



Civil and Administrative Tribunal  
New South Wales

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Case Name: Bun v Independent Liquor and Gaming Authority

Medium Neutral Citation: [2020] NSWCATAD 60

Hearing Date(s): 18 and 19 December 2019

Date of Orders: 21 February 2020

Decision Date: 21 February 2020

Jurisdiction: Administrative and Equal Opportunity Division

Before: Naida Isenberg, Senior Member

Decision: (1) The decision under review is set aside and the Applicant's liquor licence is extended so as to permit trading until 2.00 am Monday to Saturday and until midnight on Sundays.  
(2) The parties are to file Short Minutes of Order setting out conditions to be attached to the licence within 28 days of this decision.  
(3) If the parties are unable to reach agreement as to the conditions to be imposed on the licence, the matter will be listed for further directions.

Catchwords: LIQUOR LICENCE– extension to trading hours - overall social impact of licence – weighing positive and negative - community consultation – crime and health statistics – licence conditions

Legislation Cited: Gaming Machines Act 2001  
Liquor Act 2007  
Liquor Regulation 2018

Cases Cited: ALDI Foods v Independent Liquor and Gaming Authority [2019] NSWCATAD 43  
Auld v Independent Liquor and Gaming Authority [2018] NSWCATAD 25  
Kallin v Independent Liquor and Gaming Authority [2019] NSWCATAD 36

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

Texts Cited: None cited

Category: Principal judgment

Parties: Suphanna Bun (Applicant)  
Independent Liquor and Gaming Authority  
(Respondent)

Representation: Counsel:  
C Ireland (Applicant)  
J Emmett (Respondent)

Solicitors:  
Hatzis Cusack Lawyers (Applicant)  
Crown Solicitor (Respondent)

File Number(s): 2019/00242704

Publication Restriction: Nil

## **REASONS FOR DECISION**

### **Background to the application for review**

- 1 In June 2015, Canterbury Council (the Council) granted development approval for building alterations to premises in Beamish Street Campsie (the premises), in what was to become the Station House Hotel (the Hotel). In giving its approval, the Council permitted the Hotel to operate from 10.00 am until 2.00 am the following day from Monday to Friday, 8.00 am until 2.00 am the following day on Saturdays and from 8.00 am to midnight on Sundays and public holidays.
- 2 The previous licensee of the Hotel, Jarrod Smith, then applied to the Respondent to transfer an existing hotel licence situated at Hurlstone Park, to the premises. In early 2018, the Respondent approved Mr Smith's application but reduced the Hotel's licensed trading hours, requiring the premises to close by midnight Monday to Saturday and by 10.00 pm on Sundays. The Hotel was then fitted out and commenced to trade; its facilities now include a sports bar, lounge, dining room, commercial kitchen, dining area and a gaming room with 29 machines.

- 3 The Applicant, Suphanna Bun, is the present licensee of the Hotel. He applied to the Respondent to extend trading hours under the licence to those approved by the Council, that is, to permit trading until 2.00 am Monday to Saturday and until midnight on Sundays. The application was refused by the Respondent, against the advice of officers of the Department of Industry. The Applicant seeks review of that decision.

### **Statutory scheme**

- 4 The objects of the *Liquor Act 2007* (the Act) are as set out in s 3 as follows:

#### **3 OBJECTS OF ACT**

- (1) The objects of this Act are as follows:

- (a) To regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
- (b) To facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
- (c) To contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:

- (a) The need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
- (b) The need to encourage responsible attitudes and practices towards 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.

- 5 The Objects are reflected in s 48(5) of the Act which provides as follows:

The Authority [and the Tribunal on review] must not grant a licence, authorisation or approval to which a relevant application relates, unless the Authority is satisfied, after having regard to:

- (a) the Community Impact Statement [CIS] provided with the application, and
- (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),

that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.

- 6 The Respondent has published a Guideline to explain the procedure and the considerations relevant to its inquiry - Guideline 6 (the Guideline). A new version of the Guideline was published on 5 August 2019, that is, since the Respondent made the decision under review, and that is the relevant Guideline for the purposes of these proceedings: *Smith v Independent Liquor and Gaming Authority* [2018] NSWCATAD 224 at [26]. See also *Auld v Independent Liquor and Gaming Authority* [2018] NSWCATAD 25 (*Auld*). I have taken it into account:
- 7 The Guideline sets out comprehensively information required in relation to a proposed liquor licence. Importantly, the Guideline also sets out matters the Authority *must* consider in determining whether it is satisfied that the overall social impact of the licence, authorisation or approval sought will not be detrimental to the well-being of the local or broader community, repeating s 48(5) of the Act.
- 8 Other matters which must be considered include the type of proposed licensed premises; the scale of the proposed licensed premises; the trading hours of the proposed licensed premises; the location of the proposed licensed premises; and, whether any specific measures, over and above those required by legislation, will be implemented at the proposed licensed premises.
- 9 The Guideline also provides that upon receiving an application, the Authority may refer the matter to the Secretary of the Department of Industry, (“Secretary”) for a report pursuant to s 42 of the Act. The Secretary’s report may include information and or comment on the potential social impact posed to the local or broader communities should the application be granted. The report may recommend conditions to which the proposed premises may be subject if a licence is granted, and address the compliance history, if any, of the applicant. Relevantly, where such a report is provided, the Authority is required to have regard to it in determining whether it is satisfied 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.

- 10 The Guideline also outlines matters which *may* be considered, such as research regarding demographic indicia in relation to alcohol-related harm, and relevant crime statistics.

### **The evidence**

- 11 The s 58 documents filed in the matter were extensive, and a number of exhibits were tendered. The Applicant provided affidavits dated 16 October 2019 and 19 November 2019, and gave evidence. Patrick Paroz APM, a former Commander of the Alcohol Licensing Enforcement Command of NSW Police provided an affidavit dated 19 November 2019 annexing an expert report in relation to the premises, and gave evidence. Adam Purcell, a former Superintendent of Police (and a former Local Area Commander) provided a report dated 14 October 2019, and was not required for cross-examination. The Respondent's evidence is referred to below.

### *Community views*

- 12 Attached to the Applicant's affidavit of 16 October 2019 was a petition signed by 673 patrons of the Hotel (the petition), expressing their support for (additional) trading from 12.00 midnight to 2.00 am Monday to Saturday and from 10.00 pm until midnight on Sundays.

- 13 Further, they wrote:

We regularly attend the Station House Hotel and enjoy the facilities on offer, and we would like to be able to stay at the Hotel for later in the night than we presently can. We find it inconvenient that we have to move onto other, less enjoyable venues in Campsie when we wish to keep socialising past midnight in the area on Mondays to Saturdays.

In our view, the Hotel is a safe and well-run establishment and in our experience the operation of the Hotel does not disturb the neighbourhood late at night.

- 14 The Applicant said in cross-examination that the petition had been developed over 15 days in September/October 2019. It had been kept behind the bar and staff invited patrons to sign it. Of these patrons, the Applicant acknowledged, few would actually take advantage of extended hours. He estimated that the Hotel served 100-200 customers per day.
- 15 The Applicant said in his Affidavit that in the more than a year and a half he has been the licensee, notwithstanding the Hotel's telephone number being

advertised on the front door of the premises, he has not received a single complaint from any local residents about the operation of the Hotel.

- 16 For the purposes of these proceedings, the Respondent engaged Newgate Australia to conduct community consultation. Newgate's report dated 14 November 2019 was tendered.
- 17 The consultation process included surveying local residents. 235 surveys were distributed to local residences – 25 were completed with the assistance of Newgate staff, 133 were left under the front door, and 77 were put in letterboxes. The Respondent conceded that there was almost no response from the surveys that were left under a front door or in a letter box. Overall, there was a completion rate of only 11.06% of the surveys distributed.
- 18 The Respondent conceded that a significant majority of the 26 people who responded (21 out of 26) had not observed excessive noise or offensive conduct associated with the Hotel, and did not object to the extended hours proposal (19 out of 26). A small portion of responders (2 out of 26) had observed behaviour associated with gambling which was considered as being unsafe or a risk to the community.
- 19 The Applicant was critical of how the questions had been posed by Newgate, suggesting the report did not seek to elicit answers as to whether people surveyed expressed *support* for the application:

Would you have any objections to the extended provision of liquor and gaming services in the period from 12.00 midnight until 2.00 am at the Station House Hotel?

- 20 Newgate's consultation process also included contacting 11 community organisations. Of these, three expressly declined to comment and five did not respond. Three community organisations opposed the application: the Arab Council of Australia and the Sydney Women's Counselling Centre both identified gambling as an existing problem which the extended hours would exacerbate, and both referred to violence linked to excessive gambling. The third organisation, Mission Australia, expressed concerns especially referable mainly to the Hotel's proximity to schools and the vulnerability of young children, although the Respondent conceded that this was less relevant to the present application.

- 21 Consultation for the purposes of the CIS had also yielded relatively very little by way of adverse comment. For example:
- One person expressed concern about patrons leaving the Hotel to smoke while school children were in the vicinity, although it is difficult to see how this is relevant to the application for extended hours.
  - Another person objected to the extension of hours, apprehending that patrons might become intoxicated and present a risk to people passing by the Hotel on their way to Campsie Station.
  - Campsie RSL, objected, perhaps unsurprisingly, given that that club is a competitor of the Hotel. The evidence was that it operates 234 gaming machines and, I was informed, enjoys unrestricted trading hours, presumably subject to mandatory closure periods.
- 22 During the community consultation process for the preparation of the CIS, the Applicant informed all community organisations within the Local Government Area who receive funding under the Responsible Gambling Fund (in accordance with cl 29(4) of the Regulation) in order to alert community organisations who have responsibility for treating problem gamblers of the making of an application for extended hours. The only response received was a (pro forma) from Transport NSW. No submissions were received from any gambling treatment organisation expressing concerns about the application.

*Police views about the proposal*

- 23 NSW Police, in a submission to the Respondent dated 8 November 2018, and confirmed by letter dated 1 November 2019, stated that the application was not supported.
- 24 The Police had identified five incidents of concern between April 2018 and November 2018, although there was no evidence that these matters gave rise to any charges being laid:
- (1) 5 intoxicated patrons engaged in assault (1 November 2018)
  - (2) Patron refuses to leave – altercation with manager (18 October 2018)
  - (3) 2 patrons leave with glasses (7 September 2018)
  - (4) Altercation between 2 patrons outside the Hotel (July 2018)
  - (5) Business inspection on the Hotel's first day of operation – patrons intoxicated and disorderly (April 2018)

- 25 The Applicant was cross-examined about these events, in particular in relation to his response to each incident and consequential improvements to the Hotel's operation, but overall, had little recollection of the events.
- 26 Mr Paroz analysed the COPS events and considered that, the number and nature of those incidents is such as to make the Hotel a "low-risk" venue in terms of risk for alcohol-related violence and anti-social behaviour. This is confirmed by his own observations of the Hotel.
- 27 The Respondent also relied on a number of police attendances at the premises since November 2018; these included alcohol-related or anti-social events on 6 February 2019, 3 May 2019, 23 June 2019, 13 July 2019, 14 September 2019. The relevant "COPS events" were available to the Tribunal. The Applicant was also cross-examined about these incidents, and again, had little recollection of the detail of the events and the police attendances.
- 28 In summary, while Licensing Police have a favourable opinion of the licensee, it was considered that staff lack the appropriate training to conduct their duties adequately in the absence of the licensee. Police also expressed the view that the single security guard was not sufficient. Police recommended in its submission of 8 November 2018 that the licensee conduct training every 3 months to discuss (specified) matters, such crime scene preservation, steps to prevent intoxication and armed hold up guidelines.

#### *Other contentions*

- 29 The Applicant submitted that through the development approval process the Council had effectively approved the extended hours. The Applicant submitted that, in doing so, the Council was necessarily satisfied that the extended trading hours would be acceptable to the community the Council represents. The Council stated that the hours sought by the Applicant were consistent with its own development consent. The Council specifically informed those advising the Applicant that it had no objection to the application for extended hours.
- 30 The Applicant submitted that the extension of hours will facilitate the development of the hospitality industry by enabling the Applicant to offer more employment to his current staff.



- 31 Taking into consideration the available information and his observations and experience, Mr Paroz was of the view that there is little or no risk of alcohol-related crime or anti-social behaviour increasing in the local or broader community of Campsie if the application were to be approved. He based his opinion on the following factors:
- The small number of incidents attributable to the operation of the Hotel
  - No incidents of malicious damage or disorderly conduct attributable to the operation of the Hotel
  - The lack of specific complaint or disturbance issues raised by members of the local community during the survey conducted on behalf of the ILGA
  - The conditions which the applicant has proposed for the liquor licence should the application be approved further reduce this minimal risk
  - The licensee and management of the Hotel provide a highly visible presence in support of their staff and to ensure compliance with the robust plan of management
  - The small number of patrons that would reasonably be expected to take advantage of the limited additional trading hours
- 32 He considered that the relatively early closing time of the Hotel merely serves to encourage patrons to leave the Hotel and travel to other venues. He considered that it is preferable that patrons have the option of staying longer at the Hotel where they would remain under the observation of staff and security. Patrons could then be progressively dispersed, with the assistance of a courtesy bus service, over a two hour period.

#### *Gaming activities at the Hotel*

- 33 Clause 28 of the Regulation requires an applicant for an extended trading authorisation to address matters related to gambling activities at the premises during the period in which the extended trading hours are proposed. Those matters are to be set out in the CIS lodged by an Applicant.
- 34 There was evidence that there are a number of other liquor and gaming facilities located in Campsie, including the Campsie Hotel, Oasis on Beamish and Campsie RSL, all of which are licensed to trade much later than the Hotel. The Applicant submitted that the grant of the application will enable him to compete more effectively with those other venues, enabling him to provide a

better service to his patrons, who, on the basis of the petition, supported the application.

35 In his affidavit of 19 November 2019 the Applicant addressed responsible conduct of gambling at the Hotel. He noted that the following measures have been taken:

- (1) All staff involved in the operation and supervision of the Hotel's gaming machines have undertaken and completed an approved responsible gambling course.
- (2) A record is kept and is available for inspection on request by a Police officer or Inspector from Liquor & Gaming NSW of each staff member's Competency Card following their completion of the Responsible Gambling Course.
- (3) All advertising requirements in respect of gaming in the hotel are complied with.
- (4) All gaming machines operated at the hotel are kept within an approved gaming room. The gaming room is under constant supervision, either by the personal attendance of a staff member or by CCTV.
- (5) The Regulations require a large number of signs and stickers to be placed on gaming machines, on gaming-related equipment and to be displayed within the gaming room. Sometimes, those signs or stickers can be tampered with by players, but [the Hotel endeavours] to ensure that those signs and stickers are properly displayed at all times.
- (6) Cash advances (or any form of credit) is not permitted to be given to any person to enable them to gamble at the hotel.
- (7) In the vicinity of the main entrance of the hotel, in appropriate sized letters and to alert patrons to its contents, is the required form of counselling signage notice.
- (8) Displayed in the hotel's gaming room, and in such a manner that persons entering the room are alerted to their presence, are the Player Information Brochures. These brochures are provided to patrons on request.
- (9) Free or discounted liquor is not offered to any patrons as an inducement to gamble in the hotel.
- (10) A self-exclusion scheme is operated at the hotel. The scheme operates as follows:
  - (i) no staff member will refuse a request to participate in the self-exclusion scheme;
  - (ii) All participants in the scheme are required to sign a written undertaking not to gamble in the hotel and set out a period of time of exclusion in the undertaking.

Participants are not permitted to withdraw from the undertaking for a minimum period of three (3) months.

- (iii) Participants in the scheme are permitted to obtain independent and/or professional advice before signing the undertaking.
  - (iv) Information about the availability of gambling-related counselling and treatment services are provided to the participant.
  - (v) The identity of scheme participants is made available to staff by displaying photographs of the participants. The photographs are only visible to staff undertaking gaming duties.
  - (vi) The availability of the scheme and the information is permanently displayed within the gaming room.
- (11) Details of the self-exclusion scheme are prominently displayed within the gaming room.
  - (12) To date no patrons of the Hotel have entered into self-exclusion undertakings. However, the self-exclusion scheme is linked to other hotels and clubs. When are notified by the scheme coordinators that a patron has self-excluded from another venue (or from all venues), and that exclusion is enforced at the Hotel.
  - (13) The venue has established a link with an approved gambling counselling service through GameCare.
  - (14) The Hotel's ATM and EFTPOS terminals display the problem gambling notice so patrons can clearly see the notice while using the ATM or cash-back terminal.
  - (15) Cash withdrawals from credit card account are prohibited from the ATM or EFTPOS machine facilities operated at the hotel.
  - (16) The identity of a patron who wins is kept confidential and is not published unless requested by the winner.
  - (17) A gaming machine prize of \$5,000 or more is paid by crossed cheque (or electronic fund transfer if requested)
  - (18) The hotel's gaming machine prize winning cheques are not cashed at the venue
  - (19) All gaming machine tickets are issued with the venue's name and the problem gambling notice included within the ticket.

#### *Investigators*

- 36 For the Respondent, Benjamin Dodd and Samantha Moon, inspectors under the *Liquor and Licensing Administration Act 2007* provided statements and gave evidence. They had undertaken surveillance at the Hotel on 4 evenings

between 15 and 26 October 2019. Each was critical of aspects of the Hotel's operation. One concern was in relation to the location of 'mandatory gambling notice stickers', to the effect that they were not sufficiently prominently displayed; there was no dispute that stickers were in place. Evidence was not provided as to whether there is a mandatory display location. Mr Paroz said that, in relation to the sticker he was able to see it clearly without bending down, which was consistent, he said, with the requirement that it be visible while playing the machine.

- 37 While Ms Moon and Mr Dodd observed some patrons migrate to another venue at closing time. Other patrons may have gone home, or were just not observed at the other venues. They did not observe any adverse interaction by departing patrons with any members of the public.
- 38 Mr Dodd gave evidence of difficulty using a gaming machine ticket, and alleged a contravention by the Hotel's staff of Regulation 105(3) of the *Gaming Machines Regulation 2019* in failing to permit redemption of a previously purchased ticket. Mr Dodd conceded that under Regulation 105(3) a ticket need not be redeemed if the person does not adequately identify themselves (and he had not done so because he was acting covertly) and that there is no requirement for reasons to be given for the refusal. He said though that he was not asked for identification in any event, and there was nothing said to suggest he was not entitled to the ticket.
- 39 In his notes of one evening's observation he reported the 'commencement of a possible drug transaction'. He conceded he did not report this to management or to Police, but said he did not do so because he did not have sufficient evidence.
- 40 Mr Dodds also considered one of the gaming machines to be faulty but did not report that to management either. When cross-examined about the evidence of Ms Moon and Mr Dodds, the Applicant said that staff are trained to identify faulty machines - if machines are faulty they will 'lock up' and are unusable. There were no reports of faulty machines that he was aware of. Machines are inspected daily. If issues can be resolved by staff during their shift, he would

not expect to be notified. The machines are regularly serviced by an independent contractor.

- 41 The Applicant also would not be drawn on the location of the stickers, and was, for the most part, unable to assist in relation to the ticket Mr Dodd said was unredeemable. All the signage is in English and he did not know how many patrons might not be able to read them, and this had never been a problem. He had received training in identifying problem gamblers – there were no patrons, as far as he was aware that would fall into that category. He had seen no evidence of drug-taking at the Hotel whatsoever.

#### *Mr Purcell's evidence*

- 42 Mr Purcell provided a report which was attached to his affidavit. He was engaged to undertake surveillance of the Hotel and to observe patrons leaving the Hotel to 'migrate' to 3 other venues in the vicinity, namely Oasis on Beamish, Campsie Hotel and Campsie RSL. He did this in both July 2018 and October 2019, on each occasion, over period of several days. His observations included:

- Saturday evenings are significantly busier for gaming trade at the four venues than Friday or Sunday evenings;
- The general male to female gender split for gaming patrons in the Hotel was 85% male to 15% female. This ratio also was generally maintained with patrons attending other venues after midnight with the exception being Campsie RSL where there was a slightly higher percentage of females present;
- On the Friday and Saturday evenings approximately 75% of the Hotel's gaming patrons upon closure were either followed or were sighted in other gaming rooms at the remaining three late evening trading venues in the Campsie area. This figure dropped to about 50% of the Hotel's patrons on the Sunday evening;
- The unaccounted patrons leaving the Hotel either attended other unobserved venues or went to private residences;
- Oasis on Beamish experiences a great benefit to their gaming patronage after the Hotel closes due to the influx of their patrons. On all four evenings patron numbers at Oasis on Beamish gaming room were increased after the Hotel closed. These increases were up to 25%;
- The Campsie Hotel and Oasis on Beamish trended a spike increase of patron numbers immediately after the Hotel closed but on all evenings the numbers present decreased between 12.30am and 1.30am (Friday/Saturday) and 10.30pm to 11.30pm (Sunday);

- Campsie RSL had decreased patron numbers in the gaming area after midnight compared to the numbers counted prior to midnight on the subject evenings.
- 43 Mr Purcell also concluded that the vast majority of late-night patrons choosing to attend licenced premises in the Campsie area are there to avail themselves of gaming entertainment and are not solely alcohol-driven or drawn to other forms of entertainment. There did not appear to be any other late night entertainment on offer at the other venues.
- 44 He said he did not observe in either round of surveillance any person in licenced premises noticeably affected by alcohol or intoxicated to a level that would require their removal. Further, he saw no sign of anti-social or criminal behaviour from any patron at any venue during the surveillance periods; generally, patrons present were polite, well-behaved and kept to themselves.
- 45 At no time did he observe patrons of the Hotel being unreasonably noisy when dispersing at closing time; they generally moved away quickly and quietly from the venue without any disruption to the amenity or good order of the area.
- 46 He also did not observe patron numbers increase after 12.30 am on Friday/Saturday nights or after 10.30 pm on Sunday nights at the three late night venues. There was a general trend of an initial spike in patron numbers at Campsie Hotel and Oasis on Beamish immediately after the Hotel closed, which he considered this was explained by an influx of the Hotel's patrons. However, both hotels incrementally had decreased patron numbers after this spike and Campsie RSL also had decreased numbers after midnight.
- 47 Based on his observations he considered:
- The Hotel does not present as a venue that would attract migrating patrons that have been drinking elsewhere. It offers no form of entertainment other than gaming and offers no real point of difference from the other existing late-night venues, all of which decrease their patronage generally after midnight which clearly indicates they are not drawcards for late night revellers. Further, there is no other venue in the area offering alternate entertainment (e.g. music, cabaret, etc) that would bring patrons into the area seeking to prolong an evening of drinking alcohol;
  - The Hotel has indicated they would be willing to cap its patron numbers to 75 after midnight. This is significantly less than 'small bar' patron numbers and would lessen the potential for issues occurring either in or around the venue;

- The Hotel would employ security to manage these small patron numbers;
  - Currently the Hotel ceases trade at the standard trading hours with their patrons leaving as a group. He concluded that if the Hotel was authorised to trade until 2.00am these patrons would disperse more incrementally as they do at the other listed venues. In his experience this would lessen any impact on the local amenity;
  - The Hotel has indicated it will provide a courtesy bus to provide transport away from the venue. This addresses the issue of patrons potentially moving through neighbouring streets after leaving the Hotel and also addresses the potential for disturbance from patrons loitering in the area waiting for transport away from the venue;
  - In his view, refusal to grant extended trade hours to the Hotel will not deter the majority of current patrons from continuing to use gaming machines.
- 48 Police also referred to occasional (gambling) compliance issues, especially in relation to signage: see the incidents on 31 January 2019, 9 March 2019, 9 April 2019, 25 April 2019, 23 August 2019, 6 September 2019. The Respondent conceded though that there have also been a significant number of police inspections during the period that had indicated no issues.

#### *Research about social harm from gambling*

- 49 The Respondent relied primarily on two reports in relation to gambling, the Productivity Commission's report of 26 February 2010 (the PC Report) and a report by Ogilvy Illumination of the results of a survey of NSW gambling behaviours in April 2012 (the Ogilvy Report).
- 50 The kinds of social harms caused by problem gambling are described at some length in Chapter 4 of the PC Report. The two ultimate findings of that Chapter relied on by the Respondent are:

There is strong evidence that gambling can have adverse health, emotional and financial impacts on many more people than those categorised as 'problem gamblers'. As is the case in policies addressing harm from alcohol consumption, policy also needs to address these wider impacts.

People playing gaming machines face much greater risks than people who gamble on other forms, particularly lotteries, scratchies and bingo.

- 51 The PC Report considers the impact on the hours of operation of gaming machines. Minimum shut-down periods were not necessarily effective, but the time at which mandatory shut-downs commence had a potential positive impact. In particular, mandatory shut-down at midnight impacts everyone in the venue at that time, but a greater proportion of problem gamblers or moderate

risk gamblers are likely to be in the venue at that time, because a greater proportion of those gamblers gamble late at night.

- 52 In relation to enforced breaks, the PC Report notes a 2009 Victorian study that "the overwhelming majority of recreational gamblers said that a mandatory break of 20 minutes after two hours of play would not reduce their enjoyment, while moderate risk and problem gamblers reported much greater effects on their time and money spent".
- 53 The Ogilvy Report found that problem gamblers and moderate risk gamblers were usually male, aged between 18 and 34, single or separated/widowed/divorced, unemployed, left school in year 10, or year 12/diploma being the highest level of achievement, and were regular gamblers.
- 54 The Ogilvy Report also made the following findings:
- (a) Problem gamblers and moderate risk gamblers were most likely to have gambled on gaming machines.
  - (b) Problem gamblers and moderate risk gamblers were far more likely to drink alcohol while gambling and were more likely normally to gamble in the evening.
  - (c) Problem gamblers and moderate risk gamblers were considerably more likely to have faulty cognitions about gambling.
  - (d) Problem gamblers and moderate risk gamblers were far more likely to say they had lost track of time or felt like they were in a trance in the last 12 months.
- 55 The Respondent also relied on NSW Gambling Survey 2019, published in September 2019 (the 2019 Survey), which had similarities with the findings in the Ogilvy Report. The 2019 Survey also found that:
- (a) problem gamblers and moderate risk gamblers are more likely to play gaming machines at a pub or hotel, rather than a club or a casino; and
  - (b) problem gamblers and moderate-risk gamblers are more likely to play gaming machines for longer sessions (2-3 hours or over 3 hours).

*Gambling in Campsie and the Canterbury-Bankstown LGA)*

- 56 The Respondent referred to the Census statistics for Campsie which indicate some overlap with the characteristics that are associated with problem



gamblers or moderate risk gamblers, including a higher proportion of persons aged 18-34 years than the State average, a higher proportion of unemployed people, and a significantly higher proportion of persons whose highest educational attainment is year 12. The Respondent conceded that this information was not compelling on its own.

- 57 It submitted that evidence about gaming machine profit indicates that the local and broader community has a very high comparative use of gaming machines: out of 1,386 hotels in the State, the Hotel has the 27th highest profit per gaming machine. The Hotel's profit per gaming machine from late March 2018 to 31 December 2018 was \$228,333. Other hotels in Campsie also appear high on the list: the Campsie Hotel has the 16th highest profit per gaming machine and Oasis on Beamish has the 31st in the state. Similarly, the total net profit from gaming machines generated by each of those hotels was very high on the list, with the Campsie Hotel being 13th out of 1,386 hotels, Oasis on Beamish being 29th and the Hotel being 30th.
- 58 As for the broader community, Canterbury-Bankstown has one of the highest gaming machine profits of all LGAs in the State.
- 59 The Respondent submitted that while the detail of the observations vary between witnesses, it could be concluded that most of the patrons who would take advantage of extended trading hours at the Hotel would do so to use gaming machines; and when patrons leave at midnight, some, but not all, are later observed at nearby gaming machine venues.
- 60 The patrons who are using the gaming machines at midnight, and might continue to use them until 2am, are a greater likelihood of being problem gamblers or moderate risk gamblers. Such gamblers are more likely to have faulty cognition, to become dissociated while gambling, and to drink while gambling. The consumption of alcohol will tend to increase faulty cognition and poor judgment.
- 61 If individuals are resolved to keep gambling after they have been forced to leave the Hotel, they are likely to move to one of the other venues nearby. There is reason to infer, therefore, that the Hotel's patrons who are not seen at nearby venues after midnight are likely to have ceased gambling. Moreover,

even if they continue to gamble at another venue, problem gamblers and moderate risk gamblers are still more likely to benefit from the enforced break involved in leaving the Hotel at midnight and walking to the new venue.

- 62 The Respondent submitted that the negative social impacts lie across a range of areas, but its greatest concern is the prospect that granting the application is likely to exacerbate the social harm from problem gambling. It conceded too, that this is very difficult to measure.
- 63 The Respondent conceded that there were social benefits, especially to the local community, if the extension of the licence is granted. The benefits need to be considered in the context of a community that already has clubs and hotels providing similar liquor and gaming services during the proposed extended hours. The benefits will primarily be for the people who would patronise the Hotel late at night, as an alternative to attending another venue or going home. The evidence is that this is a relatively small number of patrons, especially on weeknights, most of whom patronise late night venues for the purposes of gambling.
- 64 The Respondent noted in the decision under review that the Campsie community is "quite disadvantaged ranking in the third decile on the Index of Relative Socio-Demographic Advantage and Disadvantage compared to other suburbs within the State of NSW". As the Applicant observed, when the Respondent had approved the transfer of the licence to the current premises in early 2018, the Respondent had noted that, at that time, Campsie ranked in the second decile. It follows, the Applicant submitted, that Campsie has become somewhat *less* disadvantaged since the Respondent first approved a licence for the Hotel.
- 65 The research relied on by the Respondent was to the effect that some 9% of problem gamblers tended to gamble in the after-midnight period. The Respondent referred to other research suggesting that a mandatory gaming shutdown should commence no later than 2 00 am.
- 66 The Respondent considered it desirable that people gambling at midnight should be forced to "take a break" by leaving the venue, and that this would be a "responsible" measure, in the context of this local community.

- 67 The Applicant submitted that it is preferable that the Hotel's patrons are allowed to stay longer within the Hotel so that their behaviour can be observed by staff for a longer period to see if they exhibit signs of intoxication (and consequent loss of cognitive self-control) or signs of problem gambling. Those signs can be easier to detect by staff who have already been observing the patron.
- 68 In the Applicant's submission, there is no evidence to demonstrate that an extension of trading hours at the Hotel will cause problem gambling.
- 69 Mr Paroz has also reviewed the harm-mitigation measures employed at the Hotel and proposed as part of this application. In his assessment those measures are more than adequate to mitigate the (relatively low) risk of violence and anti-social behaviour from the grant of the application.
- 70 Additional measures are proposed by the Applicant in order to limit and reduce such potential impacts, including the provision of security and the operation of a courtesy bus in the later hours of trade.
- 71 The Respondent conceded that, but for the consideration of gaming the Applicant would have a strong case for the extension of hours. It submitted that its primary concerns were in relation to staff training (as referred to by Police) and the harm caused by gambling. It submitted that, while the primary consideration is the additional hours, the Tribunal should also be concerned with the total number of hours that the extension would effect.

### **Consideration**

- 72 Section 48(5) of the Act provides that the Respondent (and the Tribunal on review) must not grant the application unless it is satisfied that the overall social impact of the proposal will not be detrimental to the well-being of the local or broader community.
- 73 The Respondent submitted, and I agree, that the Tribunal must be *actually satisfied* that the overall social impact of the proposal *will not be* detrimental. In *ALDI Foods v Independent Liquor and Gaming Authority* [2019] NSWCATAD 43 (*ALDI Foods*) at [88], the Tribunal described the test as imposing a practical, though not legal onus on the Applicant. See also *Auld* at [50].

- 74 When determining the "overall social impact" of a proposal, both positive and negative social aspects are to be taken into account: *Smith v ILGA* [2018] NSWCATAD 224 at [30]. See also *ALDI Foods* at [90].
- 75 In reaching a decision as to the overall social impact of the proposal I placed particular weight on the analysis of the information (which included a community impact statement) available to the Respondent undertaken by officers of the Department of Industry in May 2019, before the matter was submitted to the Respondent for decision, with a positive recommendation. It was observed in the submission that, in support of the application, the Applicant had provided a detailed Plan of Management and had proposed conditions to the extended licence there. After some brief negotiations the following conditions had been agreed: -
- From 10:00pm on any night the hotel trades pursuant to the extended trading hours, two (2) security officers will be present with regular patrols to be undertaken on the perimeter of the hotel until the last patron leaves the vicinity.
  - No entertainment other than background music will be provided after 12:00 midnight [Although, for reasons which are unclear this was not recommended by the departmental assessor].
  - CCTV will be operational during additional hours.
  - No more than 75 patrons are to be in the licensed area of the hotel when the hotel trades after 12:00midnight.
  - From 12midnight, there will be a limit of two (2) alcoholic drinks sold or supplied per person at any one time.
  - No shots, shooters, slammers or high strength RTD's or jugs of liquor are to be served after 12:00midnight (or after 10:00pm on Sunday).
  - The sale and supply of liquor must cease at 01:40 am.
  - On nights the hotel trades after 12:00 midnight security will be present until half an hour after close.
  - On nights when the hotel trades after 12:00midnight, a courtesy bus service is to be provided by the licensee, transporting patrons to their nominated location within Campsie suburb at no charge. The courtesy bus service is to operate from 10:00pm and is to operate at regular intervals until at least fifteen (15) minutes after the close of trade.
- 76 In addition, the Applicant agreed not to operate with a greater overall level of social impact on the well-being of the local and broader community than what could reasonably be expected from the information provided in the CIS,

application and other information which had been provided. The Applicant submitted that these above additional measures would adequately address the concerns of the local community and would meet the needs, demands and expectations of the existing patrons who frequent the Hotel.

77 I also place particular weight on the petition signed by over 600 of the Hotel's customers, as demonstrating that there was a significant support of extended hours.

78 I also considered the results of the Newgate survey to be persuasive in that the results strongly demonstrate that there is very little opposition to the Applicant's proposal, with the vast majority of those who responded, in favour of the proposal. The Applicant sought to discredit the Newgate survey because of the poor response. The Respondent submitted that there may have been many reasons for the non-response. 25 of the 26 responses received by Newgate were completed on the day with Newgate staff; residents may have had views when directly asked, but were not proactive in making those views known. I agree with the Respondent's submission that while this may be due in some cases to indifference, or may be due to other obstacles such as language or disability. On the other hand, which the Respondent failed to add, it may be that the persons surveyed simply did not have any objection to the proposal. In the Respondent's submission, caution is appropriate in relation to the eight organisations that did not respond to the Newgate survey and it submitted that it would not be correct to conclude that these organisations supported the application or even that they have no views. The non-response might be attributable to lack of resources or prioritisation of resources. On the other hand, again, which the Respondent failed to add, those organisations may have had no objection to the proposal.

79 Granting the application will cater for public demands to continue to access quality late-night hotel facilities. It is clear from the evidence especially of Messrs Paroz and Purcell, and also Ms Moon and Mr Dodds, that the Hotel is popular in the later hours of the night, particularly on weekends, and the proposal would meet those demands.

- 80 The local Council had expressly resolved to permit the Hotel to trade until 2.00 am as being in the interests of its constituents in the local and broader communities. It clearly does not anticipate the overall social impact to be negative.
- 81 Enabling the Hotel to remain open until 2.00 am (and until midnight Sundays) will allow residents of the area a greater degree of choice, so that they can enjoy longer access to the Hotel's facilities, necessarily providing some convenience to those who wish to remain at the premises, rather than having to travel to other venues in the area. Also, it is possible that the addition of the Hotel to late night trading would be likely to increase competition in the area, the result of which may be enhanced service in all venues throughout the area.
- 82 The Respondent referred to literature to the effect that problem gamblers generally gamble for longer periods and more intensively. The Applicant's evidence was that the Hotel offers extensive harm minimisation measures, including a gaming self-exclusion scheme, although none of the Hotel's patrons have in fact signed up to the scheme made available by the Applicant and advertised by him at the Hotel. Whilst 0.5-1.0% of adults were said to be problem gamblers, significantly, in my view, there was no evidence that there were any problem gamblers who frequented the Hotel.
- 83 It is clear that requiring the Hotel to shut at midnight has not proven effective in terms of stopping gaming patrons from continuing to gamble after midnight, as they 'migrate' to other late hour venues in the area. Mr Purcell's direct observations were that about two-thirds of patrons continue to gamble at one of the nearby venues. Mr Paroz and Inspector Dodd also observed a substantial proportion of the Hotel's patrons migrate to other venues and gamble at those other venues after the Hotel closes. If there were any problem gamblers or potential problem gamblers among the patrons of the Hotel, and there was no evidence that this was the case, then it is likely that those people would be within the cohort who migrate to other venues anyway. Any negative impact of late night gambling would therefore be unlikely to be exacerbated by the Hotel's extended hours, and hence no negative impact on the local or broader community.

- 84 I had the benefit of observations made by both Mr Purcell and Mr Paroz as to the behaviour of patrons as they leave the Hotel. Based on those reports, as well as the relatively low numbers of COPS incidents associated with the Hotel and the favourable Bureau of Crime Statistics and Research (BOCSAR) data, it is apparent the Hotel does not cause disturbance to its neighbours.
- 85 Campsie and the wider Canterbury Bankstown LGA have some indicia of alcohol-related crime, but not others. In particular, both the suburb and the LGA have relatively high licence density and relatively low *Socio-Economic Indexes for Areas* compared to the State. While crime rates and health data are lower than the State average, the Respondent submitted, the potential impact of the extended hours on crime and adverse health outcomes remains important. In relation to crime rates, there is an elevated risk of alcohol-related crime between midnight and 6 am. As to health data, alcohol-related hospitalisations per capita have significantly increased over the last 15 years (in the LGA and in the State generally), although alcohol-related deaths have decreased.
- 86 In relation to the need to minimise alcohol-related harms, the measures proposed by the Applicant, and agreed by the departmental officers are likely to at least contain the potential for crime, patron migration and consequent potential for any disturbance in the local community.
- 87 I agree with the the Applicant's contention that allowing patrons to remain at the Hotel for longer will facilitate patron monitoring, which will enable better decisions to be made as to whether intervention measures need be implemented. The ability of the Hotel's staff monitoring patrons is presently lost at midnight, when the Hotel shuts and patrons migrate elsewhere. It was contended, and I agree, that there would be better informed decisions if patrons are able to be observed within the Hotel for a longer period of time, and consequently, it was submitted, the gambling harm minimisation objects of the GM Act are best furthered by granting the extension, such that gaming patrons can stay under the observation of Hotel staff.
- 88 In terms of the overall social impact test, there is little evidence by which to infer that the grant of the application will lead to gambling-related harm or

liquor-related harm sufficient to outweigh the public benefits of the application and to warrant refusal.

- 89 Permitting the Hotel to trade until 2.00 am will enable members of the public to enjoy, for longer, the attractive facilities of this new and popular hotel without having to relocate to other venues by midnight. Extending the trading hours will provide members of the local community the additional amenity and convenience of being able to remain at the Hotel longer, which, on the available evidence, they either positively support or do not oppose.
- 90 It is difficult to see why the Respondent continued to oppose the application when the issues the departmental officers and the Police had raised appear to have been addressed by the Applicant in the proposed conditions referred to above. It is possible that there is a desire to curb alcohol consumption generally, or, more likely, gambling in the area. It is somewhat disingenuous, it seems to me, if this were the case, to target the Applicant in order to achieve this end. There are other venues in the area with far longer daily trading authorisation. Even after the grant of the application, the Hotel will still trade fewer hours than the standard trading period set out in s 12 of the Act (126 hours) and will operate a longer gaming shutdown period than is mandated by s 39 of the GM Act. On the evidence, the Hotel also has far fewer gaming machines than at least one of its competitors. Presumably it would be open to the Respondent to review those licences if it had a genuine concern about late night alcohol consumption and gambling in the area.
- 91 I am satisfied that, on balance, the overall social impact will not be detrimental to the local or broader communities.
- 92 Having come to that view, the correct and preferable decision is for the decision under review to be set aside and the Applicant's licence extended so as to permit trading until 2.00 am Monday to Saturday and until midnight on Sundays. I observe, however, that I have referred above to the conditions which the Applicant proposed if the extension were granted and which, I understand, were satisfactory to the Respondent and the Police. Mr Purcell also made some helpful observations. The Applicant has proposed a series of controls to limit and mitigate the potential for harm. I note the Police thought



additional staff training was necessary, although, it seemed to me that the type of training suggested was unduly prescriptive.

- 93 With these observations in mind, the parties are directed to file Short Minutes as to agreed conditions to be imposed on the licence.

### **Orders**

- (1) The decision under review is set aside and the Applicant's liquor licence is extended so as to permit trading until 2.00 am Monday to Saturday and until midnight on Sundays.
- (2) The parties are to file Short Minutes of Order setting out conditions to be attached to the licence within 28 days of this decision.
- (3) If the parties are unable to reach agreement as to the conditions to be imposed on the licence, the matter will be listed for further directions.

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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

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