

Mr Tony Schwartz  
Back Schwartz Vaughan  
By email to: [tschwartz@bsv.com.au](mailto:tschwartz@bsv.com.au)

14 February 2024

Dear Mr Schwartz

<b>Application No.</b>	APP-0010876844
<b>Applicant</b>	GOWING BROS LTD
<b>Application for</b>	New packaged liquor licence
<b>Application Date</b>	8 February 2023
<b>Decision Date</b>	16 August 2023
<b>Licence name</b>	Shop 13
<b>Proposed trading hours</b>	Monday, Tuesday, Wednesday, Friday and Saturday 09:00 AM – 05:30 PM Thursday 09:00 AM – 07:30 PM Sunday 10:00AM – 05:30PM
<b>Proposed premises</b>	Shop 13, Kempsey Central 2-14 Belgrave Street Kempsey NSW 2440
<b>Legislation</b>	Sections 3, 11, 12, 29, 40, 44, 45, 48 and 114 of the Liquor Act 2007

**Decision of the Independent Liquor & Gaming Authority  
Application for a new packaged liquor licence – Shop 13**

We approve the application under section 45 of the *Liquor Act 2007* (the Act) - with the conditions set out in Schedule 1. The 6-hour closure period overrides any condition of the licence. Preliminary advice of this decision was provided on 13 October 2023.

**Approved manager or individual licensee**

The licence cannot be exercised unless and until the Authority or Liquor & Gaming NSW has been notified that:

- the licence is transferred to an individual licensee, or an approved manager is appointed; and
- the licensee or approved manager is a suitable and qualified person.

**Statement of reasons**

Overall, we are satisfied that the social impact of approving the application will not be detrimental to the well-being of the local or broader community.

**Our findings**

## Procedural and trading hour requirements

- the application meets the Act's requirements for procedural fairness and trading period
- the sale of liquor would comply with the licence's authorisation.
- sections 30 and 31 of the Act don't apply to this application.

## 'Fit and proper person'

The applicant is a 'fit and proper person' to operate the business to which the proposed licence relates.

## Responsible service of alcohol

Procedures for the responsible service of alcohol will be in place at the premises from the start of licensed trading, under the plan of management and the conditions on the licence.

## Development consent requirements

The necessary development consent is in force. Kempsey Shire Council approved the development application DA2200340 for the premises on 19 October 2022.

## Community impact

### *Local and broader communities*

The relevant 'local community' is the suburb of Kempsey, and the relevant 'broader community' comprises the Local Government Area (LGA) of Kempsey.

### *Diversity and density of licensed outlets*

L&GNSW Liquor & Gaming LiveData Report for the suburb of Kempsey shows:

- there are 14 authorised liquor licenses, of which 7 are authorised to sell packaged liquor
- saturation of packaged liquor licences in Kempsey is higher compared to the Kempsey LGA and all of NSW.

### *Crime data (annual rate per 100,000 residents)*

BOCSAR data shows that, in the year to March 2023:

- the premises were located in hotspots for alcohol-related assault, domestic and non-domestic assault, and malicious damage to property
- alcohol-related domestic and non-domestic assault, disorderly conduct, and malicious damage to property in the Kempsey LGA was higher compared to all of NSW (crime rates in the suburb of Kempsey were not calculated due to the low population count).

### *Alcohol-related health data (per 100,000 residents)*

HealthStats NSW data showed that:

- alcohol-related deaths and hospitalisations in the Kempsey LGA were higher compared to the NSW average.

### *ABS Socio-Economic Index for Areas (SEIFA)*

Both the suburb of Kempsey and the Kempsey LGA were ranked as relatively disadvantaged in terms of household income and residents in skilled occupations compared to other suburbs and LGAs in NSW.

## Business model

We note that the proposed business model involves the sale of packaged liquor for consumption away from the premises. The liquor to be sold will be limited to a range of higher end products, including craft beer, cider and spirits, along with boutique wine and champagne.

### Benefits proposed by applicant

The applicant proposes that the Centre and proposed Store have positive social and economic effects for current and future residents of Kempsey, by meeting consumer demand from a growing community for something that is a bit different to all the other packaged liquor operators in town. In providing this positive market distinction, the proposed Store will generate permanent employment and temporary jobs in its fit-out. The provision of boutique style products from this Store provides a clear market distinction, one which develops the liquor industry in a positive way.

### Stakeholder submissions

We considered the submissions from:

- NSW Police Force, dated 4 March 2023 (objection), which raised concerns in relation to the high saturation of liquor licences authorised to sell packaged liquor in Kempsey, availability of 10% mainstream products at the proposed premises, and that an unrelated application for a proposed premises in the same location was refused in 2011. Police further noted that there has been a concerted effort in addressing alcohol abuse in Kempsey over the years.
- Kempsey Shire Council, dated 24 May 2023, which raised no concerns.
- L&GNSW Compliance, dated 6 March 2023, which raised no concerns.
- Transport for NSW, dated 3 March 2023, which notes that an analysis of alcohol-related casualty crashes occurring in the Kempsey LGA between 2017-2021 indicates there were 34 crashes in the period (approximately 7 per year).
- Local Aboriginal Community (Durri Aboriginal Corporation Medical Service, and Kinchella Boys Home Aboriginal Corporation), dated 29 May 2023 (objections), which note concerns due to the overall social impact and detrimental well-being on the broader community.
- Aboriginal Affairs, dated 25 November 2022, which noted no objection to the application “on the basis that the applicant has also notified the NSW Aboriginal Land Council and the Local Aboriginal Land Council of the proposal and objection process”.
- Member of the public, dated 20 February 2023, who did not support the application on the basis that there are existing bottle shops in Kempsey and the township is heavily reliant on welfare.
- 6 members of the public, dated 25 April 2023, which notes the proposed premises would offer convenient trading hours in line with the shopping centre and premium boutique products focusing on quality and not “discounted liquor”.

We also considered the Applicant’s submission in response, to these submissions, which notes:

- Kempsey is the commercial and shopping district for the entire LGA, and while the applicant accepts that packaged liquor licence density is high in the Kempsey LGA, this is often the case in large regional areas with smaller populations.
- high crime rates attributed to the LGA are potentially associated with high levels of transient visitation compared to the local population size; and overall, there is a downward trend in crime rates.
- the store will be located within the shopping centre and near a major supermarket (Coles) that does not provide a liquor store; the proposed store location would provide convenience to customers who also shop for groceries.
- the fact sheet supplied by Durri Aboriginal Corporation Medical Service in their submission is not specific to Kempsey LGA (covering a geographical area from Tweed Heads to the north and Laurieton to the south) and relates to both drug and alcohol use. The data is

also over 4 years old. It cannot therefore be relied upon to provide an accurate picture of the Kempsey LGA.

- there is no evidence that there is a higher demand from people requiring treatment or assistance in this location compared with any other location nor that they are likely to be customers of this store.
- the store will not appeal to more vulnerable members of society due to higher price points and boutique range of products to be stocked.

### **Findings of concern and mitigation**

If the licence is granted, there is a risk that liquor sold at or from the premises would lead to an increase in alcohol-related crime, health, and other social and amenity issues, worsening these problems.

We are satisfied that the risks are mitigated by the:

- relatively small size of the premises which is also located within a shopping centre with no direct street frontage
- reduced licensed trading hours
- specialised liquor products conditions imposed which limits liquor sold from the premises to a range of higher end products, including craft beer, cider and spirits, along with boutique wine and champagne.
- low crime rates in Kempsey (not calculated). In these instances, BOCSAR considers the incident count to not be statistically significant due to a low population count
- lower rate of alcohol-attributable hospitalisations in the Kempsey LGA compared to NSW
- fact that the licence saturation for Kempsey may be skewed due to the low population size
- harm minimisation measures outlined in the plan of management and licence conditions set out in Schedule 1.

### **The material we considered**

We considered all the material we received about the application, including:

- completed application dated 13 December 2022
- completed Category B Community Impact Statement (CIS) dated 24 January 2023
- completed certifications of advertising dated 8 February 2023.
- plan of management documents for the premises, titled Plan of Management and dated 24 April 2023
- ASIC business records for the Applicant and associated companies
- floor plan for the premises, dated 19 November 2021, indicating the proposed licensed area.

Under [Guideline 6](#), we also considered: data published by Bureau of Crime Statistics and Research (BOCSAR), NSW Department of Health and Australian Bureau of Statistics (ABS), and relevant L&GNSW liquor licensing records.

Other relevant material

- submissions received
- correspondence between L&GNSW staff and the applicant between Date and Date in relation to the assessment of the Application

- Google map images extracted from the Google website showing the location and photos of the Premises in map view.

This decision will be published on the [Liquor & Gaming NSW website](#) in accordance with section 36C of the *Gaming and Liquor Administration Act 2007*.

### **If you're not happy with this decision**

If the applicant, or a person who was notified of the application and made a submission, is unhappy with this decision, they may apply to [NCAT](#) for a review of the decision.

An application for review must be made no later 28 days after being notified that the decision is published on the [Liquor & Gaming NSW website](#). There is a fee to lodge the application.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney or visit the [NCAT website](#).

### **If you have any questions**

Please contact the case manager, Max Costa, at [max.costa@liquorandgaming.nsw.gov.au](mailto:max.costa@liquorandgaming.nsw.gov.au) if you have any questions.

Yours sincerely



Caroline Lamb

**Chairperson**

For and on behalf of the **Independent Liquor & Gaming Authority**

## Schedule 1 – Licence conditions to be imposed

### Shop 13

No.	Condition to be imposed	Description
1.	<b>6-hour closure</b>	Section 11A of the <i>Liquor Act 2007</i> applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of six (6) hours between <b>03:00 AM and 09:00 AM</b> during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2.	<b>Restricted trading &amp; NYE</b>	<p>Good Friday      Not permitted</p> <p>December 24<sup>th</sup>    Normal trading Monday to Saturday, 8:00 AM to 12:00 midnight Sunday</p> <p>Christmas Day    Not permitted</p> <p>December 31<sup>st</sup>    Normal trading Monday to Saturday 10:00 AM to 12:00 midnight Sunday</p>
3.	<b>Social impact</b>	The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4.	<b>Liquor Accord</b>	The licensee or its representative must join and be an active participant in the local liquor accord.
5.	<b>Plan of management</b>	The premises is to be operated at all times in accordance with the Plan of Management dated <b>24 April 2023</b> as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
6.	<b>CCTV</b>	<p>1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises ("the premises") in accordance with the following requirements:</p> <ul style="list-style-type: none"> <li>(a) the system must record continuously from opening time until one hour after the premises is required to close,</li> <li>(b) recordings must be in digital format and at a minimum of ten (10) frames per second,</li> <li>(c) any recorded image must specify the time and date of the recorded image,</li> <li>(d) the system's cameras must cover the following areas: <ul style="list-style-type: none"> <li>(i) all entry and exit points on the premises, and</li> <li>(ii) all publicly accessible areas (other than toilets) within the premises.</li> </ul> </li> </ul> <p>2) The licensee must also:</p> <ul style="list-style-type: none"> <li>(a) keep all recordings made by the CCTV system for at least 30 days,</li> <li>(b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and</li> <li>(c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24</li> </ul>

No.	Condition to be imposed	Description
		hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.
7.	<b>Specialised liquor products</b>	<p><b>Specialised Liquor Products</b></p> <ol style="list-style-type: none"> <li>1) The licensee must ensure that only the following liquor products are sold or supplied by the licensed business ("Business"), except as provided by sub-clause 2:               <ol style="list-style-type: none"> <li>a. craft beer</li> <li>b. craft cider</li> <li>c. craft spirits</li> <li>d. boutique wines (including sparkling wines and champagne)</li> </ol> </li> <li>2) The licensee must ensure that a list of the product lines and products stocked by the Business at any one time is kept at the premises and made available for inspection on the request of a police officer, Liquor &amp; Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.</li> <li>3) For every liquor product that is available for sale under sub-clause 1, the licensee must maintain and make available for inspection on the premises documentation from the supplier confirming the location of production, and/or that the product meets the relevant definition specified in this condition.</li> </ol> <p><u>Definitions</u></p> <p>For the purposes of this condition:</p> <ol style="list-style-type: none"> <li>1. Craft beer is defined as beer that is not generally considered to be mainstream beer, and is produced by a craft brewer:               <ol style="list-style-type: none"> <li>(a) which is located in Australia and produces less than 40 million litres of beer per annum, or located overseas and produces less than 6 million barrels of beer per annum;</li> <li>(b) where not more than 25 percent of the brewery is owned or controlled (or equivalent economic interest) by an industry participant that is not itself a craft brewer; and</li> <li>(c) which will certify that the majority of its total beverage alcohol volume is in beers whose flavour derives from traditional or innovative brewing ingredients and their fermentation (flavoured malt beverages are not considered beers).</li> </ol> </li> <li>2. Craft cider is defined as cider that is not generally considered to be mainstream cider, and is produced by a craft producer:               <ol style="list-style-type: none"> <li>a. which is located in Australia and produces less than 40 million litres of cider per annum, or located overseas and produces less than 6 million barrels of cider per annum;</li> <li>b. where not more than 25 percent of the producer is owned or controlled (or equivalent economic interest) by an industry participant that is not itself a craft cider producer; and</li> <li>c. which will certify that the cider is made from liquid consisting only of juice (no concentrates).</li> </ol> </li> </ol>

No.	Condition to be imposed	Description
		<p>3. Craft spirits are defined as spirits that are not generally considered to be mainstream spirits and are:</p> <ul style="list-style-type: none"> <li>a. the product of a distillery that has maximum annual sales of less than 100,000 proof gallons or 52,000 cases, or in the case of blended spirits, the product of an independently owned and operated facility that uses any combination of traditional and innovative techniques such as fermenting, distilling, re-distilling, blending, infusing or warehousing to create products with a unique flavour profile; and</li> <li>b. distilled at a distillery where the spirit has either been run through a still by a craft distiller, or in the case of a blended spirit, the spirit has been distilled originally by a craft distiller.</li> </ul> <p>4. Boutique wine is defined as wine (other than sparkling wine or champagne) that is manufactured by or on behalf of a boutique wine company which crushes and bottles 250 tonnes or less annually under its own label and is independently owned (i.e. not owned by a larger wine company at the time wine is supplied to the Business).</p>
8.	<b>Incident register</b>	<ul style="list-style-type: none"> <li>1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident: <ul style="list-style-type: none"> <li>a. any incident involving violence or anti-social behaviour occurring on the premises,</li> <li>b. any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,</li> <li>c. any incident that results in a person being turned out of the premises under section 77 of the Liquor Act 2007,</li> <li>d. any incident that results in a patron of the premises requiring medical assistance.</li> </ul> </li> <li>2) The licensee must, if requested to do so by a police officer or Liquor &amp; Gaming NSW inspector: <ul style="list-style-type: none"> <li>a. make any such incident register immediately available for inspection by a police officer or Liquor &amp; Gaming NSW inspector, and</li> <li>b. allow a police officer or Liquor &amp; Gaming NSW inspector to take copies of the register or to remove the register from the premises.</li> </ul> </li> <li>3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.</li> </ul>