

Mr Brett Tobin
Hatzis Cusack Lawyers

bt@hatziscusack.com.au

29 November 2017

Dear Mr Tobin

APPLICATION NO: APP-0003065368
APPLICATION FOR: Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Sunday 10:00am – 8:00pm
APPLICANT: Mr Ian Charles Smith
PROPOSED LICENCE NAME: Petsolo Pty Ltd
PROPOSED PREMISES: 89 Northcote St
KURRI KURRI NSW 2327
ISSUE: Whether to grant or refuse an application for
a packaged liquor licence
LEGISLATION: Sections 3, 29, 30, 40, 45 and 48 of the
Liquor Act 2007

**INDEPENDENT LIQUOR & GAMING AUTHORITY DECISION
APPLICATION FOR A PACKAGED LIQUOR LICENCE – PETSOLO PTY LTD**

The Independent Liquor & Gaming Authority considered application number APP-0003065368 at its meeting on 15 November 2017 and, pursuant to section 45 of the *Liquor Act 2007*, decided to **refuse** the application.

If you have any enquiries about this letter, please contact the case manager via email to michael.fabits@liquorandgaming.nsw.gov.au.

Yours faithfully



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

STATEMENT OF REASONS

DECISION

1. On 9 June 2017, Mr Ian Charles Smith (“the Applicant”) lodged an application for a packaged liquor licence for premises located at 89 Northcote St KURRI KURRI NSW 2327 (“the Application”) with Liquor & Gaming NSW (“L&GNSW”) for determination by the Independent Liquor & Gaming Authority (“the Authority”).
2. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority decided to refuse the Application.
3. In making this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 29, 30, 31, 40, 45 and 48 of the Act, and the relevant provisions of the *Liquor Regulation 2008* (“the Regulation”).

MATERIAL CONSIDERED BY THE AUTHORITY

4. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. In accordance with the Authority’s Guideline 6, the Authority has also had regard to relevant L&GNSW liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, sourced by L&GNSW staff from publicly available sources.
7. The material considered by the Authority is listed in the Schedule, with a summary where appropriate.

LEGISLATIVE FRAMEWORK

8. The Authority has considered the Application in the context of the following legislative provisions.

Objects of the Act

9. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations and needs of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
10. In the pursuit of these objectives, section 3 requires the Authority to, in determining a liquor licence application, have due regard to the need to minimise alcohol-related harm, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Trading hours

11. Section 12 of the Act sets out the standard trading period for different types of liquor licences. Additionally, section 11A imposes a condition on all licences prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

Minimum procedural requirements

12. Section 40 of the Act prescribes the minimum procedural requirements for a liquor licence application to be validly made to the Authority.

Fit and proper person, responsible service of alcohol, and development consent

13. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
 - (a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
 - (b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - (c) the applicable development consent required for use of the premises for the proposed business is in force.

Community impact statement

14. Section 48 of the Act requires certain applications, including an application for a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
15. Section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter brought to its attention.

Provisions specific to packaged liquor licence

16. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.
17. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.
18. Section 30 requires a separate liquor sales area to be set up on the licensed premises if its primary business is not to sell liquor for consumption away from the premises.
19. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

KEY FINDINGS

20. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

Validity, procedural and trading requirements

21. The Authority finds that:
 - (a) the Application has been validly made and meets the procedural requirements under section 40 of the Act,
 - (b) the proposed trading hours for the Proposed Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods,

- (c) if the licence were to be granted, liquor would be sold and supplied in accordance with the authorisation conferred by a packaged liquor licence, as required by section 29 of the Act, and
- (d) sections 30 and 31 of the Act do not apply to the Application, as the Proposed Premises is not intended to operate as is contemplated by those sections.

Fit and proper person, responsible service of alcohol, and development consent

22. Pursuant to section 45 of the Act, the Authority is also satisfied that:

- (a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- (b) if the licence were to be granted, practices would be in place from the commencement of licensed trading at the Proposed Premises to ensure the responsible service of alcohol, having regard to the Applicant's Plan of Management, and
- (c) the requisite development consent is in force, based on Complying Development Certificate CN110338 issued by BCA Certifiers Australia Pty Ltd on 12 September 2013.

Community impact statement

23. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Proposed Premises on the local and broader communities.

24. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Kurri Kurri, and the relevant "broader community" comprises Cessnock Local Government Area ("the LGA").

Positive social impacts

25. The Authority notes that a similar application was made by the Applicant for the same address in 2014, which was refused. The Authority acknowledges that the proposal has since been revised in an effort to mitigate some of the concerns raised in respect of the previous application, including a reduction in the floor space of the proposed licensed area and consent to the imposition of conditions restricting the types of liquor products permitted to be sold.

26. The Authority accepts the Applicant's claim that the Proposed Premises would comprise a modern and well-presented packaged liquor facility, which would provide additional choice to residents of Kurri Kurri.

27. The Authority also accepts the Applicant's claim that the granting of the licence would provide an additional measure of convenience to residents living in the northern part of Kurri Kurri, in that they would be able to purchase packaged liquor closer to home, without having to attend Kurri Kurri's CBD. This convenience would be further enhanced by way of the availability of off-street car parking spaces located adjacent to the Proposed Premises.

28. The Authority is satisfied that there is a degree of local support for the Application, as evidenced by the many signatories to the petition provided by the Applicant. The Authority notes, however, that the letter from Marli Accommodation Services Pty Ltd suggests that its support is, at least in part, linked to the Applicant's proposal to provide ongoing

financial support to the organisation should the Application be granted, and has given less weight to the submission on this basis. It should be noted that Marli Accommodation Services Pty Ltd is in the process of establishing a womens' shelter in Kurri Kurri.

29. The Authority notes that no objection has been received from NSW Police. Furthermore, Cessnock City Council has advised that it does not object to the Application.

Negative social impacts

30. The Authority notes that both the local and broader communities have a significantly higher density of packaged liquor licences per 100,000 of population when compared to the corresponding NSW figure. The Authority is satisfied that Kurri Kurri's population is sufficiently provided for in respect of packaged liquor.
31. The Authority recognises that the local and broader communities have significant indigenous populations – comprising 7.6% of Kurri Kurri's population, its indigenous population equates to more than double the corresponding NSW figure. The Authority has also had regard to the ABS data indicating that, as at 2011, Kurri Kurri was extremely disadvantaged in comparison with other suburbs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage, ranking in the 1st decile. The LGA ranked in the 2nd decile when compared to other LGAs in NSW.
32. The Authority notes from the BOCSAR data that, for the year ending June 2017, the Proposed Premises is not located in any hotspots for any relevant offences. However, there are hotspots for domestic assault, non-domestic assault and malicious damage to property in Kurri Kurri suburb.
33. The Authority is troubled by evidence that some alcohol-related offences are occurring at unacceptably high rates in the local and broader communities. Incidents of alcohol-related domestic assault, alcohol-related assault and malicious damage to property occurred at markedly higher than average rates in both Kurri Kurri and Cessnock LGA in the year ending June 2017, indicating that a significant degree of alcohol-related harm is currently being experienced within the local and broader communities.
34. The Authority notes that data provided by NSW Health indicates that, whilst residents of the LGA are being hospitalised as a result of alcohol-related health issues at a lower than average rate, they are dying from alcohol-related health problems at a much higher than average rate.
35. The Authority considers the submission received from Barkuma Neighbourhood Centre Inc ("Barkuma") to be persuasive and credible. The submission raises a number of concerns in respect of the local Aboriginal community, including the prevalence of family violence and mental health problems, amongst other things. Furthermore, the Authority is satisfied that there is a degree of local opposition to the Application, as evidenced by the many signatories to the petition facilitated by Barkuma.
36. The Authority notes the extensive submission provided by the Applicant in response to the objections received by L&GNSW, however, on balance, remains very concerned by the rates of relevant offences and the various indicia of vulnerability to alcohol-related harm in the local and broader communities. The Authority is satisfied that it is likely that any liquor that were to be sold or supplied at the Proposed Premises would contribute to the prevailing concerning levels of alcohol-related harm being experienced in those communities.
37. The Authority is not satisfied that the risks associated with the granting of the Application would be sufficiently mitigated by the imposition of special licence conditions, the Applicant's revision of what was proposed in his 2014 application or the Applicant's adherence to the Plan of Management document lodged with the Application.

Overall social impact

38. Having considered the positive and negative impacts that are likely to flow from granting the licence, the Authority is not satisfied that the overall social impact of granting the licence would not be detrimental to the well-being of the local and broader communities.
39. Furthermore, the Authority is not satisfied that a decision to grant the licence would be consistent with the objects of the Act to regulate the supply of liquor and facilitate the responsible development of the liquor industry in line with community expectations and needs.
40. Accordingly, the Authority has decided to refuse to grant the Application.



Philip Crawford
Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <http://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

SCHEDULE

1. ABS SEIFA data based on the 2011 Census indicating that Kurri Kurri suburb ranked in the 1st decile compared to other suburbs in NSW, and Cessnock LGA ranked in the 2nd decile compared to other local government areas in NSW, on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. Complying Development Certificate CN110338 issued by BCA Certifiers Australia Pty Ltd on 12 September 2013.
3. HealthStats NSW data relating to alcohol attributable deaths by local government area, 2001-2002 to 2012-2013, indicating that the Smoothed Estimate of Standardised Mortality Ratio was 121.70 for Cessnock LGA for the period 2012-2013.
4. HealthStats NSW data relating to alcohol attributable hospitalisations by local government area, 2001-2003 to 2013-2015, indicating that the Smoothed Estimate of Standardised Separation Ratio was 85.70 for Cessnock LGA for the period 2013-2015.
5. 2016 Census Quickstats for Kurri Kurri suburb and Cessnock LGA.
6. Letter from Barkuma Neighbourhood Centre Inc objecting to the Application, attaching a petition objecting to the Application featuring 436 signatures, dated 28 February 2017.
7. National Police Certificate for the Applicant, issued 18 April 2017.
8. CIS Category B dated 9 June 2017.
9. Application form for a packaged liquor licence, lodged 9 June 2017.
10. Plan of the proposed licensed area lodged with the Application on 9 June 2017.
11. Certifications of Advertising Application signed by Mr Brett Tobin and the Applicant, dated 19 and 22 June 2017.
12. An email from Cessnock City Council advising that it has no objection provided that the conditions of the Complying Development Certificate are complied with, dated 5 July 2017.
13. BOCSAR Crime Hotspot Maps for Kurri Kurri and surrounding suburbs for the year ending June 2017.
14. NSW crime statistics for the year ending June 2017, published by BOCSAR, for Kurri Kurri suburb and Cessnock LGA. This data indicates that:
 - the rate of alcohol-related domestic assault incidents recorded by NSW Police for Kurri Kurri suburb was 243.0 per 100,000 persons, and for Cessnock LGA, was 214.8, well above the State-wide rate of 116.2 per 100,000 persons;

- the rate of alcohol-related non-domestic assault incidents recorded by NSW Police for Kurri Kurri suburb was 113.4 per 100,000 persons, and for Cessnock LGA, was 141.4, compared to the State-wide rate of 134.3 per 100,000 persons;
 - the rate of alcohol-related assault incidents recorded by NSW Police for Kurri Kurri suburb was 372.6 per 100,000 persons, and for Cessnock LGA, was 367.0, well above the State-wide rate of 265.8 per 100,000 persons; and
 - the rate of malicious damage to property incidents recorded by NSW Police for Kurri Kurri suburb was 1424.7 per 100,000 persons, and for Cessnock LGA was 1,083.0, well above the State-wide rate of 817.3 per 100,000 persons.
15. Liquor licensing records from L&GNSW as at 28 August 2017 indicating that, amongst other things:
- Kurri Kurri suburb had four packaged liquor licences, equivalent to 66.2 packaged liquor licences per 100,000 of population;
 - Cessnock LGA had 57 packaged liquor licences, equivalent to 102.6 packaged liquor licences per 100,000 of population; and
 - NSW had 2,475 packaged liquor licences, equivalent to 33.1 packaged liquor licences per 100,000 of population.
16. Extract from Google maps indicating the location of the Proposed Premises, dated 8 September 2017.
17. Plan of Management for the operation of the Proposed Premises, dated October 2017.
18. A letter from Hatzis Cusack Lawyers dated 16 October 2017, attaching a petition in support of the Application featuring 385 signatures.
19. Undated letter from Marli Accommodation Services Pty Ltd in support of the Application.