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Application under section 53 of the *Liquor Act 2007* (“Act”) to vary or revoke conditions on hotel licence number LIQH400110790 for the Bradbury Inn Hotel, (“Hotel”) located at 96 The Parkway, Bradbury NSW

BACKGROUND

I refer to an Application by your client, Mr Peter Nellies, the licensee of the Hotel, made on 27 January 2010 (“**Application**”). Processing of the Application was suspended for some time, at the Applicant’s request, before it was eventually amended by a letter from your firm dated 20 October 2011.

In the amended Application, the licensee submits:

1. That Condition “210” on the Government Licensing System liquor licence record (“**GLS Licence**”), which imposes a 1 am lockout, should be varied so that the lockout commences at 3 am for a trial period of 12 months.
2. That Condition “230” on the GLS Licence, requiring that the Hotel be conducted in accordance with a plan of management dated 15 April 2008, should be varied to read:

“The licensed premises are to be conducted in accordance with the plan of management dated May 2010 (reference No 078701.POM5) or such other plan of management subsequently approved by the Authority.”

3. That the licensee no longer seeks the variation of Condition “340” on the GLS Licence, which requires that whenever the Hotel trades after midnight, the Hotel shall conduct uniformed security patrols of the Hotel car park, the Bradbury Shopping Centre car park, the eastern side of The Parkway to a distance of 160 metres and the roadway from the Hotel car park to Jacaranda Avenue.

4. That the licensee no longer seeks the variation of Condition “350” on the GLS Licence, which requires that the Hotel perform a rubbish clean up before 7am, on any day that the Hotel is open for trade, of the areas surrounding Sherwood Hills Baptist Church Primary School and the Council Community Centre.
5. That the licensee no longer seeks the variation of Condition “360” of the GLS Licence, which requires that the car parking areas of the Bradbury Shopping Centre, including all open and accessible verandas, be cleared of all rubbish that could be reasonably associated with the operations of the Hotel by 7 am on any day that the Hotel is open for trade.
6. That Condition “370” on the GLS Licence, which requires that the licensee give the owner of the Bradbury Shopping Centre 28 days prior notice before an application is made to vary the licence conditions or the Hotel’s Plan of Management, be varied to only require 2 days prior notice.
7. That Condition “380” on the GLS Licence, which requires that the owners of the Hotel maintain a public liability insurance policy that notes the interest of the owner of the Bradbury Shopping Centre in respect of that policy, be revoked.

NOTIFICATION OF DECISION

8. On 14 December 2011 the Authority sent a decision letter to the licensee by email to your firm advising that the Authority had decided:
 - To approve the Application to vary the Condition “230”, with the amended condition now numbered “3010” on the GLS Licence.
 - To approve the Application to revoke the Conditions numbered “380” and “400” on the GLS Licence.
 - To refuse the Application to vary Conditions “210” and “370” on the GLS Licence.
9. The Authority’s decision letter enclosed an amended version of the GLS Licence as of 14 December 2011, reflecting its decision.

REQUEST FOR REASONS

10. On 14 December 2011 you requested the Authority to provide reasons for its decision to only partially grant the Application. You followed up that request by a further email dated 9 January 2012 whereupon the Authority advised that it would provide a decision letter within 28 days.

11. Unfortunately, due to competing and unforeseen demands that arose in the Authority's casino jurisdiction during early February 2012, the Authority was unable to provide your client with a further decision letter within the time frame envisaged.
12. As noted in Authority Guideline 7, it is not the usual practice of the Authority to provide statements of reasons in relation to decisions on primary liquor applications and statements will only provide them when resources are available. Nevertheless, the Authority has decided to give reasons in this instance, by reason of the significant degree of community and key stakeholder interest in the Application, as evident by the number and detail of submissions made by the Applicant, Council, Police, Director General and local residents.

MATERIAL BEFORE THE AUTHORITY

13. The Authority has considered the Application and all subsequent submissions that have been made in relation to the Application. Without listing every document on the licensing file, the key submissions are:
 - (i) Application Form received by the Authority on 27 January 2010
 - (ii) Letter from Bruce Stewart Demarco addressed to OLGR dated 22 February 2010
 - (iii) Letter from Campbelltown Local Area Command of NSW Police ("**Police**") to the Authority dated 18 February 2010
 - (iv) Letter from Campbelltown City Council ("**Council**") to the Authority dated 22 February 2010
 - (v) Letter from Thomas Hotels to Council dated 22 January 2010
 - (vi) Letter from Police to the Authority dated 19 February 2010
 - (vii) Email to the Authority dated 25 February 2010 from Mr Dominic Bressan, Crown Property Holdings Pty Ltd, the owners of the Bradbury Shopping Village
 - (viii) Letter from Council to the Authority dated 10 March 2010
 - (ix) Report from Director General dated 29 March 2010 objecting to the Application.
 - (x) Letter from Council to the Authority dated 15 April 2010 enclosing a Council memorandum dated 30 March 2010
 - (xi) Email from Crown Property Holdings Pty Ltd to the Authority dated 14 May 2010
 - (xii) Letter from Design Collaborative to residents /stakeholders dated 28 June 2010 providing details of community consultation on the Application
 - (xiii) Letter to Council from Mr George Phelps dated 5 July 2010 opposing the Application with regard to late trading
 - (xiv) Letter from John and Sue Chamberlain received by Council on 12 July 2010 objecting to the Application with regard to late trading
 - (xv) Notes to Council from an unnamed local resident, undated, comprising handwritten annotations on a copy of a letter sent to residents by Crown Property Holdings Pty Ltd dated 12 July 2010. The writer opposes the Application with regard to late trading
 - (xvi) Letter from John and Sue Chamberlain received by Council on 12 July 2010 objecting to the Application with regard to late trading
 - (xvii) Email to OLGR from Dominic Bressan, Crown Property Holdings Pty Ltd dated 12 July 2010 expressing procedural concerns regarding a notice of community consultation meeting arranged by Design Collaborative Pty Ltd for 8 July 2010
 - (xviii) Email from Mr Keith Atkins to the Office of Liquor Gaming and Racing ("**OLGR**") dated 19 July 2010 opposing the Application with regard to late trading

- (xix) Email from Mr Alan Joy to OLGR dated 19 July 2010 expressing concern regarding the Application with regard to late trading hours
- (xx) Email from Mr John Davies to Council dated 19 July 2010 objecting to the Application with regard to late trading
- (xxi) Email from Mr Craig Taylor to Council dated 19 July 2010 objecting to the Application
- (xxii) Letter to OLGR from Helen Brown dated 19 July 2010 expressing opposition to the Application with regard to late trading
- (xxiii) Letter from Alan Banfield to Council dated 19 July 2010 expressing concern about the Application with regard to late trading
- (xxiv) Email from John Davies to Council dated 19 July 2010 objecting to the Application with regard to late trading
- (xxv) Email from Craig Taylor to Council dated 19 July 2010 objecting to the Application
- (xxvi) Email from Mr David Connor and Mrs Barbara Connor to OLGR dated 20 July 2010
- (xxvii) OLGR Compliance Section File Note dated 20 July 2010 of telephone call from Mr Harold Strathfield making oral submissions on the Application
- (xxviii) Email from Ms Rita Ramsdale to OLGR and Council dated 20 July 2010 opposing the Application
- (xxix) Letter from Mr Stanley Dubraskas, Ms Jill Hurst and several other local residents to OLGR dated 20 July 2010 opposing the Application with regard to late trading
- (xxx) Letter to Council from five residents of 66 Fern Avenue Bradbury by fax dated 20 July 2010 objecting to the Application with regard to late trading
- (xxxi) Email from Rita Ramsdale to OLGR, Council and Police dated 20 July 2010 objecting to the Application with regard to late trading
- (xxxii) Letter from Mr Peter Murphy to Council dated 22 July 2010 objecting to the Application
- (xxxiii) Letter from Peter Murphy to Council dated 22 July 2010 objecting to the Application with regard to late trading
- (xxxiv) Email from Mr Robert Williamson to Council dated 23 July 2010 opposing the Application and relating his experience with foul language, vandalism and noise.
- (xxxv) Email from Pamela Welbourn to Council dated 23 July 2010 protesting against the Application with regard to late trading
- (xxxvi) Email from Mr Phil Cumming and Mrs Ina Cummings to Council dated 23 July 2010 objecting to the Application with regard to late trading
- (xxxvii) Email from Ms Pamela Welbourn to Council dated 23 July 2010 objecting to the Application with regard to late trading
- (xxxviii) Email from Mr Peter Wilson and Mrs Judith Wilson to Council dated 24 July 2010 objecting to the Application with regard to late trading
- (xxxix) Email from Peter and Judith Wilson to Council dated 24 July 2010 objecting to the Application with regard to late trading
- (xl) Letter to Council, undated, from Ms Sue Cleary and Mr Alan Cleary objecting to the Application with regard to late trading, relating their experiences of living next to a walkway used by Hotel patrons
- (xli) Email from Mr David and Mrs Barbara Connor enclosing letter dated 27 July 2010 to OLGR, Council and Police opposing the Application with regard to late trading
- (xlii) Email from Mr John Sullivan to Police and Council dated 27 July 2010 opposing the Application with regard to late trading and relating his experience of vandalism from Hotel patrons on late trading evenings and noise from Hotel entertainment
- (xliii) Email from Mr Keith Atkins to OLGR and Police dated 27 July 2010 objecting to the Application with regard to late trading
- (xliv) Email from Neil White to OLGR dated 30 July 2010 opposing the Application with regard to late trading

- (xlv) Letter to OLGR from Val Dredge and six other signatories dated 31 July 2010 opposing the Application with regard to late trading impacts, an anticipated increase in litter should the Hotel's litter collection requirements be removed, and an increase in danger and damage to the community by removing the Hotel's security patrol requirements
- (xlvi) Email from Ms Barbara Hopwood to OLGR dated 26 July 2010 objecting to the Application with regard to late trading
- (xlvii) Letter to Council from D&K Cullen dated 26 July 2010 opposing the Application with regard to late trading
- (xlviii) Email from Council to OLGR dated 27 July 2010 (enclosing correspondence in relation to the Application from John and Sue Chamberlain; Craig Taylor; John Davies; Alan Banfield; Rita Ramsdale; several residents from 66 Ferb Avenue, Bradbury; Peter Murphy; Phil and Ina Cummings; Pamela Welbourn; RJ and VC Williamson; Peter and Judith Wilson; John Sullivan; David and Barbara Connor and Keith Jenkins objecting to aspects of the Application). The email notes that Council does not support the Application in relation to the proposed variation of the 1 am lockout condition.
- (xlix) Email from Council to OLGR dated 29 July 2010 (enclosing further submissions received by Council opposing the Application from Helen Brown; Sue and Alan Cleary; D and K Cullen; and Barbara and Ray Hopwood).
- (l) Letter to Council from Mrs Sue Cleary and Mr and Alan Cleary, undated, objecting to the Application with regard to late trading
- (li) Email to OLGR and Council from Mr Neil White dated 30 July 2010 opposing the Application with regard to late trading
- (lii) Letter to Council from Mr Andrew Hayes and Mrs Karinne Hayes dated 30 July 2010 objecting to the Application with regard to late trading
- (liii) Email to OLGR and Council from Ms Michelle Lidbetter dated 31 July 2010 opposing the Application with regard to late trading
- (liv) Letter to Council from local resident with an illegible name dated 2 August 2010 complaining about the Application with regard to late trading
- (lv) Email from Ms Christine Jamieson to OLGR and Council dated 4 August 2010 objecting to the Application with regard to late trading
- (lvi) Email to Council from Derek and Sylvia Wilson dated 8 August 2010 objecting to the Application with regard to late trading
- (lvii) Email from Richard Rodwell to Council dated 9 August 2010 objecting to the Application with regard to late trading
- (lviii) Letter to OLGR from Ms Enid Duncan dated 10 August 2010 objecting to the Application with regard to late trading
- (lix) Email to OLGR from Pastor Ralph Lewis, Macarthur District Community Church dated 7 September 2010 objecting to the Application with regard to late trading
- (lx) Letter to Council from Andrew and Karrine Hayes dated 30 July 2010 objecting to the Application with regard to late trading and relating their experience of intoxicated departing Hotel patrons walking past their residence and issues with litter and property damage that they attribute to Hotel patrons
- (lxi) Email from Christine Jamieson to OLGR and Council dated 4 August 2010 objecting to the Application with regard to late trading and relating her experiences with late night disturbance from Hotel patrons
- (lxii) Email from Derek and Sylvia Wilson dated 8 August 2010 objecting to the Application with regard to late trading and relating their experience of noise disturbance from bands at the hotel and litter from Hotel patrons
- (lxiii) Letter to OLGR from Enid Duncan dated 10 August 2010 protesting against the Application with regard to late trading. The letter describes her experience with groups

of young drunk people walking late at night down the street, leaving bottles and acts of vandalism

- (Ixiv) Email from Bruce Stewart Dimarco to OLGR dated 2 February 2011 requesting that the Application be put “on hold” pending a determination from Council on a related development application
- (Ixv) Letter from Mr Steve Bruton on behalf of the Authority to Bruce Stewart Dimarco dated 1 June 2011 requesting that the Applicant respond to the Authority’s email dated 25 August 2010 seeking submissions in response to the submissions of Council and members of the public and notifying that if the outstanding matters are not resolved within 21 days the Authority will complete its assessment of the Application on the material before it
- (Ixvi) Email from Bruce Stewart Dimarco dated 3 June 2011 in response to Steve Bruton’s letter noting that the firm had responded on 27 April 2011 to the matters raised by the Authority and advising that Council has determined the development application for certain alterations to the Hotel building, noting that the Applicant will seek clarification of Council’s position and that the Applicant intends to conduct further consultation with the community. The Applicant confirms that the Application is proceeding and requests that the Authority withdraw its requirement that the Applicant reply within 21 days to give the Applicant time to conduct further consultation
- (Ixvii) Letter to OLGR from Bruce Stewart Dimarco dated 10 June 2011 advising that the Applicant proposes to submit a further report from Design Collaborative and a further legal submission “in about 60 days”
- (Ixviii) Letter from Crown Property Holdings Pty Ltd to Design Collaborative dated 24 June 2011 with Crown’s opinion on Design Collaborative’s position regarding Conditions 210, 230, 340, 350, 360, 370, 380 and 400 as then recorded on the GLS Licence
- (Ixix) Letter from Design Collaborative to Police dated 16 June 2011 noting the approval of the development application on 12 April 2011 and making submissions regarding Conditions 210, 230, 340, 350, 360, 370, 380 and 400 and on the quality of Hotel management generally
- (Ixx) Letter from Police to the Authority dated 28 July 2011 enclosing an earlier submission from Police dated 21 July 2011 which, *inter alia* opposes changing the 1 am lockout time; provides Police statistics on incidents that have occurred within a 1 km radius of the Hotel over the past 12 months and encloses a statistical report entitled “Licensed Premise Further Information Report for the Hotel” for the period from February – July 2010. Police submit that there are “too many” recorded incidents whereby a person who has been spoken linked to the Hotel was reported to have been “well affected” by alcohol (18 incidents) or “moderately affected” by alcohol (26 incidents)
- (Ixxi) Letter from Bruce Stewart Dimarco to the Authority dated 30 August 2011 enclosing a Report from Design Collaborative to the Authority dated August 2011, with Design Collaborative’s observations on the Application and submissions made in response to the Application
- (Ixxii) Supplementary report from the Director General (via the OLGR Compliance Section) to the Authority dated 21 September 2011 noting the Director General’s previous objection to the Application dated 29 March 2010 and re-stating the Director General’s opposition to varying Condition 210 until such time as the Hotel adopts alternative controls to address the risks to which Condition 210 is directed
- (Ixxiii) Letter from Police to the Authority dated 21 September 2011 referring to Design Collaborative’s reports, and enclosing copies of correspondence from local residents to Police in opposition to the Application. Police comment that while the Applicant may seek to discredit Police statistics or opinion regarding patron migration and the Hotel’s business practices, local opposition to the Application is clear. Police affirm their

opposition to the Application, including their opposition of any trial use of a 3 am lockout

(lxxiv) Letter from Council to the Authority dated 21 September 2011 noting that the August 2011 Design Collaborative Report was considered by Council at its meeting on 20 September 2011. Council is most concerned with the potential for enabling patron migration after 1 am from other licensed premises in the Campbelltown CBD and the resultant disturbance and vandalism caused to local residents from patrons migrating on foot, due to the lack of public transport at that hour. Council affirms its previous submission to the Authority of 22 February 2010 and its resolution of 6 April 2010

(lxxv) Letter from Bruce Stewart Dimarco to the Authority dated 20 October 2011 amending the Application and making further submissions regarding the nature of the Authority's discretion to vary licence conditions, events that have transpired since the Conditions under consideration were imposed by the former Licensing Court, the regulatory record of the Hotel, the issue of patron migration raised by Police, the concerns of local residents and the merits of granting the amended Application.

REASONS FOR DECISION

14. In making this decision the Authority has considered the statutory objects and considerations provided by section 3 of the Act, which states:

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 the promotion, sale, supply, service and consumption of liquor,
- (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Variation of Condition 230 regarding the Plan of Management

15. The Authority accepts the Applicant's submissions that the former Condition 230, which required compliance with the Hotel's Plan of Management dated 15 April 2008, should be varied to refer to the current Plan of Management.

16. The Applicant's submissions include the Hotel's latest Plan of Management dated May 2010. It would serve no regulatory purpose for Condition 230 to require compliance with a plan that has been superseded.

17. The Applicant's proposed variation of Condition 230 offers a degree of flexibility in that it will enable the Condition to remain relevant and enforceable should the Authority approve amendments to the current Plan of Management in the future.
18. The Authority notes that while the Director General initially opposed the Application entirely in a Report dated 29 February 2010, a later submission dated 21 September 2011 focusses upon the Director General's opposition to varying the 1 am lockout requirement.
19. The Authority notes that the new Plan of Management refers to a 12 months trial of a 3 am lockout. The document was apparently drafted in this manner to accommodate the prospect that the Authority may grant a trial lockout from 3am.
20. In its submission dated 21 September 2011, Council affirms its previously communicated opposition to the Application. Council was clearly aware that the Plan of Management dated June 2011 refers to a 12 months trial of a 3 am lockout. Council do not say that they oppose any updating of Condition 230 *per se*. Rather, Council is clearly concerned with the scope for disturbance arising from patron migration to the Hotel after 1 am, should the lockout be varied to 3 am.
21. The Authority notes that Police express their opposition to the Application in their latest submission dated 21 September 2011, but the focus of that concern would appear to be the lockout condition. In their earlier more detailed submission dated 18 February 2010, Police submitted that they have "no objection" to the variation of Condition 230, but recommend that the proposed Plan of Management (then before them) dated 16 December 2009 should be scrutinised by the Authority to "ensure its correctness" prior to its approval.
22. While the Authority is aware that the Plan of Management refers to a 12 months trial of a 3 am lockout, the Authority has by this decision refused the Application to vary Condition 210. As a consequence, Condition 210, not the new Condition 3010 requiring compliance with the Plan of Management, will remain the operative condition with regard to the commencement time for the lockout, which shall remain at 1 am. The Hotel will otherwise be required by the new Condition 3010 to comply with the Plan of Management dated May 2010.

Variation of Condition 370 requiring 28 days' notice to the neighbouring Supermarket land owner of any proposed change to the licence conditions or the Plan of Management

23. This condition states:

"The licensee shall give to the owner for the time being of the Bradbury Shopping Centre, twenty eight (28) day's prior notice of any application to vary these licence conditions or the Plan of Management for the licensed premises. Such notice is to be in writing and its to contain a complete copy of the proposed application to amend the conditions of the licence or Plan of Management.

24. In its submission dated 20 October 2011 Bruce Stewart Dimarco question the opposition expressed in the submissions from Police and the Supermarket land owner, Crown Property Holdings Pty Ltd (“**Crown**”) to the Hotel’s proposed variation of this notice requirement. The Applicant describes this condition as concerning a “matter of private interest”. The Applicant questions why Crown should be in any better position than other stakeholders should the Applicant propose to change the conditions of its licence or its Plan of Management.
25. The Applicant submits that:
- “Licence conditions are for the orderly regulation of licensed premises, as required in the public interest. Today, licence conditions are not for the giving of private rights and supporting private interests”
26. The Authority notes that Condition 370 was imposed by the former Licensing Court as a condition of granting the Hotel’s application for extended trading. The condition was imposed for a public purpose, that is, in the interests of properly regulating the supply, during extended trading hours, of liquor from the Hotel premises - given the particular impact that the operation of the Hotel is likely to have upon its immediate neighbour.
27. The Authority is satisfied, on the basis of the submissions from Crown, that the Supermarket land owner continues to be impacted by the operation of the Hotel and the conduct of the Hotel’s patrons. Those impacts are illustrated by the fact that licence conditions oblige the Hotel to perform security patrols and rubbish collections with regard to Crown’s land.
28. The Shopping Centre land is private land that serves a significant public purpose. Changes to the Hotel’s licence conditions or its Plan of Management will likely be of particular concern to Crown.
29. On balance, the Authority considers that there is still a useful regulatory purpose in requiring, in the public interest, that the Hotel give 28 days advanced notice of any future proposal to change the Hotel’s licence conditions or its Plan of Management. This notice will enable the property owner who is most likely to be impacted by the Hotel’s operations to prepare properly considered submissions to the Authority and/or to liaise with the Hotel directly.
30. Given the ongoing differences between the Hotel owner and Crown that are evident from their respective submissions on this Application, advanced notice may also have the virtue of giving the two parties time to resolve or reduce any differences in advance of the Hotel making future applications to the Authority.

Revocation of Condition 380 regarding public liability insurance

31. This condition states:

“The owners of the licensed premises must maintain a public liability insurance policy, which notes the interests of the owner of the time being of the Bradbury Shopping Centre, in respect of that policy.”

32. In their submission dated 16 June 2011, the Applicant’s consultant Design Collaborative submits that while this matter is outside the realm of their expertise, they “do not consider that it should be necessary for the Hotel to provide insurance cover to the Shopping Centre land because it would be required to have its own indemnity insurance”. Design Collaborative note that the respective car parks of the Hotel and Supermarket are now “divided” and that it is no longer possible for Hotel patrons to drive over the Shopping Centre land from the Hotel land and therefore “there are no liability issues requiring insurance cover.”
33. In a submission from Crown to OLGR dated 25 February 2010, Crown submit that the imposition of Condition 380 was a “central reason” why the Hotel was granted extended trading hours by the former Licensing Court. The Supermarket owner alleges (and the Authority accepts is likely the case) that “many hotel patrons, often intoxicated, walk across Shopping Centre land when arriving at or exiting the Hotel”. The Authority understands by this submission that the condition was one of the measures agreed to by the Hotel in consideration for Crown not pressing its objection to the Hotel’s extended trading application before the Licensing Court in 2008.
34. In an apparent reference to recent environmental planning litigation between the two neighbouring landowners, Crown submit that “it was again determined by the Land and Environment Court and agreed by all parties, including the Hotel, that it was reasonable and necessary that the owners of the Shopping Centre land, currently being ourselves, be protected from liability should anything happen to one of those patrons while on Shopping Centre land.”
35. In their submission dated 18 February 2010, Police oppose the revocation of Condition 380, submitting that the Applicant has failed to sufficiently explain the reasons as to why they now require revocation of this condition. Police note advice that was reportedly given to them by the licensee to the effect that Condition 380 should not cause any changes to the insurance policies of the Hotel or the Shopping Centre, as both premises must maintain public liability insurance policies independently of each other.
36. Police advise that bollards now restrict vehicle access between both properties, and note that on 29 May 2009 the Shopping Centre owner obtained approval from Council to construct a dividing fence between the two – although Police note that they have not seen “any plans for the denial of access” between the two properties. Until that time, Police oppose any change to this condition.
37. The Authority does not accept the argument made by Design Collaborative that there are “no liability issues” arising from the movement of Hotel patrons between the Hotel land and the Supermarket land. Clearly there remains some scope for persons to access the Hotel land from the Supermarket land and vice versa. The Authority notes that the

foreshadowed dividing fence between the two properties has not been erected and Crown advise that there are no current plans to install that fence.

38. However, the circumstances of land use have changed since Condition 380 was first imposed, in that vehicular access between the two properties is no longer practicable, according to advice provided by the Applicant and Police. Accordingly, the public liability concerns arising from persons traversing the two properties are less acute at this time.
39. The Authority accepts the point made by Design Collaborative that both properties will, as a matter of commercial practicality, need to maintain their own public liability insurance coverage. On balance, the Authority considers that it is no longer reasonably necessary in the public interest to encumber the liquor licence with Condition 380. The Authority has decided that the preferable course is to revoke this Condition.

Revocation of Condition 400 – that the Supermarket owner’s permission of Hotel patrons to access Hotel land via the Supermarket land is given “without prejudice” to the Supermarket land owner’s legal or equitable rights.

40. This Condition states:

“Without admission of any legal or equitable rights in favour of the owner of the licensed premises, to allow the owner of the licensed premises, by their servants or invitees, access over any part of the land which comprises the Bradbury Shopping Centre, shall be without prejudice to any legal or equitable rights of Crown Property Holdings Pty Ltd (CAN 079 473 878) (Crown) and any agreement by Crown to the imposition of these licence conditions or to any clause in the Plan of Management, shall be without prejudice to Crown’s legal or equitable rights as owner of the land which comprises the Bradbury Shopping Centre.”

41. Crown submits that Condition 400 formed part of the package of terms upon which Crown agreed to not press its objection to the Hotel’s application for extended trading when that application was before the Licensing Court in 2008.
42. The Applicant submits, and the Authority accepts, that having this statement on the face of the GLS Licence adds nothing to the private law rights of the parties. Crown has clearly communicated the reservation of its rights to the Hotel owner and may continue to do so by means other than a statement that is recorded on the face of the liquor licence.
43. In the Authority’s view this condition serves no ongoing regulatory purpose and it is not reasonably necessary in the public interest to continue to record this statement on the GLS Licence. Accordingly, in the interests of rationalising the content of the licence, the Authority has decided to revoke this condition.

Refusal of application to vary Condition 210

44. This condition states:

“No new patron will be allowed entry into the licensed premises after 01.00 am and before 05.00 am Tuesday to Saturday (inclusive) and 10.00 am on Sunday.”

45. The most controversial aspect of the Application is the proposed variation of Condition 210 which currently imposes a lockout commencing at 1 am. This Condition was imposed by the former Licensing Court on 15 April 2008 when the Court granted, for a trial period, extended trading hours for the Hotel.
46. The Applicant now requests that this Condition be varied to 3 am on a 12 months trial basis. This proposal has been the focus of most of the submissions and has attracted overwhelming opposition from local residents and a local church. The proposal is also opposed by Police, Council, the Director General and the neighbouring property owner, Crown.
47. While liquor and gaming applications are not simply a “popularity contest” and must be determined on their merits according to the objective requirements of the legislation, this Application is notable for the absence of any significant local support from residents, businesses or other organisations in favour of liberalising the lockout, whether on a trial basis or otherwise.
48. The Authority has assessed this proposal on the basis of the material before it. It has considered whether it is reasonable and in the public interest to grant the variation sought by the Applicant, having due regard to all of the objects and statutory considerations specified by section 3 of the Act.
49. While it is not uncommon, in the Authority’s experience, for applications seeking extended trading hours to attract resident opposition, they may also attract a degree of community support from locals seeking new late night entertainment options or businesses/business groups who favour developing the night time economy of the local or broader community.
50. The degree of support or otherwise in a community is relevant to the Authority’s deliberations. One object of the Act is 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 (s 3(1)(a)).
51. However, notwithstanding the extensive and meaningful consultation engaged in by the Applicant and its consultant, Design Collaborative, there does not appear to be any significant local community support for varying the 1 am lockout.
52. Design Collaborative have submitted that the residents who have made adverse submissions do not understand the nature of the Application before the Authority. It is true that the local submissions do not specifically articulate their position on each of the enumerated Conditions under consideration, but in the Authority’s view, residents do understand and have focussed their opposition upon the prospect that the Hotel’s late trading restrictions may be liberalised.

53. The positive impacts offered by this proposal are, in the Authority's view, increasing late access to another local entertainment venue that may provide liquor and gaming services and a place for social interaction at this location.
54. Enabling the Hotel to receive patrons up to 3 am may be expected to provide benefits to the licensed business (and indirectly, its staff, contractors and other service providers).
55. At present, the Hotel is licenced to trade 24 hours per day from Monday to Saturday and from 10 am to 10pm on Sunday, although the Condition 210 operates to confine access to the Hotel's services after 1 am to those patrons who are already on the premises.
56. A submission from Bruce Stewart Dimarco dated 20 August 2011 argues, by reference to case law in the environmental planning jurisdiction, that:
- “the objectors fears of adverse impacts, no matter how genuinely felt, are only relevant to the extent that there is a reasonable probability that the impacts will occur” (*Vinson v Randwick Council* [2005] NSWLEC 142 at [13])
57. The Authority accepts that it should assess the Application on the basis of what impacts are likely to occur should the Application be granted. That assessment inevitably involves a degree of speculation, and that speculation may be informed, to the extent practicable, by recent experience regarding the conduct of this venue and the late trading impacts of other licensed premises in the area.
58. Clearly there is a difference in opinion as to the likely future impact of a 3 am lockout operating at the Hotel. Design Collaborative concedes in its submission dated 20 October 2011 that there would be “some degree of patron migration” between venues in the Campbelltown CBD and close by, but there will not be any significant migration to the Bradbury, by reason of the Hotel's location, the character of the venue and the management of the business after midnight.
59. As discussed below, Police consider that the Hotel will likely become affected by late night patron migration.
60. The residents' opposition to the Application is not simply expressed in terms of opposition to late trading in the abstract. Several of the residents who have made submissions are long established locals who live in proximity to the Hotel and have provided examples of adverse impacts that they have experienced from the conduct of late night drinkers that they attribute to the operation of the Hotel.
61. Several residents describe liquor containers being left in the streets and late night disturbance from groups of drunk young people walking by their homes and acts of vandalism to their property and noise from live entertainment at the Hotel.

62. Many submitters emphasise that the Hotel is located in an otherwise quiet residential area, which in the Authority's view may form another reasonable basis for concern that this venue will have a relatively acute impact upon the community than were the venue located in a commercial area.
63. The Authority does not consider that persons living nearby a Hotel are entitled to expect that there be no disturbance from the operation of that business. However, the later a venue trades, the greater its capacity to unreasonably impact upon the amenity of a neighbourhood, especially when that venue is located in a residential area.
64. Noise disturbance from persons coming and going to the Hotel on foot or by car, many of whom are likely to be affected by alcohol to varying degrees, is likely to exact a relatively greater impact the later a licensed premises trades into the evening. Disturbance from the conduct of a Hotel's patrons that may be considered reasonable before midnight may be unreasonable if it occurs at 2 or 3 am.
65. Not all of the concerns cited by local residents may be logically exacerbated by varying the lockout from 1 to 3 am. The Authority notes that while noise from live entertainment has been cited as a problem from some residents, such entertainment must, in any event, cease by midnight, by the operation of Condition 220.
66. While residents have drawn attention to the problem of liquor containers being left on the streets (and the Authority accepts that such impacts are in fact occurring) that type of disturbance can be ameliorated by Condition 340 requiring daily rubbish collection by 7 am, and is in any event likely to be a function of local *take away* liquor sales – that is, liquor purchased from either the Hotel or the "Cellarbrations" bottle shop located in the neighbouring Shopping Centre.
67. The Hotel's licence does not permit takeaway liquor sales after midnight (and after 10 pm on Sundays) and the Cellarbrations store will also have ceased its sales before midnight. Therefore, liberalising the lockout for the Hotel's *on premises* liquor service between 1 and 3 am need not exacerbate this problem - save for the prospect that some street drinkers might "pre fuel" while migrating to the Hotel using liquor purchased elsewhere and leave containers in the vicinity of the Hotel.
68. There is uncertainty surrounding the cause of local vandalism reported by the residents. While the Authority accepts that vandalism of the kind described in the submissions has occurred and residents *believe* that these incidents are attributed to Hotel patrons, Design Collaborative report advice from Senior Constable Carol Ray that these incidents are not likely to be attributed to Hotel patrons but reflect a problem the area has with anti- social behaviour.
69. Design Collaborative also cite statistics to the effect that only around 6% of reported malicious damage incidents are recorded as having been alcohol related (although the accuracy of Police statistics may be limited in those malicious damage cases where the perpetrator, and hence their degree of intoxication, is unknown).

70. The Authority considers it likely that alcohol consumed on and off licensed premises can play a role in malicious damage incidents, but advice from Police in this case suggests that the Hotel should not be singled out as the source of this problem.
71. Nevertheless, the Authority believes that there are some practical impacts that have been identified by local residents that are, in the Authority's view, reasonably and credibly linked to the conduct of the Hotel's patrons and are likely to become more acute if the Hotel is allowed to receive patrons between 1 and 3 am.
72. The Authority accepts that residents have in fact been disturbed late at night by groups of persons affected by alcohol who have been patrons of the Hotel. The Authority considers it likely that if the Hotel is allowed to receive patrons until 3 am then there will be more persons travelling to and from the Hotel during that time by car and on foot than would otherwise be the case.
73. Noise disturbance from persons passing by homes, talking loudly, even after only moderate consumption of liquor and without any further disorderly conduct, will have a considerable adverse impact upon residential amenity when it occurs early in the morning in an otherwise quiet residential context. The Hotel cannot be expected to control this conduct by patrons migrating to and from the venue when it occurs out of earshot or the line of sight of Hotel staff.
74. The Authority has given weight to the concerns raised by Police and Council regarding the impact upon local amenity of patron migration after 1 am, should the lockout be varied to 3 am at this location.
75. In their letter dated 19 February 2010 Police advise that there are seven late trading venues in the local area from which patrons may potentially migrate to the Hotel, were the Hotel to have a 3 am lockout. They are:
- Court Tavern (with a 1am lockout)
 - Campbelltown City Hotel (with a 1.30 am lockout)
 - Leumeah Club Hotel (with a 3 am lockout)
 - Campbelltown Club Hotel (with no lockout)
 - Campbelltown Catholic Club (with a 2 am lockout for non-members);
 - the RSL Club (1 am lockout for non-members) and
 - Club 209 (with a 1.30 am lockout).

76. This Police submission makes the following observations:

“Club 209 have shown initiative in attempting to reduce the levels of intoxication by ceasing the service of liquor at 2.30 am, being half an hour before closing. This has shown that the majority of their patrons (or an average between 300 and 400) leave the premises to begin their migration. Moreover, the migration from not only Club 209 but from other nearby licensed premises, to Campbelltown Club Hotel during

2.30 am and 3.30 am causes crime to increase whereby shop fronts in Queen Street, Campbelltown and adjoining streets are being urinated on, windows/shutters damaged, assaults being committed upon and by intoxicated persons and generally a disturbance to the neighbourhood.

As this is currently a common trend, police can envisage that these patrons will be migrating to the Bradbury Hotel in the same fashion from Campbelltown CBD and seeking admittance. The topography of the route in which patrons would take consists of Queen Street (main street) having numerous amounts of shop fronts and heritage listed buildings, a 24 hour McDonald's restaurant, Bradbury Oval and Apex Park which is a poorly lit open parkland, making pedestrians vulnerable to robberies and assaults and The Parkway which is the main road into Bradbury is a well established dense residential area all the way to the hotel, being a stretch of approximately 1 km. As mentioned above, this route can be made within 10 to 20 minutes from the CBD.

Police have no doubt that should intoxicated persons present themselves for admittance just prior to the lockout of 3 am, that security/management would be refusing them entry, hence increasing the likelihood of patrons being injured. "

77. The Authority has taken into consideration those aspects of the Hotel's operations that have been identified by Design Collaborative as working to limit the late night impact that the venue may otherwise cause. From midnight, there will be no live entertainment or music for dancing permitted; the kitchen shall cease operating; the north eastern courtyard shall be cleared of patrons and the western courtyard must have only 32 patrons and used for smoking. From 1 am, the seating area next to the kitchen shall be cleared of patrons; and from 2 am the lounge bar seating area is to be cleared of patrons.
78. Design Collaborative opine that these factors militate against the Hotel becoming a "destination" venue, by contrast to venues like the Leumeah Club Hotel and the Campbelltown Club Hotel which are a comparable distance from the Campbelltown CBD.
79. Design Collaborative submit that the Hotel should not, in its opinion, attract the "party on" crowd and note that a licence condition requiring security patrols will be retained on the licence and shall assist in deterring adverse incidents occurring in close proximity to the Hotel.
80. The Authority has considered these submissions but in this instance prefers the expertise and experience of local Police with regard to the current adverse social impacts arising from late night patron migration in the area and the prospect of such adverse impact extending to the Hotel should the lockout be varied to 3 am.
81. The Authority is satisfied that increased disturbance is likely to occur from patrons walking to and from the Hotel late at night, and from patrons driving to and from the

Hotel late at night during the 1 am to 3 am period. Regardless of the quality of management, the venue is likely to experience greater difficulties from prospective patrons during late trading, who are more likely to be tired and or subject to varying degrees of intoxication.

82. The Authority is satisfied that residents living nearby or en route to the Hotel are likely to experience further disturbance problems from the misconduct of patrons who have been drinking for a prolonged period and moving through the neighbourhood either to or from the Hotel.
83. While the Authority accepts that the venue will operate on a scaled down basis after 1 am and will not, under current management plans, have all the hallmarks of a late night “destination” venue, the very purpose of liberalising the Hotel’s lockout must be to enable the Hotel to attract and receive increased patronage after 1 am that it could not otherwise entertain.
84. The Authority is satisfied that if the proposed variation to Condition 210 was granted, the Hotel will become part of a cluster of very late trading local venues that are capable of attracting and likely to receive those patrons who chose to migrate among licensed premises in the early hours of the morning. This will expose the residents and the Hotel to further late night disturbance that will not be in the public interest.
85. The Applicant has noted and the Authority accepts that the Hotel has not been the subject of a formal disturbance complaint under section 79 of the Act; nor any formal disturbance complaint to Council since 2009; that Council has expressed a view that the Hotel is well managed; and that the Hotel is not and has not been a “declared premises” by reason of the occurrence of incidents of violence on premises under Schedule 4 of the Act. The Authority accepts advice from the Applicant’s solicitor that there has been only one penalty notice issued against the current licensee since he acquired the licence in January 2007 and this was for an incident of permit intoxication.
86. Nevertheless, the Hotel has been designated a “level 3” premises under the scheme administered by the Director General for the regulation of violence on premises, having recorded 8 incidents of violence on premises in the Director General’s assessment dated 14 September 2011, being the most recent assessment available at the time the Authority determined this matter. While the Authority accepts the Applicant’s argument that this factor alone does not warrant refusal of the Application, it provides an objective basis for the Authority to maintain concerns that this venue is demonstrably exposed to a significant number of incidents of violence on premises and that record is likely to worsen should the venue be open to receive patrons until 3 am.
87. The Authority has taken into account the Applicant’s critique of the use of Police statistics and the attribution of various events by Police to the Hotel. Nevertheless, the Authority is satisfied and accepts Police concerns regarding the Hotel’s potential to become a location for further adverse incidents should the lockout be extended to 3 am.

88. In all the circumstances of this case and giving weight to the provision of section 3 (2) (c) of the Act that requires the Authority to consider the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life, the Authority has decided that the preferable course is to refuse the Application to vary Condition 210.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Sidoti', with a small flourish at the end.

Chris Sidoti
Chairperson
on behalf of the Independent Liquor and Gaming Authority