



Mr Andrew Lauridsen
Chief Executive Officer
Toongabbie Sports Club

Via email: andrew.lauridsen@toongabbiesportsclub.com.au

21 December 2020

Dear Mr Lauridsen

Application No.	1-7665600655
Applicant	Toongabbie Sports and Bowling Club Limited
Licence number	LIQC300230694
Licence name	Toongabbie Sports Club
Premises	12 Station Road Toongabbie NSW 2146
Application for	3-hour gaming machine shutdown period on weekends and public holidays pursuant to section 40 of the <i>Gaming Machines Act 2001</i>
Current gaming machine shutdown period	Monday to Sunday 3:00 am – 9:00 am
Proposed gaming machine shutdown period	Monday to Friday 3:00 am – 9:00 am Saturday, Sunday and public holidays 5:00 am – 9:00 am

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

The Independent Liquor & Gaming Authority ('Authority') considered the application above, and decided on 11 November 2020 to **refuse** the application pursuant to section 40 of the *Gaming Machines Act 2001*.

Statement of reasons

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is not required to provide reasons for this decision, however in this instance, for your information, we provide the following comment on your application.

Legislative framework

The Authority has considered the application in the context of sections 3 and 40 of the *Gaming Machines Act 2001*:

3 Objects of Act

- (1) The objects of this Act are as follows—
 - (a) to minimise harm associated with the misuse and abuse of gambling activities,
 - (b) to foster responsible conduct in relation to gambling,
 - (c) to facilitate the balanced development, in the public interest, of the gaming industry,
 - (d) to ensure the integrity of the gaming industry,
 - (e) to provide for an on-going reduction in the number of gaming machines in the State by means of the tradeable gaming machine entitlement scheme.
- (2) The Authority, the Minister, the Secretary, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for gambling

harm minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under this Act.

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

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

- (1) The Authority may, on application by a hotelier or club, approve of the hotel or the premises of the club having, with effect on and from 1 May 2003 or from any time after that date, a shutdown period of between 6 am and 9 am on each day that is a Saturday, Sunday or public holiday (***the 3-hour shutdown period***).
- (2) If the 3-hour shutdown period on a Saturday, Sunday or public holiday is approved for the time being in respect of a hotel or the premises of a club, the hotelier or club must ensure that each approved gaming machine that is kept in the hotel or on the premises of the club is not operated for the purposes of gambling between 6 am and 9 am on that day.

Maximum penalty—100 penalty units.

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

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

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

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

Key findings

In considering whether the application satisfies the requirements specified in the Minister's Guidelines, the Authority notes that:

1. The applicant relies on clause 1.2 of the Minister's Guidelines, and contends that the venue is located in an area where other hospitality and entertainment venues are open until 6 am on Saturdays, Sundays or public holidays. Specifically, the applicant references following venues:
 - Parramatta Leagues Club – open until 6am 7 days a week
 - Hotel Seven Hills – open until 6 am Friday and Saturday
 - Wentworthville Leagues Club – open until 6 am Friday and Saturday
 - Blacktown Workers – open until 4 am Friday and Saturday
 - Pendle Inn – open until 4 am Monday to Saturday.

2. The venues the applicant relies upon for the purposes of the Minister's Guidelines are located some 3-6.7 kilometres in (driving) distance from Toongabbie Sports Club ('Club'), with none of the venues located in the same suburb or Statistical Area Level 2 ('SA2') as the Club, and only one venue located in the same local government area ('LGA') as the Club.
3. The Minister's Guidelines do not define what comprises an "area" for the purposes of applying clause 1.2. Section 40 of the *Gaming Machines Act 2001* ('Act') is also silent on the matter.
4. Since the Minister's Guidelines were issued, LGAs have been consolidated into geographically broader areas as a result of the 2016 Council amalgamations. LGAs are now considered too geographically and demographically diverse to provide any genuinely "local" character, and accordingly are no longer appropriate to define the relevant "area" as contemplated by clause 1.2 of the Minister's Guidelines.
5. Further, following the 2018 amendments, the Act has moved from an LGA-based approach to classifying gaming venues to an SA2-based approach, particularly for the purposes of the classification of areas under section 33.
6. Accordingly, the Authority considers that relying on the SA2 is the preferable approach to applying the Minister's Guidelines.
7. The Authority has carefully considered the applicant's submissions on this matter, including that:
 - a. The term "area" is "inherently inexact, general and flexible", and the Minister's Guidelines have "deliberately eschewed the choice of a fixed geospatial unit of measurement ... to provide greater flexibility".
 - b. As the use of the SA2 in the Act was not in place at the time the Minister's Guidelines were published, it is therefore "unreasonable" to interpret the term "area" in clause 1.2 as applying to an SA2, as that definition would not have been the intent of Minister at the time of approving the Guidelines.
 - c. If the SA2 *is* to be used, the legislation makes provision for including surrounding areas such as adjoining SA2s and other SA2s within the same LGA [in limited circumstances], and that in the case of this application there are hospitality and entertainment venues open to 6 am on Saturdays or Sundays or public holidays both in the LGA and adjoining SA2s.
 - d. There are a number of community facilities which suggest that the Toongabbie and Seven Hills suburbs are within the same area, for example, Seven Hills-Toongabbie RSL services the "single community drawn from both suburbs" [it is noted that this venue is not open past 4am on any day].
 - e. Membership data for Toongabbie Sports Club indicates that 2,379 members reside in Toongabbie, 1,413 in Seven Hills, and 2,440 in other suburbs, suggesting that Toongabbie/Seven Hills is an "identifiable area".
8. The Authority accepts the applicant's submissions that the term "area" was selected to allow the decision maker the flexibility to consider an application's individual circumstances. However, the Authority is not persuaded by the remainder of the applicant's submissions, and considers the applicant's interpretation of the term "area" to be purposefully broad so as to increase the application's prospects of success.
9. The Authority considers use of the SA2 to identify the "area" that a gaming venue falls within to be the most informative and up-to-date interpretation of the term, and is of the view that the flexibility of the term "area" (as identified by the applicant) allows for this position, as do the facts of the application outlined above.

In addition to the requirements of section 40 of the Act, including the requirements of the Minister's Guidelines, the Authority must also apply the overarching objects and considerations in section 3 of the Act for every application of this kind.

In considering whether approving the application would satisfy the objects of the Act, the Authority notes that:

1. The applicant has failed to provide sufficient evidence to satisfy the Authority that reducing the gaming machine shutdown period would facilitate the balanced development, in the public interest, of the gaming industry.
2. The Authority will from time to time inform itself on relevant domestic and international research on problem gambling, and that information may inform the Authority's assessment of an application. The Authority has concerns about applications that would increase the availability of gaming machines after 2 am, in light of the growing evidence base¹ that shows:
 - a. there is a significantly higher risk of harm associated with the use of Electronic Gaming Machines ("EGM") compared to other types of gambling
 - b. problem gamblers may be over-represented among EGM players between 12 midnight and 4 am, particularly after 2 am
 - c. there is a range of risks specific to late-night EGM play, including that gamblers are more likely to chase losses and take greater risks as the night wears on
 - d. a late-night gaming machine shutdown period is more likely to impact problem gamblers than moderate or low risk gamblers. More than half of problem gamblers would choose to go home following EGMs shutting down at a venue, rather than migrate to another venue
 - e. minimum legal requirements, reliant upon informed choice and voluntary self-exclusion, may be of limited utility in managing the risk posed to problem gamblers and at-risk gamblers.
3. The NSW Gambling Survey 2019² showed that (in the previous 12 months) 16% of the population played EGMs. Within this gambling segment, there is a significantly higher prevalence of moderate risk and problem gambling. Specifically:
 - a. among EGM players there is a significantly higher prevalence of problem gambling at 5.4% compared to 0.4% of gamblers who do not play EGMs
 - b. EGM players have a 3.58 times greater chance of being a moderate-risk or problem gambler than gamblers who are not EGM players
 - c. 36% of EGM players indicate some degree of gambling problems (ie, low-risk, moderate-risk or problem gambling combined) compared to 19% of the gambler population as a whole.
4. The 6-hour gaming machine shutdown period is a fundamental legislative harm minimisation measure, with research³ finding that a late-night shutdown is most likely to impact problem

¹ Hing, N., Russell, A. & Rawat, V. (2020). Responsible Conduct of Gambling. [Central Queensland University]. Commissioned by New South Wales Responsible Gambling Fund, Sydney.

Smith, C., Wolstenholme, A. & Duffy, C. (2019). Shutdown periods for electronic gaming machines. [Snapcracker Research + Strategy]. Commissioned by New South Wales Responsible Gambling Fund, Sydney.
Central Queensland University. (2019). NSW Gambling Survey, 2019. Commissioned by New South Wales Responsible Gambling Fund, Sydney.

Tuffin, A., & Parr, V. (2008). Evaluation of the 6-hour shutdown of electronic gaming machines in NSW. Report prepared for the NSW Office of Liquor, Gaming and Racing by Bluemoon Research.

² Central Queensland University. (2019). NSW Gambling Survey, 2019. Commissioned by New South Wales Responsible Gambling Fund, Sydney.

gamblers than any other group. This is because problem gamblers are significantly more inclined to play EGMs after midnight and to play for longer periods of time overall.

5. The Applicant's submission states that the Club "is only seeking to extend its hours to remain competitive", and draws multiple comparisons to its "competitors" in order to justify approval of the Application. Section 10(e)(i) of the *Registered Clubs Act 1976* states that a club should be established for *social, literary, political, sporting or athletic purposes or for any other lawful purposes*. The Authority reminds the Club that gaming should only ever be an ancillary offering, and should not be relied on as a mechanism to remain commercially "competitive", as this is not the intended purpose of a club.
6. Gaming venues can apply for approval of a varied or reduced gaming machine shutdown period only in certain special circumstances, and that a reduced or varied gaming machine shutdown period is to be understood as an exemption, and is certainly not an automatic entitlement.
7. The Authority considers that gaming venues should be supportive of harm minimisation initiatives in the interests of the wellbeing of their patrons and members.
8. Finally, the Authority notes that the Club is already permitted to operate its gaming machines until 3 am, and that nothing prevents the Club from continuing to offer its non-gaming services to its members during gaming machine shutdown hours.

Accordingly, the Authority refuses the application.

If you have any enquiries regarding this correspondence, please contact the Authority's Secretariat at ilga.secretariat@liquorandgaming.nsw.gov.au.

Yours faithfully



Philip Crawford
Chairperson

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

³ Smith, C., Wolstenholme, A. & Duffy, C. (2019). Shutdown periods for electronic gaming machines. [Snapcracker Research + Strategy]. Commissioned by New South Wales Responsible Gambling Fund, Sydney.
Tuffin, A., & Parr, V. (2008). Evaluation of the 6-hour shutdown of electronic gaming machines in NSW. Report prepared for the NSW Office of Liquor, Gaming and Racing by Bluemoon Research.