Store is likely to lead to an increase in the amount of alcohol being smuggled into the Stadium. She shares the views expressed by Sergeant Thompson about the effectiveness of the controls currently in place to stop alcohol being taken into the Stadium.
- 98 In Dr Stubbs' view, the post-Game environment will "dramatically change" with the introduction of the Store. Dr Stubbs contends that the Store will be highly accessible to patrons leaving the Stadium via the eastern exit (the exit closest to the Store) and those queueing to enter, and/or congregating near, the Leagues Club. That group, contends Dr Stubbs, is likely to include patrons who are already reasonably intoxicated and in an "excitable state". In addition, Dr Stubbs contends that the Store will offer patrons the opportunity to purchase and consume alcohol in the area surrounding the Precinct, including the adjacent large foreshore park and to consume alcohol on their way home.
- 99 In addition, Dr Stubbs contends that patrons ejected from the Stadium for intoxication, aggression and/or anti-social behaviour will pose an increased risk of anti-social behaviour or violence, because they will potentially be able to purchase alcohol from the Store and to continue drinking, transferring alcohol-

related problems inside the Stadium to the public domain at a time when police and security resources are focused on managing the crowd within the Stadium.

100 Commenting on the risk mitigation strategies initially proposed by Dan Murphy's, she concluded that they will not be effective in minimising the increased likelihood of alcohol-related harm on Games Days. Specifically:

- (1) *Positioning additional security staff at door of Store:* Dr Stubbs contends that while this measure will prevent access to alcohol by "obviously intoxicated" people and minors, it will not prevent patrons purchasing alcohol for consumption before, during and after Games.
- (2) Using prominent signs to notify customers that it is prohibited to take alcohol into the Stadium and bag searches will be conducted on entry to the Stadium: Dr Stubbs is of the view that this measure will be of little consequence, given the relative ease with which alcohol can be smuggled into the Stadium.
- (3) *Engaging User Paid Police to monitor and patrol the immediate vicinity to the Store:* Dr Stubbs concedes this measure may prevent people drinking in the carpark area near the Store. However, in her view it will not address public drinking in the wider environs, including the foreshore area, shared path and surrounding streets. Nor, in her view, will it stop alcohol being smuggled into the Stadium.

Professor Ryan

101 Professor Ryan is of the opinion that the mitigation strategies currently employed by the Stadium together with the conditions proposed by Dan Murphy's, will mitigate the potential for an increase in alcohol-related harm posed by the Store on Game Days. In her view, permitting the Store to trade throughout the two hours before and after the commencement of the Game is unlikely to be detrimental to the well-being of the local or broader community. In reaching that conclusion, Professor Ryan considered the following factors to be relevant:

- (1) Dan Murphy's proposed ban of single-serve beers, ciders and RTDs or any spirits with a volume of 200ml (which it subsequently increased to 250ml) or more;
- (2) The fact that the majority of the Store's customers are likely to be over 25 years of age and therefore not an "at risk" group;
- (3) The fact that there are no "at risk" groups over-represented in the local community;

- (4) The findings of the Newgate Survey which reveal that resident concerns stem largely from the use of the Stadium, rather than ancillary uses in local areas.
- (5) The available data which indicates that anti-social behaviour, such as malicious damage to property, is trending downward or has been stable over the past four years; and
- (6) The finding of two focus group studies, that the introduction of the Store is unlikely to increase the alcohol purchasing and consumption behaviours of young people. (For the purpose of preparing her report Professor Ryan conducted two focus groups to explore the alcohol consumption patterns of young people who may be at greater risk of alcohol-related harm. Professor Ryan emphasised that she does not claim that those studies constitute representative research.)

Key points of agreement and disagreement between the experts

102 At the request of the Tribunal, Dr Stubbs and Professor Ryan prepared a joint report outlining the key issues about which they agree.

103 They agree that while the social and physical environment in which the Store will operate is not “high risk” either demographically or with regard to the density of licensed premises, there are potentially increased risks of alcohol-related harm on Game Days.

Density of licenced premises

104 Dr Stubbs and Professor Ryan agree that the literature points to a relationship between density and clustering of licensed premises and alcohol-related harm. They agree that currently there is not a high density of licensed premises in Woollooware. However, they agree that having three licensed venues operating simultaneously within 150m over a short period together with large numbers of patrons, potentially poses increased risks and management challenges.

Before game drinking

105 Dr Stubbs and Professor Ryan agree that the introduction of the Store potentially increases the risk of preloading and opportunistic purchases. They disagree about the likelihood of that risk being realised.

106 Each expert is familiar with the significant body of research and literature about the practice of preloading. They agree that while the terms “predrinking” and “preloading” are commonly used in the literature interchangeably, they are not

one and the same thing. They agree that not all people who drink before attending a Game become, or intend to become intoxicated.

- 107 As to the incidence of preloading, the experts agree that the literature identifies young people, that is people between the ages of 18 and 34 years, heavy drinkers and people on low incomes as having a propensity to preload. They agree that a high proportion of patrons are likely to be young people and that young people have a propensity to preload for various reasons, including price sensitivity.
- 108 With acknowledging that preloading is a common practice among a small number of patrons, Professor Ryan considers it unlikely that the introduction of the Store would lead to an increase in that practice. In her view, where it occurs, preloading is generally planned and commences some distance from the destination venue. Similarly, Professor Ryan considered it unlikely that the establishment of the Store would contribute to the practice of patrons drinking en route to the Stadium, pointing out that alcohol consumed en route self-evidently must be purchased before arriving at the Stadium. Dr Stubbs, on the other hand, for the reasons outlined above, is of the view that the introduction of the Store is likely to significantly increase the incidence of pre-loading and drinking before the Game.
- 109 A further point of difference between the experts is whether the nature of a sporting event lends itself to preloading. Professor Ryan points out that published studies examining preloading have largely focused on events such as music festivals and night clubs. She contends that those events are significantly different in nature to sporting events, such as NRL games. The latter are of shorter duration and command relatively high-ticket prices. In addition, she contends that patrons attending sporting events are generally intent on observing and enjoying the event, which they are unlikely to be able to do if they are heavily intoxicated. Dr Stubbs disagrees.
- 110 A further point of disagreement is the likelihood of patrons who have already been drinking, buying additional alcohol at the Store and consuming it before the Game. Professor Ryan contends that it is likely that intoxicated customers would be refused service. While conceding that RSA practices are not fool

proof, in her view it is likely that the Store's staff would be able to detect customers moderately affected by alcohol. While conceding that it can be difficult for staff to detect whether a person is moderately affected by alcohol in a crowded, darkened nightclub, Professor Ryan contends that the same difficulties do not arise in a well-lit liquor outlet, such as the proposed Store. Dr Stubbs disagrees. She argues that staff would not necessarily be able to detect whether a customer is moderately affected by alcohol.

- 111 Referring to her observations of people drinking openly in the WAFZ and outside the Stadium in August 2019, Dr Stubbs contends that the close proximity of the Store to the Stadium will give patrons who had already been drinking a further opportunity to purchase and to consume additional alcohol before a Game and, as a consequence, to increase their level of intoxication. While conceding this to be a possibility, in Professor Ryan's view the high level of police and security presence surrounding the Stadium and the Store, is likely to deter patrons from public drinking.

Smuggling alcohol into the Stadium

- 112 Dr Stubbs and Professor Ryan agree that there is a risk that patrons will smuggle small amounts of alcohol into the Stadium, and that this behaviour is likely to be motivated by the high price and limited range of alcohol sold in the Stadium. In addition, they agree that the effectiveness of the searches undertaken by the Stadium is variable.
- 113 However, they disagree about whether the introduction of the Store will increase the risk of patrons smuggling alcohol into the Stadium. While conceding that the proposed ban on single alcohol sales will mitigate that risk to an extent, in Dr Stubbs' view the introduction of the Store will increase the risk of patrons smuggling alcohol into the Stadium. Professor Ryan disagrees. In her view, people intent on smuggling alcohol into the Stadium are likely to prepare for this in advance either at home or en route to the Stadium to avoid detection.
- 114 In addition, Dr Stubbs and Professor Ryan disagree on the likelihood of some patrons seeking to circumvent the ban on single-serve sales by buying multi-packs of single drinks or bottles of spirits, and distributing those among a group

of friends. In Professor Ryan's view, the high level of police and security personnel surrounding the Stadium and the Store is likely to deter patrons from seeking to do so.

115 In Dr Stubbs' view, the location of the Store — in a multi-level shopping centre and car park, close to a large foreshore park — provides ample opportunities for patrons seeking to circumvent the ban on single-serve drinks. Dr Stubbs disagrees with the proposition that the presence of police and security personnel is likely to have a significant impact on patron behaviour, pointing to her observations of patrons drinking "openly and freely" in the WAFZ, near the entrance to the Stadium.

116 Professor Ryan contends that even where a patron manages to by-pass security and smuggle a couple of drinks into the Stadium, consuming that amount of alcohol is unlikely to result in harm, given, among other things, security within the Stadium, and implementation of RSA procedures by the Stadium.

During the Game

117 Dr Stubbs is of the view that as a result of the Store's proximity to the Stadium, there is an increased risk of opportunistic alcohol purchases, which is likely to result in some people consuming more alcohol before and during the Game, which in turn will lead to a greater incidence of anti-social behaviour among patrons during the Game. Professor Ryan disagrees with the assumption on which this hypothesis is based, that is, as a result of the introduction of the Store there is a real risk that some patrons will increase their level of pre-Game alcohol consumption. In her view, where alcohol is purchased from the Store before the Game, it does not necessarily follow that it will result in drinking at a level that is likely to result in problematic behaviour.

118 Dr Stubbs and Professor Ryan agree that patrons ejected from Games could pose a potential risk of alcohol-related harm. Dr Stubbs is of the view that the risk is material, Professor Ryan puts it no higher than a possibility. Professor Ryan considers it unlikely that the Store would contribute to any increased risk posed by ejected patrons because of the police and security presence and

communication between security at the Stadium, the Club and the Shopping Centre.

After the Game

- 119 Professor Ryan and Dr Stubbs agree that the introduction of the Store increases the opportunity for the purchase and consumption of alcohol after the Games. They disagree, however, about whether that opportunity is likely to translate into an increased risk of alcohol-related harm.
- 120 While acknowledging that there is always the potential for alcohol-related harm as large numbers of people move through an area, Professor Ryan is of the opinion that any increased risk posed as a result of the introduction of Dan Murphy's is likely to be minimal, primarily because security and police presence is likely to deter people from consuming alcohol purchased in the vicinity of the Stadium and the Store. She concedes, however, that the development of the Precinct will open up access to a large foreshore area, which is likely to make detection more difficult than in an indoor environment such as a shopping centre, especially at night.
- 121 As discussed above, Dr Stubbs considers the risk of an increase in alcohol-related harm to be significant, pointing out that the introduction of the Store gives people an opportunity to purchase alcohol after the Game that was otherwise not available.

Submissions

- 122 Dan Murphy's contends that if, in lieu of Revised Condition 8, the conditions it proposes were to be imposed on the Licence, the Tribunal could be satisfied that the overall social impact of the Licence would not be detrimental to the well-being of the Woollooware or the Sutherland Shire LGA communities.
- 123 In support of that contention, Dan Murphy's argues, first, the proposed condition requiring the Store to close by 8pm on Game Days, addresses a major concern expressed by NSW Police and Dr Stubbs about the potential negative impact of the introduction of the Store to the post-Game environment. Based on the start times for the last two NRL seasons, this condition will result in the Store closing during or shortly after about half of the First Grade NRL games played at the Stadium.

- 124 Second, as accepted by the Authority, Dan Murphy's is an experienced operator of large packaged liquor facilities and has in place a range of measures to facilitate the responsible supply and sale of liquor. The Tribunal can be confident, according to Dan Murphy's, that those measures together with the additional measures it proposes, will be strictly enforced.
- 125 Third, the Premises will operate in a modern multi-story shopping centre, where public drinking will be prohibited and there will be a significant security presence. This is likely to deter the small number of patrons who might consider drinking in public alcohol purchased from the Store and/or contravening the proposed ban on single alcohol sales.
- 126 Fourth, the opinions expressed by NSW Police and Dr Stubbs about the likely risks posed by the introduction of the Store are based largely on a factual matrix about existing alcohol-related harm on Games Days, which is not supported by the evidence. While conceding that on Game Days a small number of patrons smuggle alcohol into the Stadium and/or drink to excess before, during and after Games, Dan Murphy's contends that there is no reliable evidence of: significant numbers of patrons pre-loading, binge drinking or arriving at Games in an intoxicated state; patrons purchasing alcohol from BWS Woollooware and consuming it en route to, or smuggling it into, the Stadium; high levels of public drinking in and around the Stadium and the WAFZ before and after the Game, or; large numbers of patrons remaining in the vicinity of the Stadium after the Game, or; patrons proceeding to the Leagues Club in such numbers and in such an intoxicated state so as pose a risk of alcohol-related harm. Dan Murphy's contends that if the level and extent of alcohol-related harm on Game Days were of the magnitude suggested by Sergeant Thompson in these proceedings, it is inconceivable that the police would not have taken remedial action.
- 127 Fifth, the evidence shows that the current mitigation strategies employed by police, the Stadium and the Leagues Club are effective and evidence a high level of coordination. The examples of Mr Paroz being detected attempting to "smuggle" alcohol into the Stadium, and a patron being ejected from the

Stadium for apparently throwing a plastic cup in the air during a game in April 2019, demonstrate the effectiveness of these strategies.

- 128 Sixth, the incidence of patrons being ejected from the Stadium is very rare and the overwhelming majority of ejections do not result in social harm. There is no reliable evidence of ejected patrons remaining in the vicinity of the Stadium, or, as suggested by Dr Stubbs, departing from the Stadium in groups.
- 129 Seventh, some of the types of risks of alcohol-related harm identified by Dr Stubbs, such as intoxicated patrons being able to purchase alcohol from the Store, are far-fetched, suggesting that her opinions may be influenced by subconscious bias. A further difficulty with Dr Stubbs' evidence is that she has tended to extrapolate from her observations of patron behaviour during a single visit and failed to look at the totality of the evidence about such behaviour on Game Days. This brings into question the reliability of the opinions expressed by Dr Stubbs about the risks of alcohol-related harm resulting from the introduction of the Store.
- 130 Eighth, as detailed in the CIS, and accepted by the Authority, the positive impacts of the Licence are likely to be significant. Those impacts will outweigh any negative social impacts of the Licence.
- 131 The Authority concedes that the proposed 8pm closing time addresses many of its concerns in relation to the post-Game environment. However, it contends that the Tribunal could not be satisfied that the overall social impact of the Licence, with the conditions proposed by Dan Murphy's in lieu of Revised Condition 8, will not be detrimental to the well-being of the Woollooware or the Sutherland Shire LGA communities.
- 132 First, the Authority submits that there is persuasive evidence that the negative social impacts of the introduction of the Licence without Revised Condition 8 will be significant, pointing to the opinions expressed by Dr Stubbs and Sergeant Thompson,
- 133 Second, the Authority cites the substantial body of scientific literature pointing to the interrelationship between alcohol-related harm and the increased accessibility of alcohol, in terms of cost, opening hours and physical access to

liquor outlets. The Authority rejects the contention advanced by Dan Murphy's that that literature is of tangential relevance to the assessment of the risk of alcohol-related harm on Game Days likely to result from the opening of the Store. While accepting that there is no study which has directly examined the impact on the community of a large take-away liquor outlet operating in close proximity to a major sporting event, the Authority contends that that literature is, nonetheless, relevant.

- 134 Third, the Authority rejects the contention that the opinions expressed by NSW Police and Dr Stubbs about the likely risks posed by the introduction of the Store are based on a factual matrix which lacks any proper basis. The Authority submits that Sergeant Thompson is probably best placed to comment on current levels and types of alcohol-related harm having attended 20 Game Days. His evidence is that intoxicated patrons are the most significant challenge facing police on Game Days.

Conclusion

- 135 The key question to be determined is whether, with the imposition of the conditions proposed by Dan Murphy's, I can be satisfied that the overall social impact of the Licence will **not be detrimental to the well-being** of the Woollooware and the Sutherland Shire LGA communities: s 48(5) of the *Liquor Act*. The parties agree, and I concur, that if the decision made by the Authority to grant a licence to Dan Murphy's was varied by inserting Revised Condition 8 in substitution for Condition 8, the answer to that question would be "yes".
- 136 Answering the question posed by s 48(5) of the *Liquor Act* involves a two-step process. First, identifying the probable positive and negative social impacts of the Licence (with Dan Murphy's proposed conditions in lieu of Revised Condition 8) on the well-being of the Woollooware and the Sutherland Shire LGA communities. Second, weighing up the identified negative and positive impacts and evaluating whether the overall social impact will not be detrimental to the well-being of the Woollooware and the Sutherland Shire LGA communities. I accept, as submitted by the Authority, that the use of the definitive phrase "will not be" in s 48(5) indicates that a definitive state of

satisfaction must be reached that the grant of the licence will not be detrimental to those communities.

- 137 I accept, as submitted by Dan Murphy's, that in answering the question posed by s 48(5), I must have regard to the whole of the *Liquor Act*, including the power given to the Authority to impose additional conditions on a licence, or to vary or to revoke existing conditions after the licence is granted: see s 53. If, however, Dan Murphy's is suggesting that I can more readily be satisfied that the social impact will not be detrimental to the well-being of the local and broader community, in the knowledge of the safety net provided by s 53, I am unable to agree. Section 48(5) requires that I be satisfied at the time of making the decision to affirm, revoke or vary the decision to grant the Licence, that the social impact of the Licence will not be detrimental to the well-being of the local or broader communities.
- 138 Dan Murphy's submits that the current impact of alcohol-related harm associated with Game Days is relatively slight and well managed. The Authority disagrees and contends that the social impact of drinking on the local community close to Shark Park on Game Days is already significant, notwithstanding concerted attempts to minimise it.
- 139 To accept Dan Murphy's proposed conditions in lieu of Revised Condition 8, I would have to: (i) accept Dan Murphy's characterisation of the nature and extent of the alcohol-related social impacts and, (ii), accept that its proposed conditions will mitigate to inconsequential levels any potential exacerbation of those impacts.
- 140 There is persuasive evidence of alcohol-related harm caused by patrons on Game Days. It is undisputed that many patrons drink during the Game, and that some patrons drink before entering the Stadium. It is also conceded by Dan Murphy's that a small number of patrons smuggle alcohol into the Stadium, presumably to avoid having to pay the high prices for the limited range of alcohol on offer at the Stadium. While most patrons leave a light footprint on the local area, police and community evidence suggests that a small minority of patrons, behaving in antisocial ways, have a disproportionate social impact on Game Days. Significant efforts have been made to minimise

these effects, but they have been unsuccessful in eliminating them entirely. How big that overall impact is, and whether an additional liquor outlet very close to the Stadium is likely to add to it materially, are the factual issues to be resolved.

- 141 Dan Murphy's case is built largely on the opinion evidence given by Mr Paroz. Mr Paroz was a very experienced senior police officer with particular expertise in relation to licensing enforcement. His evidence was to the effect that there was little evidence of adverse social impact related to alcohol consumption on Game Days in the vicinity of Shark Park and that the NSW Police evidence and submissions exaggerated the scale of the current problem. He stated in his 31 October 2019 report that, in his opinion, the grant of the application carried with it "a negligible risk of alcohol-related crime and disturbance in the local or broader community, or public drinking, alcohol-related offences and anti-social behaviour" in the area near Shark Park. In his opinion, the concerns expressed by NSW Police were exaggerated and unsupported by persuasive evidence. In the conclusion to his report (which preceded the proposed compromise subsequently proposed by Dan Murphy's), he argued:

It is my opinion that conditions 8 and 9 will have little or no impact on persons attending the Stadium because I believe it is highly unlikely that attendees at the Stadium for NRL game would be seeking take-away alcohol before, during or after games.

- 142 If that foundational assumption is shown to be flawed, it would follow that his whole argument is undermined. While I accept that his opinion has been offered in good faith and is his honest appraisal, in my view Mr Paroz's assessment of risk is unduly sanguine. I do not accept that the risk is "negligible". For that reason, where his opinions are in conflict with those of Dr Stubbs and Sergeant Thompson, I prefer theirs.
- 143 In assessing the weight to be given to Mr Paroz's evidence, it is unnecessary to go through the entirety of his evidence. The limitations of Mr Paroz's evidence are most starkly revealed in one important segment of his reports and oral evidence. His analysis of the flaws in the police evidence is based, in part, on his direct observational evidence of his own visits to nine games at the Stadium.

- 144 Although the Authority accepted Mr Paroz as a witness of truth, and I have no reason to consider him to be less than truthful, I have difficulty in accepting his observational evidence as providing a comprehensive representation of the general state of affairs in the vicinity of the Stadium on game days, so strongly is it contradicted by other credible evidence. He stated that at the nine games he attended throughout 2018 and 2019, he saw patrons drinking in the WAFZ near the Stadium only twice. He said that he saw no signs that this area was a hotspot for misuse of alcohol. This implied that few people drink in the areas close to the Stadium on Game Days. Observations made by Dr Stubbs, on what appears to have been a typical Game Day, of considerable numbers of people drinking openly and in the vicinity of police and security suggest that his evidence on this point may not be reliable. Neither sample is statistically strong but there is no reason to think that Dr Stubbs arrived on a day of a sudden outbreak of low-level lawlessness.
- 145 Mr Paroz's observational evidence was also contradicted by Sergeant Thompson who has attended 20 Game Days. Sergeant Thompson's evidence of alcohol-related litter in the vicinity of the stadium on Game Days is strong circumstantial evidence of public drinking in the neighbourhood of the Stadium, notwithstanding efforts to control and reduce it. He and other police officers also observed drinkers in the area before and after Games. The evidence of community observations and concerns also contradict Mr Paroz's evidence. About 50 of the surveyed respondents to the Newgate study claimed to have witnessed people drinking in the locality of the Stadium and 60% of respondents reported problems of alcohol litter.
- 146 Significantly, some of the concerns expressed related to alcohol packages littering the neighbourhood. Even the evidence that the littering problem had been partially solved by the placement of bins implies that considerable quantities of packaged drinks are purchased and brought into the areas close to the Stadium on Game Days. Sergeant Thompson gave evidence that on Game Days large wheelie bins are placed in eight locations in the neighbourhood of the Stadium for the specific purpose of collecting bottles and cans consumed by patrons drinking before Games. That evidence tends to corroborate Dr Stubbs' observational evidence and undermines the overall

effect of Mr Paroz's observational evidence. I do not suggest that Mr Paroz was not honest in his evidence but it does not account for the various indicia of significant social impact of drinking in that locality. When he is so firmly controverted by a variety of other evidence, for Mr Paroz to imply that if he did not see the signs and symptoms of adverse social impact they were not there or, if they were, only to a negligible degree, is not persuasive.

- 147 Mr Paroz disputed the analysis provided by NSW Police to the Authority on the basis of his analysis of the COPS material. In his view, an "inexperienced observer" may draw wrong conclusions by inferring a higher level of antisocial behaviour than the empirical evidence actually reveals. His evidence was to the effect that the COPS reports showed only a relatively small (and tolerable) number of "events" over the 2017 and 2018 NRL seasons. Mr Paroz and Sergeant Thompson disagree as to the conclusions that can be drawn from the summaries in this report.
- 148 In his attack on the NSW Police COPS evidence, however, Mr Paroz, in effect, sets up a "straw man" and demolishes it. The evidence of Sergeant Thompson is not that Shark Park and Woollooware are dangerous crime hotspots. The COPS material provides a very limited perspective on all the relevant activity that police and security personnel managing crowds in the area are engaged in. COPS records only those "events" that police choose to register. It is a very incomplete picture of police and security activity and the activity of security personnel engaged by the Stadium and the League Club, about the general level of risk of alcohol-related harm. The reality of the risk, as described by Sergeant Thompson, Dr Stubbs and Professor Ryan is, in fact, far more banal. They have described what might be considered typical Australian crowd behaviour at popular sports events. By overstating his case, the weight that might otherwise have been given to Mr Paroz's opinions, is diminished.
- 149 The assessment of the evidence of Dr Stubbs and Professor Ryan is more difficult. Both presented as balanced, independent experts who agreed on a number of matters and were willing to make reasonable concessions when they thought it appropriate. They accept that although the local area is not a high-risk area, the potential risk of alcohol-related harm increases in the

Stadium environs on Game Days. They agree that increasing the density of liquor outlets increases potential risk. They agree that the phenomenon of preloading is real, especially among young people. They agree that some patrons drink before the Game, some to excess. They both acknowledge that smuggling of alcohol goes on, particularly by young people, despite efforts to prevent it. They agree that patrons ejected from games may pose a risk of anti-social behaviour but have different views about the magnitude of that risk.

- 150 The essential difference between them is that Dr Stubbs holds the view that the presence of the Store near the Stadium poses a risk of increased alcohol-related harm to the local community, whereas Professor Ryan holds the view that the measures proposed by Dan Murphy's are likely to minimise any additional risk.
- 151 Professor Ryan places emphasis on the following factors in combination: (1) the proposed ban on the sale of single-serve drinks, which in her view is likely to reduce the likelihood of patrons buying alcohol to consume before the Game or to smuggle into the Stadium; (2) patrons intending to preload are likely to plan to do so well in advance of arriving at the Stadium and therefore unlikely to look to the Store to purchase alcohol; (3) the significant police and security presence, together with the mitigation measures already in place and those proposed by Dan Murphy's, are likely to have a strong deterrent effect on patrons seeking to circumvent the ban on the sale of single-serve alcohol; (4) the majority of customers are likely to be over 25 years old and therefore a lesser risk than immature drinkers; (5) "at risk" groups are not over-represented in the local community; (6) resident concerns relate primarily to the use of alcohol in the Stadium rather than ancillary uses in local areas; and (7) the available data shows that anti-social behaviour has trended downward since the current risk management strategies have been introduced.
- 152 Predicting the future is difficult, especially, as in this case, the available research is limited, and respected social planners disagree on the ultimate issue. Nevertheless, for the reasons that follow, I find that the introduction of the Store is likely to lead to an increase in alcohol-related harm on Game Days.

- 153 In reaching that conclusion I acknowledge that the introduction of the Store is unlikely to change the level and pattern of alcohol consumption and behaviour of the vast majority of patrons on Game Days. However, given the close proximity of the Store to the Stadium, together with the competitive price and wide range of alcohol on offer at the Store, in my view there is a real risk that as a result of the Store's introduction, a small number of patrons will consume more alcohol than they otherwise would have, had it not been for the introduction of the Store. Of that group, some, but of course not all, are likely to cause alcohol-related harm both inside and/or in the environs of the Stadium. While a possibility, I am not satisfied on the available material that that impact will extend beyond the local community.
- 154 While it seems probable as contended by Professor Ryan that the majority of patrons who currently preload or drink before Games do so in a planned manner and buy their alcohol before leaving for, or on the way to the Game, the opening of the Store is likely to increase opportunistic purchases of alcohol. This seems to me to be common sense, although the number of patrons who might do so can only be a matter of speculation. On the other hand, some of those who currently buy elsewhere may choose to wait until they get to the Store. The opening of the Store will increase competition and possibly reduce the market share of local outlets such as Woollooware BWS. Nevertheless, as the literature reveals, increasing the density of liquor outlets generally results in an overall increase of alcohol purchases. That is likely to increase the risk of alcohol-related harm in the vicinity of the Store itself, especially on Game Days.
- 155 Are the measures proposed by Dan Murphy's sufficient to offset this risk? I am not satisfied that they are. In reaching that conclusion I accept that those measures, if introduced, would be vigorously enforced by Dan Murphy's.
- 156 The proposed condition that the Store close by 8pm on Game Days, self-evidently will prevent patrons purchasing and consuming alcohol after evening Games and undoubtedly reduces the risk of alcohol-related harm after those Games. However, it will have no impact on the post-Game environment when Games are played in the afternoon. The relatively low number of patrons ejected from afternoon Games suggests that crowds attending those Games

are generally well behaved and easier to manage. Nonetheless, in my view, the risk that some patrons will purchase alcohol after those Games and proceed to consume it on the way home and/or in the vicinity of the Precinct is real, notwithstanding among other things, the deterrent effect of the prohibition on public drinking and the significant security and police presence.

- 157 The proposed ban on the sale of single-serve drinks on Game Days is likely to reduce the risk of increased drinking by patrons as a result of the introduction of the Store, but not to an extent that is negligible. In making that assessment I have had regard not only to the ban itself but the deterrent effect of the existing and proposed mitigation strategies. I accept Dr Stubbs' opinion that it is likely that some patrons will seek to circumvent the ban on the sale of single-serve drinks by dividing multi-pack purchases among a group of friends. Given that many patrons attend games with friends or family, it is conceivable, even likely, that a four or six-pack of drinks could be shared among a group. Indeed, an unintended consequence of the proposed ban may be to increase alcohol consumption. A customer would have to consume, smuggle or otherwise dispose of at least four/six drinks.
- 158 I am not persuaded by the submission that because there is no direct evidence of patrons dividing multi-packs of alcohol purchased from BWS Woollooware in an effort to circumvent that store's ban on single alcohol sales, there is no material risk that patrons will seek to circumvent that ban if imposed at the Store. The circumstances surrounding the two outlets are markedly different, including the proximity of each to the Stadium.
- 159 The ban on single-serve drinks, together with the other mitigation measures, including bag searches conducted on entry to the Stadium, is likely to deter most patrons from seeking to smuggle alcohol into the Stadium. Nonetheless, in my view it is likely that a small number of patrons will seek, some successfully, to smuggle alcohol purchased from the Store into the Stadium. This is especially concerning given Sergeant Thompson's opinion that most of the alcohol smuggled into the Stadium is of a higher strength than that on offer at the Stadium, where only mid-strength beer is available in certain parts.

Those patrons smuggling higher strength alcohol into the Stadium are likely to arrive more quickly at a state of intoxication.

- 160 In addition, the ban on the sale of single-serve drinks will not prevent patrons purchasing spirits or beverages in containers holding more than 250ml.
- 161 Posting additional security at the doors to the Stadium, in my opinion, is unlikely to deter customers intent on dividing up multi-packs or bottles of spirits among groups. While it is improbable that patrons will seek to divide up and or consume purchased alcohol in the immediate vicinity of the Store, the Precinct itself, together with the large foreshore park, offers ample opportunities to customers seeking to avoid detection.
- 162 Finally, even if Mr Paroz is correct that most crowds at the Stadium behave well, Sergeant Thompson's local experience is that a small minority behave badly, especially after games when crowds are dispersing in large numbers and can be hard to control. And there is some evidence that some crowds are considered poorly behaved by the police trying to manage them. In my view, the fact that police are ejecting an average of 13 people from the Stadium for bad behaviour per Game, most of whom are probably affected by alcohol, probably masks a much larger number who are intoxicated and increasingly so as the Game proceeds. Sergeant Thompson's observations suggest that most people are well-behaved and manage their drinking, but some do not. Even a small increase in the amount of alcohol consumed by some patrons at a Game or a small increase in the level of intoxication of those predisposed to anti-social activity when intoxicated, is likely to materially increase the overall adverse social impact on the local community.
- 163 For these reasons, I conclude that the grant of the Licence with Dan Murphy's proposed conditions is likely to lead to an increase in the risk of alcohol-related harm and have a detrimental impact on the well-being of the Woollooware community.
- 164 I accept that the grant of the Licence will also have a positive impact on the well-being of the local and broader communities. Those positive impacts include the increased convenience and range of liquor choices that will be available to consumers of alcohol in the local and broader communities

together with those listed in the CIS, such as the creation of increased employment and career opportunities.

- 165 Notwithstanding those significant positive impacts, having regard to the negative impacts discussed above, I am not satisfied that the grant of the Licence, with the imposition of the conditions proposed by Dan Murphy's, will not be detrimental to the well-being of the Woollooware community. However, I am satisfied that the grant of the Licence with the imposition of Revised Condition 8, will not be detrimental to the well-being of the Woollooware or the Sutherland Shire LGA communities.

Order

- (1) I have decided that the correct and preferable decision is to vary the decision made by the Authority on 24 October 2018 by substituting Condition 8, with the following condition:

The licensed premises must not trade during the period ninety (90) minutes before a first grade NRL Game commences at the Southern Cross Stadium (located at 461 Captain Cook Drive Woollooware) until ninety (90) minutes after the Game finishes.

I hereby certify that this is a true and accurate record of the reasons for decision of the New South Wales Civil and Administrative Tribunal.

Registrar

Annexure A

Decision of the Independent Liquor and Gaming Authority Application for a packaged liquor licence - Dan Murphy's

The Independent Liquor and Gaming Authority considered the application above at its meeting on 17 October 2018, and decided to approve the application pursuant to section 45 of the Liquor Act 2007, subject to the following conditions:

1. Section 11A of the Liquor Act 2007 applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 3:00 AM and 9:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.

2. Restricted trading and NYE (std)

Retail Sales

Good Friday Not permitted

December 24th Normal trading Monday to Saturday

8:00 am to 10:00 pm Sunday

Christmas Day Not permitted

December 31st Normal trading

3. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4. The premises is to be operated at all times in accordance with the Endeavour Drinks Group Liquor Store House Policy and Best Practice Policies and Interventions documents, as submitted to the Independent Liquor and Gaming Authority ("the Authority") in support of the licence application and as may be varied from time to time after consultation with the Authority. A copy of these documents is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Authority.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. Closed-circuit television system
 - 1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises ("the premises") in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the premises is required to close,
 - (b) recordings must be in digital format and at a minimum of six (6) frames per second,
 - (c) any recorded image must specify the time and date of the recorded image,
 - (d) the system's cameras must cover the following areas:
 - (i) all entry and exit points on the premises, and
 - (ii) all publicly accessible areas (other than toilets) within the premises.
 - 2) The licensee must also:
 - (a) keep all recordings made by the CCTV system for at least 30 days,
 - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
 - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

7. Incident register

1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:

(a) any incident involving violence or anti-social behaviour occurring on the premises,

(b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,

(c) any incident that results in a person being turned out of the premises under section 77 of the Liquor Act 2007,

(d) any incident that results in a patron of the premises requiring medical assistance.

2) The licensee must, if requested to do so by a police officer or inspector:

(a) make any such incident register immediately available for inspection by a police officer or inspector, and

(b) allow a police officer or inspector to take copies of the register or to remove the register from the premises.

3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

8. The licensed premises must not trade during the period between two (2) hours before a first grade NRL game commences at the Southern Cross Group Stadium (located at 461 Captain Cook Drive, Woollooware) until two (2) hours after the game finishes.

9. The licensed premises must cease trading two (2) hours before the gates open on any "fight night" held at the Southern Cross Group Stadium (located at 461 Captain Cook Drive, Woollooware).

Annexure B

Revised Condition 8 proposed by the Authority

The licensed premises must not trade during the period ninety (90) minutes before a first grade NRL Game commences at the Southern Cross Stadium (located at 461 Captain Cook Drive Woollooware) until ninety (90) minutes after the Game finishes.

Annexure C

Revised Conditions proposed by Dan Murphy's in lieu of Condition 8

3060	The licensed premises will not sell single-serve beers, ciders & RTDs or any spirits that have a volume of 250ml or less on any day when the first grade NRL Cronulla Sharks team are playing
------	---

	<p>a home game at PointsBet Stadium located at 461 Captain Cook Drive, Woollooware (the Stadium).</p>
3070	<p>Signage will be provided at the front of the premises advising customers of bag searches when entering the Stadium, and the prohibition of taking liquor into the Stadium and drinking in public places.</p>
3080	<p>Game Day Security</p> <p>(1) From one (1) hour before a first grade NRL game at the Stadium until one (1) hour after that game ends, or until the licensed premises closes, whichever occurs first, (the Security Operation Period): -</p> <p>(a) 2 User Paid Police are to be engaged (the Security Team) to continuously patrol the area being the immediate vicinity of the licensed premises (the Security Patrol Area);</p> <p>(2) During the entire Security Operation Period, 1 security officer (not being a User Pay Police officer) is to be permanently stationed at the principal entrance to the licensed premises (whose principal tasks are to check ID and refuse access to the premises by intoxicated, violent, quarrelsome or disorderly persons).</p> <p>(3) For the purposes of compliance with this condition, in the event that User Pay Police are unavailable to undertake the duties required by the Security Team within the Security Patrol Area , those duties can be undertaken and fulfilled by a private licensed security firm and their staff.</p>
3090	<p>On any day when the first grade NRL Cronulla Sharks team are playing a home game at the Stadium the premises will close at 8pm.</p>

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.