

NSW Independent Liquor & Gaming Authority

Our ref: DF25/046355

Mr Dion Manca
LAS Lawyers

30 July 2025

Dear Mr Manca

Application Nos.	1-9481414389 1-9482583312 1-948149916
Applicant	De Angelis Investments Pty Ltd
Applications for	<u>Application 1</u> Termination of lease of 5 Gaming Machine Entitlements from Shamrock Hotel Motel, Temora (LIQH400120508) to Bath Arms Hotel, Burwood (LIQH400100396) (noting that the Authority only needs to be given notice of the termination of the lease under section 25(3) of the <i>Gaming Machines Act 2001</i>). <u>Application 2</u> Transfer of 3 Gaming Machine Entitlements (without forfeiture – rural closure) from Post Office Hotel, Ulan (LIQH400116209) to Bath Arms Hotel, Burwood (LIQH400100396) <u>Application 3</u> Transfer of 3 Gaming Machine Entitlements (with forfeiture of 1) from The Mercure Hotel Sydney, Chippendale (LIQH424013942) to Bath Arms Hotel, Burwood (LIQH400100396)
Applications date	21 May 2025
Decision date	18 June 2025
Licence name	Bath Arms Hotel
Trading hours	Monday to Saturday 10:00 AM – 3:00 AM Sunday 10:00 AM – 10:00 PM
Premises	348 Parramatta Road Burwood NSW 2134
Legislation	Sections 3, 19, 20, 25 of the <i>Gaming Machines Act 2001</i>

Decision of the Independent Liquor & Gaming Authority

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NSW Independent Liquor & Gaming Authority

Application for a Gaming Machine Entitlement Transfer, and notice of a Lease Termination

Application 1

We **note** the intention to terminate the lease of Gaming Machine Entitlements (**GMEs**) between the Bath Arms Hotel (LIQH400100396) (the **Hotel**) and Shamrock Hotel Motel (LIQH400120508) under section 25(3) of the *Gaming Machines Act 2001* (the **Act**).

Application 2

We **refuse** the transfer of 3 GMEs (without forfeiture) from Post Office Hotel (LIQH400116209) to the Hotel under section 19(2) of the Act.

Application 3

We **refuse** the transfer of 2 GMEs (with forfeiture of 1) from The Mercure Hotel Sydney (LIQH424013942) to the Hotel under section 19(2) 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 section 19 of the Act.

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

Statement of reasons

We note that the three applications (the **applications**) seek to terminate a lease of 5 GMEs and replace them with the transfer of 5 GMEs sourced from two other venues.

While we note that the gaming availability at the Hotel would not increase if the applications were approved, after consideration of submissions and material from Liquor & Gaming NSW (**L&GNSW**) and the applicant, we have determined that the applications should be refused due to several gaming-related risks arising from the applications, which we set out further below.

Our main findings

Both the local and broader communities for the purposes of this decision is the Statistical Areas 2 (**SA2**) and the Local Government Area (**LGA**) of Burwood.

The venue has paid a financial contribution of \$494,066.70 to the Responsible Gambling Fund over a five-year period.

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

- the average profit per gaming machine at the Hotel (\$221,614) is lower than the averages of the SA2 (\$436,253), LGA (\$375,264) and comparable venues (\$324,126);

- the gambling participation rate for pokies/gaming machines in the LHD (9.7%) is lower than the state average (14.3%);
- one GME will be permanently forfeited; and
- approval of the applications will not result in a GMT increase at the Hotel.

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

- the Hotel is located in a Band 3 (high risk) SA2 and the GMEs are proposed to be transferred from venues in Band 2 (medium risk) SA2 areas. The applications therefore seek to transfer GMEs from medium risk areas into a high risk area;
- the Hotel's Band 3 SA2 has identified risk factors including higher rates of young people, higher rates of single people and those from culturally and linguistically diverse backgrounds;
- the gaming profit per gaming machine at the Hotel is lower than comparable venues in Burwood, with an average profit per gaming machine of \$221,614 versus \$324,126 for comparable venues. However, if approved, the GMEs would be transferred from venues with very low gaming intensity (average profits per gaming machine of \$9,475 and \$19,381 for the Post Office Hotel and The Mercure Hotel Sydney respectively) thereby increasing the risk of gaming-related harm;
- the Hotel has 18 hours of post-midnight gaming per week, with six of those in the higher risk post-2.00am period, while one of the venues from which GMEs will be sourced does not trade after midnight; and
- the percentage of moderate and high-risk gamblers for the local health district (**LHD**) (4.3%) is slightly above the NSW average (4%).

The material we considered

We considered the following material when making our decision:

- the legislation
- the application material
- liquor licence document
- the gaming plan of management
- 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 at the Hotel and
 - gaming participation and prevalence in the LHD compared to NSW
- L&GNSW compliance materials and
- the applicant's 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 that reads "Caroline Lamb".

Caroline Lamb

Chairperson

Independent Liquor & Gaming Authority