

Mr Peter Comerford
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25 September 2018

Dear Mr Comerford,

Application File No	1-6636881091
Application for	New Extended Trading Authorisation for an existing full hotel licensed premises
Proposed Trading hours	<u>Consumption on premises</u> Monday to Saturday 8:00 AM – 1:00 AM Sunday 8:00 AM – 9:00 PM <u>Take Away Sales</u> No change proposed
Licence name	Oxford Hotel
Applicant	Mr Brian Michael Condran
Premises	159 Walker Street, Casino NSW 2470
Issues	Whether to approve a new extended trading authorisation
Legislation	Sections 3, 14, 15, 15A, 17, 40, 45, 48, 49 and 51 of the <i>Liquor Act 2007</i> (NSW)

Decision of the Independent Liquor and Gaming Authority on Application for Extended Trading Authorisation– Oxford Hotel, Casino

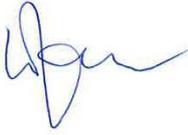
The Independent Liquor and Gaming Authority (“Authority”) has considered application number 1-6636881091 seeking the grant of a new Extended Trading Authorisation (“Application”) that would, if granted, permit licensed trading across the entire licensed area outside of the standard trading hours prescribed by the *Liquor Act 2007* (NSW) (“Act”) between midnight and 1:00 am Monday through Saturday and between 8:00 am and 10:00 am Sunday.

The Authority has decided, pursuant to section 49(2) of the Act, **not** to approve the authorisation on the basis that the Application is invalid by reason that the community impact statement does not comply with minimum legislative requirements.

The enclosed statement of reasons has been prepared for the purposes of section 36C of the *Gaming and Liquor Administration Act 2007* (NSW) in respect of the Authority’s decisions to not approve the Extended Trading Authorisation. What follows has been prepared in the context of a high-volume liquor and gaming jurisdiction that requires the publication of statements of reasons, as soon as practicable.

If you have any enquiries about this letter, please contact the case manager via email to ash.maurya@liquorandgaming.nsw.gov.au

Yours faithfully

A handwritten signature in blue ink, appearing to read 'P Crawford', with a stylized flourish at the end.

Philip Crawford
Chairperson
For and on behalf of the Independent Liquor & Gaming Authority

Statement of reasons

Decision

1. On 18 January 2018 the Independent Liquor & Gaming Authority (“the Authority”) received an application dated 12 January 2018 (“Application”) pursuant to section 49 of the *Liquor Act 2007* (NSW) (“Act”) from Mr Brian Michael Condran (“Applicant”). The Application seeks the approval of an extended trading authorisation (“ETA”) in respect of hotel licence number LIQH400119674, which currently attaches to premises trading as the Oxford Hotel at 159 Walker Street, Casino (“Premises”).
2. The hotel is currently licensed to trade for consumption of liquor on the Premises from 5:00 am to 12:00 midnight Monday to Saturday and from 10:00 am to 10:00 pm on Sunday. If approved, the ETA would enable the entire licensed area of the hotel to trade beyond the standard trading period prescribed by section 12 of the Act between midnight and 1:00 am Monday to Saturday and between 8:00 am and 10:00 am on Sunday. The Applicant proposes that the licensed trading hours for consumption of liquor on the Premises be varied to 8:00 am to 1:00 am Monday through Saturday and 8:00 am to 9:00 pm on Sunday.
3. The Authority is not satisfied that the Community Impact Statement (“CIS”) which accompanied the Application met the minimum requirements prescribed by clause 10A of the *Liquor Regulation 2008* (NSW) (“Regulation”).
4. The ETA is **not** approved pursuant to section 49(2) of the Act, by reason that the CIS accompanying the Application did not comply with the requirements of section 51(2) of the Act and clause 10A of the Regulation.
5. In making this decision the Authority has had regard to relevant provisions in the Act and all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) of that Act.

Material considered by the Authority

6. The Authority has considered the Application, the CIS, and all submissions received in relation to the Application.
7. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision, as all parties required to be notified were provided with a reasonable opportunity to make submissions.
8. In accordance with the Authority’s *Guideline 6*, the Authority has also had regard to relevant Liquor and Gaming New South Wales (“LGNSW”) liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data and Australian Bureau of Statistics (“ABS”) socio-demographic data, sourced by LGNSW from publicly available sources.
9. The list of material before the Authority is set out in the Schedule.

Legislative framework

10. The Authority has considered the Application in the context of the following legislative provisions.

Objects of the Act

11. The objects of the Act, as set out in section 3(1), are 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; facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimum formality and technicality; and contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
12. In the pursuit of these objectives, section 3(2) of the Act requires the Authority, when determining a liquor related application, to have due regard to the need to minimise harm associated with the misuse and abuse of liquor (including harm from violence and anti-social behaviour); the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor; and the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Trading hours and 6-hour closure period

13. Section 12 of the Act prescribes the standard trading period for liquor licences. Additionally, section 11A imposes a condition upon all licences that fall within the scope of that section, prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

Minimum procedural requirements

14. Section 40 of the Act and relevant provisions in the Regulation prescribe the minimum procedural requirements for the making of a liquor licence application to be validly made to the Authority.

Fit and proper person, responsible service of alcohol, and development consent

15. Section 45(3) of the Act provides that the Authority may only grant a licence if it is satisfied that:
 - a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
 - b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - c) the applicable development consent required for use of the premises for the proposed business is in force.

Community impact statement

16. Sections 48(2) and (3) of the Act require that certain “relevant applications” (including an application for an extended trading authorisation in respect of a hotel) must be accompanied by a CIS that is prepared in accordance with the relevant requirements specified in the Act and Regulation.
17. Section 48(5) of the Act provides that the Authority may only grant an application to which section 48 applies if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter before it.

Provisions specific to a hotel licence

18. Further legislative provisions that are specific to a hotel licence are set out in sections 14 to 17 of the Act and in the Regulation.

Provisions specific to extended trading authorisations

19. The legal requirements for making a valid application for an ETA are provided by section 51 of the Act and the Regulation.
20. Section 51(2) provides that an application for a licence related authorisation must be in the form and manner approved by the Authority, be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, be advertised in accordance with the regulations and comply with such other requirements as may be approved by the Authority or prescribed by the regulations.
21. Section 51(3) provides that when determining an application for a licence related authorisation, the Authority has the same powers in relation to the application as it has in relation to an application for a licence.
22. The power to grant an ETA is provided by section 49(2) of the Act. Section 49(8) of the Act provides that the Authority must not grant an ETA in respect of licensed premises unless the Authority is satisfied that:
- practices are in place, and will remain in place, at the licensed premises 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
 - the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.

Gambling activities in hotels

23. Clause 10A of the Regulation requires, in the case of an application for an ETA in relation to a hotel, that the CIS document address matters relating to gambling activities that will be conducted on the licensed premises during the period that the authorisation is proposed to be in force.

Key findings

24. Section 51(2) of the Act states:

(2) An application for an authorisation to which this section applies must:

- (a) be in the form and manner approved by the Authority (or, in the case of an application for an extended trading authorisation for a small bar, by the Secretary), and
- (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
- (c) if required by the regulations to be advertised—be advertised in accordance with the regulations, and
- (d) comply with such other requirements as may be approved by the Authority (or, in the case of an application for an extended trading authorisation for a small bar, by the Secretary) or prescribed by the regulations.

25. Clause 10A of the Regulation states:

10A CIS to address matters relating to gambling activities in hotels during extended trading periods

In the case of an application for an extended trading authorisation in relation to a hotel licence, the matters to be addressed by a CIS are to include matters relating to gambling

activities on the licensed premises during the period that the authorisation is proposed to be in force.

26. A CIS must be provided in the manner and form specified by the Authority. The approved form FM2010 “Category B Community Impact Statement” states at Part 7B:

“Describe the overall social impact from the authorisation and any planned measures for ensuring the responsible conduct of gambling by patrons during the proposed authorisation period”.

27. The Applicant’s response to this question was as follows:

“As mentioned in Part 7A, two other venues have extended trading authorisation, being the Casino RSM and the Cecil Hotel. Gamblers can attend either of these premises at those venues during these hours, if they chose to.

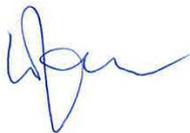
Having a third venue may assist with even distribution of service but won’t increase numbers.”

28. There is no information in the CIS, whether in Part 7A or otherwise, describing the gambling activities that will be conducted during the ETA period, if approved, nor any information as to how the Applicant will ensure the responsible conduct of such activities.
29. The CIS as filed with the Application did not reasonably “address” the “gambling activities” to be conducted on the Premises during the proposed extended hours and as a result did not meet the minimum requirements of clause 10A of the Regulation.
30. While further information with respect to the social impact of liquor and gambling activities was provided by the Applicant’s solicitor in a later two-page submission, provided to licensing staff on 29 March 2018 – that material did not form part of the CIS material, which is required by the legislation to *accompany* the Application.
31. Consequently, this further material was not available to stakeholders during the 30 day post-Application exposure period, while the Application remained published on the LGNSW website and was open to further submissions from relevant agencies or others in the community who may wish to comment.
32. Relevantly, section 51(2)(a) of the Act requires that an application for a licence related authorisation be in the *form and manner* approved by the Authority. Section 51(2)(b) requires that such application be accompanied by the fee and *such information and particulars* as may be prescribed by the regulations. Section 51(3) provides that the Authority has the same powers and functions with respect to applications for licence related authorisations as applications for licences.
33. A CIS that does not adequately answer Part 7B of the approved CIS Form is incomplete. An application accompanied by an incomplete CIS is not an application that has been prepared in the form and manner approved by the Authority.
34. Alternatively, the information provided with respect to proposed gambling activities was so limited that it did not meet the minimum information requirements prescribed by clause 10A of the Regulation. An application accompanied by a CIS that does not comply with clause 10A is an application that does not provide information and particulars prescribed by the regulations, as required by section 51(2)(d) of the Act.
35. The Authority is mindful that not all breaches of legislative requirements will render an administrative application invalid - *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355. Whether it does will depend upon whether there can be discerned a

legislative purpose to invalidate any act that fails to comply with a condition upon the exercise of administrative power. The existence of such purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition.

36. The Authority has considered the central importance of the community impact statement provisions in section 48 of the Act and the Regulation to the licensing regime, the language used by section 51(2) of the Act and clause 10A of the Regulation. The Authority has considered the crucial role that information provided in a CIS accompanying an application plays in informing those public agencies and members of the community who must be consulted pursuant to section 48 of the Act.
37. The Authority has had regard to all of the statutory objects and considerations prescribed by section 3 of the Act and notes that the information obtained through the public consultation process informs the Authority's assessment of whether the grant of an application is in the public interest.
38. Furthermore, the Authority cannot make an informed decision on overall social impact of granting an application, for the purposes of section 48(5), unless stakeholders have had a reasonable opportunity to make *informed* submissions on those matters that are required to be addressed in a CIS.
39. Section 48(1) provides that the purpose of the community impact statement requirements imposed by that section is to inform the Authority as to the views of the local community and the results of any discussions between the applicant and local community about any issues and concerns raised by the local community in relation to the application. Section 48(2) provides that an application for an ETA in respect of a hotel is a "relevant application" and section 48(3) requires that such application *must* be accompanied by a CIS.
40. The Authority is satisfied that section 48, read with section 51(2) and clause 10A, mandate that an applicant furnish a CIS that answers Part 7B of the approved form. Part 7B is designed to elicit information about gambling activities that is required by clause 10A of the Regulation. The requirement to furnish a CIS that complies with clause 10A is a condition to the valid exercise of the Authority's power to grant a "relevant application". The CIS must accompany the application and must satisfy minimum information requirements at that time.
41. Sections 48 and 51(2) of the Act and clause 10A of the Regulation all have a "rule like" quality and it is not difficult for applicants to address their proposed extended trading gambling activities when preparing a CIS.
42. The Authority has considered the extent of public inconvenience that would arise from finding an application invalid for want of compliance with clause 10A of the Regulation. The Authority is satisfied that the primary inconvenience will flow to an applicant, not the general public, in that a non-complying applicant will simply be required to make a fresh application accompanied by a compliant CIS.
43. The Authority finds that the Applicant's non-compliance with CIS requirements renders this Application invalid. By reason of this decision, the Authority has not proceeded to consider the merits of the matter, including whether the Application satisfies the overall social impact test prescribed by section 48(5) of the Act.

44. An additional procedural concern arose from the fact that the Site Notice, Notice to Neighbouring Premises and Notice to Police required by clauses 6-9 of the (then) *Liquor Regulation 2008* were dated 28 March 2018. There is insufficient evidence or material before the Authority to establish that the Applicant complied with the requirement for such notices to be provided or posted no later than 2 working days after the Application was made (18 January 2018) and if not, why the Authority should exercise its discretion with respect to non-compliance with advertising requirements.
45. Were a fresh application to be made, all relevant notification and advertising requirements specified by clauses 6-9 of the Regulation will need to be complied with. The pre-application requirements of clauses 10-11A (to the extent applicable) will also need to be complied with in respect to preparation of a CIS.
46. Noting that the Premises is located in an area that has been recently designated by the Authority to be a Band 3 SA2 statistical area for the purposes of section 33 of the *Gaming Machines Act 2001* (NSW), Authority Guideline 6 provides a range of factors and information that an applicant may address when seeking to satisfy the Authority as to how and why the overall social impact of extending the Hotel's operations will not be detrimental to the local or broader communities.
47. The Authority notes that no submission was made by NSW Police. The Authority is interested in any local information provided by Police whenever a hotel proposes to extend late trading hours.
48. If a fresh application is made, the Authority will accept payment of the current application fee as payment on the fresh application.
49. The Application is **not** approved pursuant to section 49(2) of the Act.



Philip Crawford
Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

Schedule

Material before the Authority

1. Community Impact Statement (“CIS”) Form signed by Mr Brian Michael Condran (“the Applicant”) dated 15 December 2017 attaching a schedule of addresses and agencies notified, information from the Richmond Valley Council (“Council”) website downloaded on 23 November 2017 showing Alcohol Free Zones in Casino and a Notice of Intention to Apply for Licence Form dated 13 October 2017.
2. Extended Trading Authorisation Application (“ETA”) Form signed by the Applicant and dated 12 January 2018.
3. Applicant submission via Parker and Kissane Solicitors & Attorneys dated 29 March 2018 responding to requests for information from licensing staff dated 9 February 2018 and attaching the following documents:
 - Notice of Determination of Development Application dated 27 September 2006 from Council on development application DA 2005.0116 (“DA”).
 - Certificate of Advertising of Application signed by Applicant dated 20 March 2018.
 - Diagram of proposed ETA area within the licensed boundary of the hotel premises (“Premises”).
 - Notices to Consent Authority, NSW Police and Site Notice and Notice to Neighbouring Premises signed by the Applicant and dated 28 March 2018.
 - Gambling figures for the Oxford Hotel for the periods 1 July 2017 to 31 August 2017, 1 October 2017 to 31 December 2017 and 1 January 2018 to 28 February 2018.
 - Plan of Management dated March 2018.
4. Submission from NSW Department of Health Northern NSW Local Health District dated 26 March 2018 opposing the extension of licensed trading hours on the Premises, annexing NSW Bureau of Crime Statistics and Research (“BOCSAR”) hotspot crime data and referring to the Domestic Violence Death Review Team Report 2015-2017 and other research.
5. Liquor and Gaming NSW (“LGNSW”) List of licensed premises as at 5 April 2018.
6. OneGov Licence Record for the Premises obtained by licensing staff as at 6 April 2018.
7. LGNSW Compliance Section Compliance Detail Report for the Premises recording LGNSW compliance records from 1 July 2008 to 6 April 2018, sourced on 6 April 2018.
8. BOCSAR crime hotspot data for the suburb of Casino (“Suburb”) for calendar year 2017 for the concentration of alcohol related assault, domestic assault, non-domestic assault and malicious damage, sourced by licensing staff on 9 April 2018.
9. Google Maps map, aerial image and street view photographs of the site and surrounding streets in Casino downloaded by licensing staff on 9 April 2018.
10. BOCSAR crime rate data for the Suburb for calendar year 2017 indicating the rate of (alcohol related) domestic and non-domestic assault and malicious damage events per 100,000 persons of population, sourced by licensing staff on 9 April 2018.
11. BOCSAR Crime Report for Richmond Valley Local Government Area (“LGA”) for 2017 disclosing crime by time of day and week, sourced by licensing staff on 9 April 2018.

12. NSW Healthstats data on rates of alcohol related death (2012-2013) and hospitalisation (2013-2015) in the LGA, sourced by licensing staff on 9 April 2018.
13. Email from Council dated 24 May 2018 advising that the DA does not restrict trading hours for the hotel (apart from the restaurant section of the hotel).
14. Australian Bureau of Statistics ("ABS") Socio Economic Index For Areas data ranking the Suburb and the LGA on the first decile on the Index of Relative Socio economic Advantage and Disadvantage within the State, sourced by licensing staff on 28 May 2018.
15. Email from Council dated 20 June 2018 advising no objection to the extension of the liquor licence as proposed including in the restaurant area.
16. Email from Council dated 22 June 2018 in response to an enquiry from licensing staff dated 21 June 2018, clarifying the hours of operation for the restaurant area of the hotel in relation to alcohol and food.
17. LGNSW licensed premises outlet density data for the Suburb and the LGA as at 28 August 2017 using ABS data from the 2016 Census.
18. Screenshots of the Oxford Hotel Website.