

NSW Independent Liquor & Gaming Authority

Our ref: DF25/046362

Mr Alvin Foo
Hatzis Cusack Lawyers

25 July 2025

Dear Mr Foo

Application Nos.	1-9445251318 & 1-9445251336
Applicant	Don Hodge Group Pty Ltd
Applications for	<u>Application 1</u> Increase Gaming Machine Threshold by 6 (from 15 to 21) and transfer 6 Gaming Machine Entitlements (without forfeiture – rural closure) from Junction Hotel, Broken Hill (LIQH400110235) to The Garden Bistro (LIQH440019027). <u>Application 2</u> Increase Gaming Machine Threshold by 6 (from 21 to 27) and transfer 6 Gaming Machine Entitlements (without forfeiture – rural closure) from Commercial Hotel, Forbes (LIQH400112432) to The Garden Bistro (LIQH440019027).
Applications date	16 April 2025
Decision date	18 June 2025
Licence name	The Garden Bistro
Trading hours	Licensed hours: Monday to Saturday 07:00 AM – 12:00 AM Sunday 10:00 AM – 10:00 PM Advertised hours: Monday to Thursday 11:30AM – 8:30PM Friday & Saturday 11:30AM – 9:00PM Sunday 11:30AM – 8:00PM
Premises	37 Governor Macquarie Drive Chipping Norton NSW 2170
Legislation	Sections 3, 19, 20, 20A, 34 and 35 of the <i>Gaming Machines Act 2001</i> Clauses 31, 32 and 40 of the Gaming Machines Regulation 2019

Decision of the Independent Liquor & Gaming Authority Applications for Gaming Machine Threshold Increases and Gaming Machine Entitlement Transfers – The Garden Bistro

Application 1

McKell Building, 2-24 Rawson Place Haymarket NSW 2000 | GPO Box 4012 Sydney NSW 2001
office@ilga.nsw.gov.au | ilga.nsw.gov.au | ABN 42 496 653 361

We **refuse** the application for a Gaming Machine Threshold (**GMT**) increase of 6 (from 15 to 21) for The Garden Bistro (LIQH440019027) under section 34(4) of the *Gaming Machines Act 2001* (the **Act**).

We **refuse** the transfer of 6 Gaming Machine Entitlements (**GMEs**) from Junction Hotel, (LIQH400110235) to The Garden Bistro (LIQH440019027) under section 19 of the Act.

Application 2

We **refuse** the application for a GMT increase of 6 (from 21 to 27) for The Garden Bistro (LIQH440019027) under section 34(4) of the Act.

We **refuse** the transfer of 6 GMEs from Commercial Hotel (LIQH400112432) to The Garden Bistro (LIQH440019027) under section 19 of the Act.

Impact of *ILGA v Whitebull & Ors [2023] NSWCA 224*

The court in *ILGA v Whitebull & Ors [2023] NSWCA 224* (the **Whitebull decision**) confirmed that the NSW Independent Liquor & Gaming Authority (the **Authority**) may take into account harm minimisation considerations when making a decision under sections 19 and 34 of the Act.

The principles in the *Whitebull* decision underpin the Authority's decision-making under sections 19 and 34 of the Act.

Statement of reasons

We note that The Garden Bistro (the **Hotel**) is a new hotel that is not yet trading, and together the applications seek to increase the Hotel's GMT by 80%. The GMEs are proposed to be transferred from Junction Hotel, Broken Hill and Commercial Hotel, Forbes without forfeiture due to the exemption available for 'rural closure' under section 20A of the Act.

We have identified several gaming-related risks associated with the applications, which we set out further below.

We are not satisfied that approving an increase in the availability of gaming machines in the area where the Hotel is situated will be consistent with the objects of the *Gaming Machines Act 2001* or the further requirement that the Authority must

'...have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under this Act'.

Our main findings

The local community for the purposes of this decision is the Statistical Areas 2 (**SA2**) of Chipping Norton - Moorebank. The broader community is the Local Government Area (**LGA**) of Liverpool.

After consideration of the submissions and material provided by the applicant and Liquor & Gaming NSW (**L&GNSW**), we cannot be satisfied that the risks of gaming-related harm that arise from the applications can be absolved by the mitigating factors identified.

The submissions and material from both L&GNSW and the applicant identified factors which may partially or fully mitigate against the below risk factors, including:

- the Hotel is in a Band 1 SA and the venues from which GMEs are proposed to be transferred are in Band 2 and Band 3 areas;

- if the applications are approved, the total number of venues able to offer gaming within NSW will be reduced by two;
- the Hotel currently has standard trading with no post-midnight gaming;
- the grant of the application will see the Hotel legislatively required to have one Responsible Gambling Officer on duty whenever gaming machines are in operation as the total number of GMEs will exceed 21; and
- the Hotel has a Gaming Plan of Management (**GPOM**) which outlines responsible gambling measures, including maintaining a gambling incident register and implementing harm minimisation practices.

However the submissions and material from L&GNSW identified factors which suggest that the grant of the applications may increase the harm associated with the misuse and abuse of gambling activities and fail to facilitate the balanced development, in the public interest, of the gaming industry including:

- there would be no reduction in the number of gaming machines in the state, which is one of the objects of the Act
- the significant increase of the Hotel's GMT by a total of 12, from 15 to 27, which equates to an 80% increase;
- while the Hotel is in a Band 1 SA2, the SA2 is closely surrounded by areas of sociodemographic disadvantage and high gambling intensity;
- the SA2 has identified location factors including higher rates of people with culturally and linguistically diverse backgrounds and people with lower education levels;
- the gambling intensity in the SA2 (\$330,920 profit per machine) and the LGA (\$300,226 per profit per machine) are both very high;
- the percentage of moderate and high-risk gamblers in the local health district (**LHD**) (5.9%) is above the NSW average (4%); and
- the gambling participation rate for pokies/gaming machines in the LHD (17.1%) is higher than the state average (14.3%).

The material we considered

We considered the following material when making our decision:

- the legislation
- the application material
- liquor licence document
- the GPOM
- Hotel map and images
- data provided by L&GNSW pertaining to:
 - location factors for the LGA and SA2 where the Hotel is located;
 - gaming profits in the LGA and SA2 where the Hotel is located compared to NSW and
 - gaming participation and prevalence in the LHD compared to NSW
- L&GNSW compliance materials and
- the applicant's response to L&GNSW's assessment and submissions.

This decision will be published.

If you have any questions

Please contact Liquor & Gaming NSW at: new.applications@liquorandgaming.nsw.gov.au if you have any questions.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Caroline Lamb".

Caroline Lamb

Chairperson

Independent Liquor & Gaming Authority