Court of Appeal
Supreme Court

New South Wales

Case Name:	La La Land Byron Bay Pty Limited v The Independent Liquor and Gaming Authority
Medium Neutral Citation:	[2015] NSWCA 254
Hearing Date(s):	5 August 2015
Date of Orders:	5 August 2015
Decision Date:	26 August 2015
Before:	Beazley P; Gleeson JA; Sackville AJA
Decision:	(1) The summons for leave to appeal is dismissed; (2) The applicant on the summons for leave to appeal is to pay the respondent's costs.
Catchwords:	APPEAL – leave to appeal – extent of reasons required when refusing leave to appeal ADMINISTRATIVE LAW – judicial review – review of decision of the Independent Liquor and Gaming Authority to vary extended trading authorisation – Liquor Act 2007 (NSW), ss 3, 49(8) – whether correct test of the "public interest" applied by Authority – whether relevant mandatory considerations taken into account by Authority – whether acts of Authority predating decision revealed bias – whether decision of Authority affected by legal unreasonableness
Legislation Cited:	Civil Procedure Act 2005 (NSW) Liquor Act 2007 (NSW) Supreme Court Act 1970 (NSW) Uniform Civil Procedure Rules 2005 (NSW)
Cases Cited:	Allianz Australia Insurance Ltd v Cervantes [2012]

	NSWCA 244; 61 MVR 443 Beale v Government Insurance Office (NSW) (1997) 48 NSWLR 430; 25 MVR 373 Carolan v AMF Bowling Pty Ltd [1995] NSWCA 69 Coulter v The Queen [1988] HCA 3; 164 CLR 350 Lee v New South Wales Crime Commission [2012] NSWCA 262 Michael Wilson & Partners Limited v Nicholls [2011] HCA 48; 244 CLR 427 Minister for Immigration and Citizenship v Li [2013] HCA 18; 249 CLR 332 Minister for Planning v Walker [2008] NSWCA 224; 161 LGERA 423 Rodger v De Gelder [2015] NSWCA 211 Roy Morgan Research Centre Pty Ltd v Commissioner of State Revenue (Vic) [2001] HCA 49; 207 CLR 72
Category:	Principal judgment
Parties:	La La Land Byron Bay Pty Limited (Applicant) The Independent Liquor and Gaming Authority (First Respondent) The Commissioner of Police (Second Respondent)
Representation:	Counsel: M A Robinson SC; A Poljak (Applicant) J J Hutton (Second Respondent) Solicitors: Hatzis Cusack Lawyers (Applicant) Crown Solicitor’s Office (Respondents)
File Number(s):	2015/12546
Decision under appeal:	
Court or Tribunal:	Supreme Court
Citation:	La La Land Byron Bay Pty Ltd v The Independent Liquor and Gaming Authority [2014] NSWSC 1798
Date of Decision:	17 December 2014
Before:	Adamson J

File Number(s): 2013/357278

[Note: The Uniform Civil Procedure Rules 2005 provide (Rule 36.11) that unless the Court otherwise orders, a judgment or order is taken to be entered when it is recorded in the Court's computerised court record system. Setting aside and variation of judgments or orders is dealt with by Rules 36.15, 36.16, 36.17 and 36.18. Parties should in particular note the time limit of fourteen days in Rule 36.16.]

HEADNOTE

[This headnote is not to be read as part of the judgment]

La La Land Byron Bay (La La Land) was the holder of an extended trading authorisation (ETA) granted under the provisions of the *Liquor Act 2007* (NSW) (the Act). On 4 December 2013, the Independent Liquor and Gaming Authority (the Authority) varied La La Land's Sunday trading hours from its authorised 3 am closing time to 12 midnight. La La Land filed a summons under the *Supreme Court Act 1970* (NSW), s 69 for review of the Authority's decision. That summons was dismissed by Adamson J on 17 December 2014. La La Land sought leave to appeal, and if leave be granted, to appeal from the decision of Adamson J.

In dismissing La La Land's summons seeking leave to appeal, the Court held:

Adamson J was correct to find that:

(1) There was no error in the Authority's statement and application of the "*public interest*" test, as prescribed by s 3 of the Act. [17]

(2) The Authority correctly construed s 49(8) of the Act as:

(a) affirmative conditions that must be satisfied before an ETA is granted, which does not imply that when revoking or varying an ETA the Authority must be satisfied that those conditions no longer exist; [26] and

(b) relevant factors that the Authority was bound to take into account; [27]

and properly applied this construction in its decision.

(3) La La Land failed to establish that relevant mandatory considerations existed under the Act to which the Authority had failed to afford proper, genuine and realistic consideration. [35, 37-38].

(4) La La Land failed to establish that the Authority's decision was indicative of or constituted bias as a result of public statements by the Chairman of the Authority or meetings between the Authority and NSW Police. [47, 50]

(5) La La Land failed to point to evidence which indicated that the Authority's decision was affected by legal unreasonableness. [62]

Minister for Immigration and Citizenship v Li [2013] HCA 18; 249 CLR 332.

Obiter:

The Court commented on the extent of reasons required in refusing a grant of leave.

Roy Morgan Research Centre Pty Ltd v Commissioner of State Revenue (Vic) [2001] HCA 49; 207 CLR 72 at [26].

JUDGMENT

1 **THE COURT**: The applicant sought leave to appeal, and if leave be granted, to appeal from the decision of Adamson J dismissing its summons brought under the *Supreme Court Act 1970* (NSW), s 69 to review the decision of the Independent Liquor and Gaming Authority (the Authority) to vary the applicant's extended trading authorisation (ETA). The effect of the Authority's decision was to vary the applicant's Sunday trading hours from its authorised 3 am closing time to 12 midnight.

2 The summons and the appeal were directed to be heard concurrently pursuant to the Uniform Civil Procedure Rules 2005 (NSW) (UCPR), r 51.14. A direction under that provision does not compel the court to proceed with the appeal as if leave was, or was to be, granted. The question of leave remains in issue and in an appropriate case, the court may direct, at the concurrent hearing, that the matter proceed by way of leave in the first instance. The Court considered that this was a case that was appropriate for the question of leave to be determined before deciding whether to hear submissions as on the appeal.

3 At the conclusion of the applicant's argument, which was permitted to extend well beyond the conventional 20 minutes applied by the Court to oral argument on the hearing of a summons seeking leave to appeal, the Court determined to refuse leave and made orders dismissing the summons for leave to appeal with costs. The Court announced at that time that it would give its reasons for refusing leave at a later date. Those reasons are as follows.

4 The matter before Adamson J was an application under the *Supreme Court Act*, s 69 for the review of the determination of the Authority to vary the applicant's ETA. As such, on an appeal from that decision, it was necessary for the applicant to demonstrate that her Honour erred in failing to find either that the Authority had committed jurisdictional error or error of law on the face of the record. The record, for this purpose, includes the reasons of the Authority for its determination: s 69(4).

Principles governing the grant of leave

5 Leave to appeal involves a discretionary determination by the court as to whether the matter is one in which it is appropriate to grant leave. This Court has stated that leave to appeal is likely to be granted where there is a question of principle, or a matter of public importance involved, or where an injustice is demonstrated which goes beyond that which is merely arguable: see *Carolan v AMF Bowling Pty Ltd* [1995] NSWCA 69; *Lee v New South Wales Crime Commission* [2012] NSWCA 262 at [12]. Demonstration that the primary decision maker erred is an indicator that there has been a relevant injustice. However, if the identified error was unlikely to change the outcome of the appeal, leave is unlikely to be granted.

Extent of reasons necessary to determine whether leave should be granted

6 A summons seeking leave to appeal is a form of summary procedure whereby a party is required to establish that it should pass through the gateway of leave to the appellate process. The rules of court limit the length of written submissions on such an application and this Court imposes a conventional limit of 20 minutes on the time for oral submissions.

7 It is well accepted that a court is required to give adequate reasons of its determination of a matter: *Beale v Government Insurance Office (NSW)* (1997)

48 NSWLR 430; 25 MVR 373. The extent of the reasons required is dependent upon the nature of the application before the court, the matters in issue, the legal principles involved and the extent of the submissions made by the parties. The reasons should, at least, be sufficient to enable the party against whom orders are made to appreciate why its case, whether by way of claim or defence, has not succeeded.

8 The purpose of the requirement for leave is to "[*promote*] *the availability, the speed and the efficiency of justice*": *Coulter v The Queen* [1988] HCA 3; 164 CLR 350 at 359 per Deane and Gaudron JJ. The same purpose underlies what is required of reasons in refusing leave. The court is not required to give reasons such as are appropriate for a full appellate determination. Rather, the reasons required on the refusal of leave are directed to why leave is refused, having regard to the principles governing the court's discretion in determining whether to grant or refuse leave, discussed above. As the High Court stated in *Roy Morgan Research Centre Pty Ltd v Commissioner of State Revenue (Vic)* [2001] HCA 49; 207 CLR 72 at [26]:

> "The reasons need not be extensive. In appropriate cases, little more may be required than a short, perhaps very short, statement of the chief conclusions which the judge refusing leave has reached. The disappointed applicant (and any court asked to review the refusal) must, however, be able to know from the reasons given by the primary judge why the judge reached the decision to refuse leave."

9 The reasons stated by the court in refusing leave are thus conventionally short, usually being no more than a few pages, directed to why, having regard to the principles governing leave, the case is not an appropriate matter for the grant of leave. Short reasons are appropriate, sufficient and necessary for the proper administration of justice.

10 This approach is in conformity with the statutory dictates of the *Civil Procedure Act 2005* (NSW), s 56, which specifies that the overarching purpose of the Act and of the rules of the court "*is to facilitate the just, quick and cheap resolution of the real issues in the proceedings*". The purpose and utility of leave would be defeated if the court was required to enter into a lengthy reasoning process as to why leave should be refused.

11 The length of these reasons disposing of the applicant's summons seeking leave to appeal are an exception to what is required of reasons for refusing leave and to this Court's conventional practice of giving short reasons for the refusal of a grant of leave. We have given more extensive reasons on this occasion so as to have proper regard to the applicant's submissions, which were prepared on the basis that the appeal would proceed concurrently with the leave application, should leave be granted, and because the Court ultimately permitted significantly lengthier argument than usual on the question of leave. There were also a number of issues in respect of which leave to appeal was sought to which consideration must be given. These reasons nonetheless remain of an abbreviated nature, directed to the question of leave only and not to a hearing on appeal.

Matters in issue

12 The applicant identified the following issues as arising on the appeal if leave was granted and in respect of which it contended her Honour had fallen into relevant error:

(1) The Authority had stated the wrong legal test as to what constituted the public interest: grounds 1 and 2 of the draft amended notice of appeal;

(2) The Authority had failed to take into account relevant mandatory considerations and/or the Authority had "*failed to afford proper, genuine and realistic consideration*" to such matters: ground 3 of the draft amended notice of appeal;

(3) The remarks of the Chairman of the Authority at public meetings constituted bias: ground 4 of the draft amended notice of appeal;

(4) The communications between the Chairman of the Authority and New South Wales Police officers constituted bias: ground 5 of the draft amended notice of appeal;

(5) The Authority's findings regarding the COPS events, its consideration of relevant factors and its analysis of the applicable law was indicative of and constituted bias: ground 6 of the draft amended notice of appeal;

(6) The Authority's decision was affected by legal unreasonableness: ground 7 of the draft amended notice of appeal.

The relevant legislation

13 The primary judge set out in full the relevant legislation. It is not necessary or appropriate for this Court to do so in giving reasons on a summons seeking leave to appeal, other than to refer to particular provisions as required to understand these reasons. The relevant provisions of the *Liquor Act 2007* (NSW) (the Act) set out or otherwise referred to in the judgment of her Honour are: ss 3, 11, 11A, 12, 24, 25, 42, 43, 48 and, in particular, 48(9), 49 and, in particular, 49(8), 51 and, in particular, 51(9)(b) and 51(13), 53 and, in particular, 53(1)(b), 53(2)(b) and 94(2).

Our reasons

Grounds 1 and 2: application of the incorrect test and failure to appreciate the matters the Authority was obliged to have regard to pursuant to s 3 of the Liquor Act

14 The Authority provided the applicant with the reasons for its decision on 4 December 2013. In those reasons, the Authority, having set out s 3, stated at [16] that:

> "When considering whether to revoke or vary an ETA, the test is whether the proposed administrative action is in the public interest, informed by the statutory objects and considerations prescribed by s 3 of the Act."

15 Her Honour held that there was no error in the Authority's statement of the applicable test. Her Honour, at [60], stated that a decision-maker who was required to make a decision under a statute was bound to take into account the public interest: *Minister for Planning v Walker* [2008] NSWCA 224; 161 LGERA 423 at [39]. That was not disputed by the applicant. Her Honour also stated that she rejected a submission that the public interest was confined to the object stated in s 3(1)(b). The applicant did not accept that it had made any such submission. It is not necessary to resolve whether that was so, as it is sufficient to have regard to the argument as it was put on the appeal.

16 The applicant submitted that her Honour ought to have found that the Tribunal committed both jurisdictional error and error of law on the face of the record in that it applied a predominant test of public interest: see the Authority's reasons at [16], [88], [90], [111], [114], [116] and [117]. The applicant submitted that the

correct test should have involved an application of each of the factors listed in s 3, together with an application of the test for granting an extended trading licence specified in s 49(8) of the Act.

17 The first of the applicant's points is not made out. The Authority, at [16], stated that the public interest was informed by the statutory objects and considerations prescribed by s 3. Her Honour so held.

18 At [90], the Authority dealt with factual matters it considered relevant and which supported the application to reduce the trading hours. Adamson J correctly concluded that the Authority had not erred in law in doing so.

19 There was also no error in her Honour not accepting other arguments put to her and repeated in this Court.

20 At [111], the Authority stated that whilst reduced trading hours were likely to have an impact upon local hospitality, it was necessary to consider the broader public interest. This was not to give predominance to the public interest unassociated with other relevant considerations, including the objects and considerations specified in s 3. Rather, it was a statement that the public interest was broader than the interest of a particular group of people.

21 The Authority, at [114], stated that it was in the public interest to minimise harm. Harm minimisation is one of the factors referred to s 3(2).

22 The Authority, at [116]-[117], explained why it considered that it was in the public interest to reduce the trading hours on Sunday night from a 3 am closing time to midnight, so as to reduce the capacity of the premises to attract a minority of problematic individuals having regard to the police records of unruly behaviour of people and increased incidences of drink driving offences and accidents during or shortly after those hours. There was no error of law or jurisdictional error in the Tribunal's factual findings.

23 The applicant also contended that her Honour had incorrectly construed ss 49(8) and 51 of the Act.

24 Section 49(8) provides that an ETA must not be granted unless the Authority is satisfied that: (a) practices are in place, and will remain in place, in respect of the responsible service of alcohol and for the prevention of intoxication on the

premises; and (b) the extended trading period will not result in frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises. Section 51(9)(b) provides that an authorisation for extended trading hours may be varied or revoked.

25 The applicant submitted to Adamson J, and repeated the submission in this Court, that the Authority's power to evoke or vary an ETA could not be exercised unless it was satisfied to the contrary of paras (a) and (b) of s 49(8). In other words, it was submitted that the Authority had to find that practices were not in place to prevent intoxication on the premises and that the ETA had resulted in frequent undue disturbance of the neighbourhood.

26 Adamson J rejected the submission that the power conferred by s 51(9)(b) should be confined in this way. Her Honour was correct to do so. The statement of affirmative conditions that must be satisfied before an ETA is granted does not imply that a separate statutory power to vary or revoke the ETA can be exercised only if the Authority is satisfied that those conditions no longer exist.

27 Adamson J accepted the applicant's alternative contention that the matters identified in s 49(8) were relevant factors when the Authority was considering whether or not to exercise the power to revoke or vary the ETA. By that we understand her Honour to mean that the Authority was bound to take into account whether measures were in place to ensure the responsible consumption of alcohol and whether the ETA had resulted in undue disturbance to the neighbourhood.

28 Her Honour pointed out that the Authority had stated that it was satisfied, on the basis of a detailed examination of evidence, that there was a "*real and persistent problem with patrons of the venue 'externalising' alcohol related anti-social conduct upon the local community*". In reaching that conclusion, as her Honour appreciated, the Authority recorded at length and took into account the measures the applicant claimed to have put in place to control such behaviour.

29 By way of further comment, it is noted that the applicant further complained, strenuously, that the Authority had misquoted its submission by confining it to a submission directed to s 49(8)(b). A reading of the applicant's written

submissions to the Authority at paras (1.8)-(1.10) confirms that there was no error in the Tribunal's recording of the submission. The applicant did not point to any part of its oral submissions in which the written submission was expanded. Her Honour therefore did not err in not upholding the applicant's submission on this issue.

30 The applicant has not established that her Honour erred in failing to find jurisdictional error or error of law in respect of this issue.

Ground 3: failure to take into account mandatory relevant considerations

31 In this Court's recent decision of *Rodger v De Gelder* [2015] NSWCA 211 Gleeson JA, Macfarlan and Leeming JJA agreeing, reiterated the fundamental principle in this area of the law, at [84], as follows:

> "It is well established that reference to a 'relevant consideration' in judicial review is a reference to a factor which, by law, the decision-maker is bound to take into account: *Peko-Wallsend* at 39; *Allianz Australia Insurance Ltd v Cervantes* [2012] NSWCA 244; 61 MVR 443 (*Cervantes*) at [15] (Basten JA; McColl and Macfarlan JJA agreeing)."

32 In *Cervantes*, to which his Honour referred, Basten JA stated, at [15], that:

> "… to describe evidence as 'relevant' to the case of one party is not to identify a 'relevant consideration' for judicial review …The reference to a 'relevant consideration' in judicial review is a reference to a factor which, by law, the decision-maker is bound to take into account: *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; 162 CLR 24 at 39 (Mason J)."

33 His Honour further observed that this required the identification of the legal obligation upon which it was said factors were mandatory such that they were required to be taken into account by the primary decision maker.

34 In its written submissions at para (65), the applicant identified eight matters that the Authority was required to take into account as relevant mandatory considerations. These included factual matters as well as contentions that the Authority had not had "*real regard*" to certain matters, including the bulk of its submissions (at (65)(iii)). The applicant submitted that the factors to which it had referred had a direct connection to the objects of the Act in s 3 and that her Honour should have so held.

35 To the extent that factual matters were particularised in para (65) of the applicant's submissions, they did not rise above evidentiary factors. None of the matters specified were relevant mandatory considerations under the

objects provision or any other provision of the Act. Thus the applicant had not established error by her Honour in not upholding these arguments.

36 To the extent that the applicant alleged that its submissions were not given "*real*" consideration by the decision maker, any such failure, should it be established, is not a failure to take into account a mandatory relevant consideration. But in any event, her Honour held that when the reasons of the Authority were read fairly and as a whole they reveal that the Authority correctly identified the relevant law and actively considered the material before it to decide whether to vary the ETA. Her Honour was correct to reject the contention that the Authority had failed to give "*real*" consideration to the arguments presented to it.

37 In para (67) of its written submissions, the applicant particularised 14 matters in respect of which it was said that the Authority failed to afford proper, genuine and realistic consideration. The matters specified, which included factors such as the locality, quality and design of the premises, were largely factual matters. None of the factors were established to be relevant mandatory considerations.

38 The applicant also complained that her Honour should have found that the Authority had failed to give proper consideration to the submissions of the owner of the premises. This submission is erroneous in two respects: an assertion of failure to give proper consideration to a matter is not a basis for the further assertion of a failure by the Authority to take into account a relevant mandatory consideration and, as her Honour found, is simply not made out on the face of the Authority's reasons. No basis for the assertion, other than that the Authority did not decide in favour of the applicant, is found in the applicant's submissions. Indeed, it is difficult to comprehend how the assertion could realistically have been made to Adamson J or this Court, given the detailed reasons of the Authority to which we have referred.

Grounds 4, 5 and 6: bias

39 The applicant mounted a significant challenge to her Honour's rejection of its claim that the Authority was biased. This claim was based on both public statements made by the Chairman of the Authority and meetings that were held by the Authority with the police to which the applicant was not invited.

40 The Chairman made a public speech in which he stated that the Authority was "*very reluctant to grant extended trading licences after midnight and had done so rarely*". He continued:

> "There have been very few instances indeed where trading after 2am has been approved.
>
> …
>
> And so we are very reluctant to grant extended trading hours at all, and especially after 2am when the community is already over-exposed to alcohol related violence or disturbance."

41 The applicant informed the Court that as the video of the Chairman delivering the speech revealed, the Chairman had stated that the Authority was "*extremely reluctant"* to grant extended trading hours, rather than "*very reluctant*", and had also said the Authority was "*exceptionally loathe*" to grant a licence after 2 am.

42 The primary judge, at [116], stated that there were good statutory bases for the comments made by the Chairman, including ss 11A, 12 and 48 of the Act. It is sufficient to note that s 12 provides for standard trading hours of 10 am-10 pm on Sunday and s 48 requires an application for extended trading to be accompanied by a community impact statement. Her Honour also considered, at [117], that the relatively exceptional nature of trading after midnight was indicated by s 49(8). Her Honour concluded, at [118], that rather than exhibiting a closed mind to applications that came before the Authority, the Chairman's remarks evinced an appropriate concern for the anti-social behaviour that can be the product of extended trading and for the need to scrutinise the evidence in support of any such application.

43 It was not suggested by the applicant that her Honour had applied the wrong test in respect of either actual or apprehended bias. For that reason, save for one comment, it is not necessary to cite or examine the principal High Court authorities. The complaint was that the statements of the Chairman "*on their face … tell the world that the Authority is not going to give licences after 2 am at all*".

44 There is a question as to whether the applicant's reliance upon the public statement of and conduct of the Chairman in dealing with the police prior to the

making of the decision ought to have been the subject of a claim for relief prior to the hearing. The applicant's case was, effectively, that the Authority, at least as constituted, could not bring an unbiased mind to the application. This was its position prior to the commencement of the hearing of the application. The failure to raise this challenge to the Authority's hearing of the matter from the outset raises the question whether the applicant had waived its right to raise that matter on a subsequent review of the decision: see *Michael Wilson & Partners Limited v Nicholls* [2011] HCA 48; 244 CLR 427 at [79] and [84]. In circumstances where the Authority did not seek to argue this point and where leave has been refused in any event, it is not necessary to finally determine that question.

45 The submission as finally put was that her Honour "*was simply wrong*" in not finding bias. The applicant added that her Honour also erred at [118], in stating that the Chairman's remarks were "*appropriate*". Her Honour's comment was that referred to above. The applicant submitted that her Honour, in considering the Chairman's remarks, should have had regard to the matters specified in ss 3 and 49(8).

46 In response to a question from the bench as to whether an appropriate concern for antisocial behaviour as expressed by the Chairman was inconsistent with having regard to (a) the need for harm minimisation, (b) the need to encourage responsible attitudes to alcohol consumption, (c) the need to ensure that alcohol consumption does not detract from the amenity of community life, being the matters specified in s 3(2), senior counsel conceded that those were appropriate matters, but that the applicant's concern was with the Authority having taken a fixed position in respect of all applications.

47 The applicant's complaint as to the Chairman's public statements is not made out on the plain words used by the Chairman. There was nothing in the Chairman's speech that indicated that the Authority had or would take such a fixed position in respect of 'all applications', including applications relating to the applicant's licensed premises. Rather, the statements by the Chairman put on the record the Authority's position on matters relevant to its functions under

the Act. The Authority was entitled to do so and it was appropriate in the interests of transparency of its decision making processes.

48 The applicant further maintained that there was actual bias directed to it in that "*there were meetings designed to establish a process to remove* [*the applicant's*] *Sunday night trading from midnight till 3 am and leave it with midnight*". The submission extended to a suggestion that the meetings were held, in its absence, "*to address the police's concern*". There were also email communications between the police and the Chairman. The import of the submission was that the police had objected to the grant of the extension of hours to 3 am in 2008 and that the Authority, by consulting with the police prior to lodging an application to vary the hours to midnight, had exhibited actual bias towards the applicant. The applicant did not submit that it was inappropriate for the Authority to consult with police or with other persons. It contended that as a matter of natural justice, it should have been invited to the meetings. The submission remained, however, that the outcome was a foregone conclusion.

49 Her Honour noted that the subject of the emails with the police was the rectification of certain misapprehensions the Chairman had had in respect of which he had made statements at the meeting. The misstatements were of a procedural or technical nature and were a matter of record: see judgment at [119].

50 There was no suggestion that the applicant had been denied procedural fairness at the hearing of the application. In circumstances where the Tribunal considered the evidence of all parties and gave extensive reasons, including giving considerations to those factors that supported the applicant's opposition to the application to vary the trading hours, the applicant has not established even an arguable case that there was bias, actual or apprehended.

51 Something further should be said on the issue of bias in respect of that aspect of ground 6 of the draft amended notice of appeal, in which the applicant contended error in her Honour's failure to find that the Authority's findings about the COPS events was indicative of and constituted bias.

52 The Authority, at [79]-[83] of its reasons, referred to some 49 incidents between April 2009 and February 2013 reported to police and recorded in the COPS system, and which occurred between midnight and shortly after 3 am. Many were mid-range PCA offences where the driver had given a history of having last drunk at the applicant's premises. Other incidents involved intoxicated persons on the premises, or persons being refused entry to the premises because they were already intoxicated and required police intervention. Other incidents involved assaults and disorderly behaviours, both on and away from the premises.

53 At [84]-[85], the Authority stated that it considered the events recorded in the COPS report had occurred, given that the COPS entries were contemporaneous reports made by police who have experience in the identification of intoxicated persons. The Authority could have gone further. As we have indicated, many entries related to PCA offences which specified the PCA reading. The contemporaneous character of the notes was important, however, in recording the place where an offender had last been drinking, whether there was a PCA charge or whether the incident recorded was in respect of assaults and unruly behaviour on the premises.

54 There was no legal error in the Authority treating these incidents as having occurred. There was no challenge to the authenticity or veracity of the entries. Rather, the challenge, as recorded by her Honour, was that the Authority did not care whether any of the events had actually occurred, since it was not prepared to come to a different view as to the outcome of the application to vary the extended trading hours. The applicant did not suggest that her Honour had incorrectly recorded its submission.

55 The Court considers that this ground, put both to her Honour and this Court, was an attempt to have a merits review of the Authority's decision. The Authority set out in its reasons, in addition to the COPS entries, the submissions by and on behalf of the business owner of the licenced premises, as well as the submissions of the police. Further, the Authority noted, at [86], that none of the COPS entries indicated that the business owner had permitted intoxication on the premises and it did not purport to find that was the case.

56 The Authority, at [89], noted the reduction in incidents in the most recent period. It noted the varying degree of seriousness of the incidents. It concluded, at [90], that the incidents involved an impost on police time and real or potential danger to patrons and the community. The Authority, at [92], considered that on all the evidence that there was a moderate problem with violence on the premises and a real and persistent problem with anti-social behaviour by patrons away from the premises.

57 The applicant did not directly attack any of these findings except to the extent that it made a broad, rolled up submission that the Authority was intent on coming to its determination regardless of the evidence. The careful consideration by the Authority of the material, including the parties' submissions, and its carefully reasoned conclusions totally belie any suggestion of bias or prejudgment.

58 The proposed ground 6 of the appeal relating to the incidents contained in the COPS reports has no substance. For the same reasons, the other aspects of ground 6, that her Honour erred in failing to find that the Authority's consideration of relevant factors and its analysis of the applicable law was indicative of and constituted bias was unsustainable.

Ground 7: legal unreasonableness

59 The applicant contended that her Honour erred, at [111], in failing to find that the Authority's decision was affected by legal unreasonableness: *Minister for Immigration and Citizenship v Li* [2013] HCA 18; 249 CLR 332. This ground was directed at [84]-[85] of the Authority's reasons. These paragraphs are referred to above at [49].

60 The applicant's submission, as recorded by her Honour, was that these paragraphs indicated bias. Before this Court, the applicant submitted that the decision of the Authority offends the principle of "*proportionality*": see *Li* at [73]-[74], in that the likely closure of the business by reason of the decision was a disproportionate response to the decision of the Authority in the circumstances and that the Authority focused overwhelmingly on giving weight to the public interest and not to the objects of the Act in s 3.

61 The applicant also submitted that the Authority's decision was legally unreasonable, in that excessive weight was given to events that mostly occurred off the premises. It was submitted that insufficient weight was placed on other evidence provided by the applicant relating, inter alia, to its management practices, the provision of security and the overwhelming tourist demand for late night entertainment facilities.

62 The applicant did not point the Court to any evidence before the Authority to indicate that if the extended trading hours were varied to midnight, its business would fail. Nor did the applicant establish that the Authority had given excessive weight to the matters to which it referred. The Authority considered those matters but, nonetheless, for its reasons at [92] ff determined that the extended trading hours should be varied.

Conclusion

63 The Court confirms its orders made on 5 August 2015.

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