



Mr Malcolm John Walsh  
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Dear Mr Walsh

**Application for Packaged Liquor Licence  
Cudgegong River Park Kiosk, Yarrabin**

I refer to an application received by the Independent Liquor and Gaming Authority on 28 August 2014 made by Mr Malcolm John Walsh, seeking the grant of a new packaged liquor licence within the meaning of section 29 of the *Liquor Act 2007*.

The licence is sought to enable premises currently trading as the "Cudgegong River Park Kiosk", located at 500 Endacott-Kangaroo Ground Road, Yarrabin, NSW 2850 to sell liquor by retail for consumption off the premises.

As described in the Authority's Regulatory Delegations Manual, the Authority has delegated to the Manager of Licensing the power to grant certain liquor licence applications that fall within a designated risk threshold. This Application falls within the relevant threshold, enabling the matter to be determined under delegation.

Processing of the Application was delayed by reason that the delegate was not satisfied that the Applicant had provided sufficient information to enable the Application to be determined until October 2015.

The delegate considered the Application on 25 November 2015, and has decided to *refuse* the Application pursuant to section 45 of the Act. This decision was informally communicated in an email from Authority staff dated 25 November 2015.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. This letter attaches the delegate's statement of reasons, prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

If you have any enquires about this letter please contact the case manager, Ms Santina Causa via email at [santina.causa@ilga.nsw.gov.au](mailto:santina.causa@ilga.nsw.gov.au).

Yours faithfully

Micheil Brodie  
Chief Executive

17 FEB 2016

## STATEMENT OF REASONS

### INTRODUCTION

1. On 28 August 2014, the Independent Liquor and Gaming Authority (Authority) received an application (Application) made by Mr Malcolm John Walsh (Applicant).
2. The Application seeks the grant of a new packaged liquor licence within the meaning of section 29 of the *Liquor Act 2007* (Act) in order to enable the premises currently trading as the "Cudgegong River Park Kiosk", located at 500 Endacott-Kangaroo Ground Road, Yarrabin, NSW 2850 (Premises) to sell liquor by retail for consumption off the Premises.
3. The Application proposes that the Premises be licensed to sell or supply liquor for consumption off the Premises during the trading hours of 9:00am to 9:00pm on Monday through Saturday, and from 10:00am to 8:00pm on Sunday.
4. A submission provided with the Application seeks that the 6-hour daily closure period required by section 11A of the Act be fixed at between 3:00am and 9:00am.
5. The proposed licensed area of the new licensed business will comprise an area of 14 square metres within the kiosk of this Caravan Park. The Application proposes that the licensed business will not be permitted to sell or supply liquor for consumption off the Premises at any time when the kiosk is not trading.

### MATERIAL BEFORE THE DELEGATE

6. As described in the Authority's Regulatory Delegations Manual, the Authority has delegated to the Manager of Licensing (Delegate) the power to grant certain packaged liquor licence applications that fall within a designated risk threshold. This Application falls within the relevant threshold, enabling the matter to be determined under delegation.
7. Before the Delegate was the Application, the accompanying community impact statement (CIS), further submissions and other relevant material as follows:
8. Liquor Licence Application Form dated 13 August 2014. This Form discloses that the business owner of the "Cudgegong River Park Kiosk" business currently trading on the Premises is a corporation, NSW Crown Holiday Parks Trust (ABN 26 087 692 248). The property owner of the Premises is identified as NSW Trade and Investment, Crown Lands (ABN 72 189 919 072).
9. The Application Form also discloses that the Applicant was the manager of the Club House Hotel in Gunnedah between 31 August 2004 and 8 December 2012.
10. With regard to the practices that the Applicant submits will be in place on the Premises to ensure that liquor is sold, supplied or served responsibly, and the steps to be taken to prevent intoxication on the Premises, the Applicant makes the brief submission that:
  - a) all staff are to have Responsible Service of Alcohol (RSA) qualification and training
  - b) light beer, soft drink and water will also be available for sale
  - c) photo ID will be required for proof of age
  - d) no packaged liquor is to be opened on Kiosk premises
  - e) hot food will be available at all times.
11. Attached to the Application Form are copies of stakeholder notices dated 13 August 2014 signed by the Applicant, notifying the Application to various stakeholders

required by the liquor legislation including the Licensing Police Officer of Mudgee Police Station, the Wellington Shire Council (Council) and the site notice placed on the Premises.

12. [The Delegate notes that a copy of a notice that was provided to Council, endorsed by Mr Peter Harlow, Council's Strategic and Planning Services Director on 14 August 2014, indicates that "development consent is not required to permit the proposed activity".]
13. Category B CIS Form dated 20 August 2014. The CIS Form states that the stakeholders consulted on the Application include the Licensing Police Officer of Mudgee Police Station, Wellington Shire Council, Roads and Maritime Services (RMS), the Department of Health (DOH) and the Department of Family and Community Services (FACS).
14. The Applicant submits that no issues were raised by any of the stakeholders consulted on the Application and that Council "have no objection to this Application and do not require a Development Application (DA)".
15. The Applicant notes in the CIS Form that there are "no residents or commercial activity within 50 to 100 metres of the Kiosk".
16. The Applicant also states in the CIS Form that the business conducted on the Premises, which is situated on Crown Land, is a holiday park that does not have any permanent residents living on site other than the Applicant and his wife (who are the managers of the Premises) and their son.
17. The Applicant states that the purpose of the Application is "to sell packaged liquor to visitors to the park who pay to camp".
18. National Police Certificate for the Applicant dated 17 December 2014 indicating no disclosable court outcomes or outstanding matters recorded against the name of Mr Walsh and a copy of the Applicant's driver's licence.
19. Diagram of the Premises outlining the proposed licensed area of the licensed business to operate on the Premises.
20. Email from Authority staff to the Applicant dated 29 January 2015. In this communication, the Applicant was requested to provide:
  - a) A signed copy of the Certificate of Advertising notifying the Application.
  - b) Further information in relation to the proposed licensed premises, such as whether products other than liquor will be sold.
  - c) An amended plan of the proposed licensed area clearly marking the boundary of the licensed area in red and providing labels for all internal and external areas of the licensed area.
  - d) A House Policy and a statement about what practices will be in place at the licensed premises to ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that those practices will remain in place.
  - e) Confirmation that the proposed trading hours of the licensed premises are from 9:00am to 9:00pm on Monday through Saturday and 10:00am to 8:00pm on Sunday.
  - f) Evidence (eg, a final occupation certificate or photographs of the internal and external areas) demonstrating that the Premises is ready to trade.
21. The Applicant was also directed to the provisions of sections 30 and 31 of the Act and requested to confirm that there is no other takeaway liquor service reasonably available

to the public in the neighbourhood of the Premises, and to provide information indicating that granting the Application will not encourage drink driving or other liquor related harm.

22. Email submission from the Applicant to the Authority dated 3 February 2015 confirming the proposed trading hours of the Premises are from 9:00am to 9:00pm on Monday through Saturday and from 10:00am to 8:00pm on Sunday, and attaching a Certification of Advertising Application Form dated 3 February 2015; the site notice placed on the Premises; and copies of stakeholder notices dated 13 August 2014 signed by the Applicant, notifying the Application to Council and Police.
23. Also attached to this email is a National Police Certificate for the Applicant dated 17 December 2014 indicating no disclosable court outcomes or outstanding matters recorded against the name of Mr Walsh, an amended diagram showing the licensed area of the Premises and photographs of the internal and external areas of the Cudgegong River Park Kiosk.
24. The Applicant submits that the following goods and services, other than packaged liquor products, will be available on the Premises:
  - a) Limited groceries
  - b) Drinks
  - c) Ice cream
  - d) Chips
  - e) Coffee
  - f) Hot food
  - g) Ice
  - h) Petrol
  - i) Swap 'n' Go gas cylinders
  - j) Fishing licences
  - k) Tobacco – tobacco licences
  - l) Fishing equipment such as fishing lines and sinkers
  - m) Day entry codes for day visitors
  - n) Long term casual site holders are required to pay site fees
  - o) Campers are required to pay for camping facilities
  - p) Providing information to visitors/tourists to the Park
  - q) Telstra mobile reception.
25. In relation to the practices that will be in place at the Premises to ensure that liquor is sold, supplied or served responsibly on the Premises, the Applicant states the following:
  - a) All staff to have RSA qualification and training
  - b) Light beer, soft drink and water will also be available for sale
  - c) Photo ID required for proof of age upon request
  - d) No packaged liquor to be opened on Kiosk premises
  - e) Hot food available during trading hours.
26. The Applicant also attaches a *House Policy* for the Premises. The full text of this brief Policy is as follows:

*It is a policy of this Park to endorse the following:*

  - *Takeaway alcohol is NOT to be consumed on the kiosk premises*
  - *Takeaway alcohol will NOT be sold to customers who are intoxicated*
  - *Takeaway alcohol MUST NOT be purchased and given to minors*
  - *Photo ID MUST be provided upon request.*
27. Finally, in relation to subsections 31(1)(a) and (b) of the Act, the Applicant submits that "there is no takeaway liquor service in Yarrabin that will be available to the public – the nearest packaged liquor outlet is located 38km away, being the Court House Hotel,

Mudgee". The Applicant also states that should the Application be granted, the licensee will participate in the local liquor accord.

28. Email from Authority staff to the Applicant dated 4 February 2015 requesting further clarification of the measurements of the Kiosk and the boundary of the proposed licensed areas, with an amended plan indicating how the licensed area is separated from the rest of the Premises with a physical barrier, as required by section 30 of the Act.
  29. Email submission from the Applicant to the Authority dated 11 February 2015 in response to the email dated 4 February 2015. In this email, the Applicant states that the area of the Kiosk is 66 square metres and the boundary of the proposed licensed area is 14.04 square metres. The Applicant states that the licensed area will be separated from the rest of the Premises by way of a "roped off barrier". The Applicant attaches an amended plan of the Premises, marking the proposed licensed area within the Premises in red.
  30. Submission from the Compliance and Enforcement Division of the Office of Liquor, Gaming and Racing (OLGR) dated 27 February 2015 objecting to the Application. Briefly, OLGR submits that the type of licence and proposed business model (a packaged liquor licensed premises) is assessed to be of "low risk".
  31. OLGR contend that the Premises is located within a 150 hectare park situated on Crown Land which is used as a public recreational and camping reserve by families, fishermen, boating and water sport enthusiasts, campers, bush walkers and bird watchers, and that there are "no other licensed premises" within the Cudgegong River Park reserve.
  32. OLGR contend that the geographical area of Yarrabin is situated on the border of two local government areas (LGAs), being the Mid-Western Regional and Wellington LGAs. The Mudgee Local Area Command (LAC) of NSW Police currently have jurisdiction in respect to this area.
  33. OLGR submit that data sourced from the NSW Bureau of Crime Statistics and Research (BOCSAR) shows that, between October 2013 and September 2014:
    - a) the rates of *alcohol related assaults (both domestic and non-domestic)* recorded as occurring in the Mid-Western Regional and Wellington LGAs were 545 and 442 respectively (per 100,000 persons of population), compared to 321 per 100,000 persons of population for the whole of NSW.
    - b) the rates of *alcohol related disorderly conduct offences* recorded as occurring in the Mid-Western Regional and Wellington LGAs were 183 and 170 respectively (per 100,000 persons of population), compared to 105 per 100,000 persons of population for the whole of NSW.
- [OLGR note that BOCSAR statistics based on the Mid-Western Regional and Wellington LGAs, rather than the State suburb of Yarrabin itself were used by reason that "the BOCSAR website was unable to provide accurate suburb specific data for Yarrabin as a stand-alone suburb which could be compared against the State average".]
34. OLGR submit that the above figures indicate that both LGAs appear to have a "moderate concentration" of alcohol related anti-social behaviour when compared with the State average.
  35. OLGR observe that the Applicant has provided a *House Policy* that contained only four points, all of which are legislative requirements for the type of licence sought and that must be adhered to in any event.

36. OLGR submit that the Applicant has:

*...failed to address how they intend to manage and mitigate the risks that will be associated with them selling/supplying liquor at the location (which carries with it its own set of risks due to the location and primary purposes of the park/reserve). It is not sufficient to simply deflect responsibility once a patron has left the proposed licensed area, as the applicant has a duty of care and must ensure that the local and broader community are not adversely impacted by the sale/supply of liquor at the proposed venue.*

37. OLGR submit that there does not appear to be a Police submission in response to the Application. However, on 26 February 2015, OLGR staff contacted Senior Constable Jason Turnbull from the Mudgee LAC, who advised that the proposed venue was located in a remote area and that the best case scenario for the estimated Police response time to the location of the Premises is forty (40) minutes, assuming there were Police units available and no traffic or other diversions *en route*.

38. OLGR note that Senior Constable Turnbull expressed concern regarding the availability of liquor at the reserve and the risks that arise with respect to liquor and alcohol related anti-social behaviour. Senior Constable Turnbull is reported to have asked OLGR whether the Applicant had submitted a Plan of Management in relation to the Application, and was advised that the Applicant had not.

39. OLGR note that Mr Peter Harlow, the Strategic and Planning Services Director at Wellington Shire Council has advised that development consent was not required to permit the proposed activity.

40. OLGR submit that a review of Compliance and Enforcement Division records discloses that the Applicant, Mr Malcolm John Walsh was previously the licensee of the Club House Hotel in Gunnedah (liquor licence number LIQH400113390) and has held multiple limited licences for various sporting events.

41. OLGR advise that while the Applicant was the licensee of Club House Hotel, he was the subject of several compliance breaches detected in 2008 and 2011 [the Delegate notes that the number or nature of these breaches is not specified].

42. OLGR state that the Club House Hotel was also declared a "Level 3" venue for the purposes of the Declared Premises Scheme in Schedule 4 to the Act during four out of the six rounds of assessment that were applicable whilst the Applicant was the licensee (Rounds 6, 7, 8, 9, 10 and 11).

43. OLGR state that the Club House Hotel was also designated a declared premises in Round 11, however the Applicant was the licensee for only the first two months of that Round.

44. The OLGR submission concludes that the Director of Compliance and Enforcement objects to the Application on the basis that the Application:

*...may result in an increase in alcohol related harm and anti-social behaviour in an area that is not only promoted as being family friendly but is ill equipped to deal with issues of this nature should they arise.*

45. Email from Authority staff to the Applicant dated 27 February 2015 providing the OLGR submission and inviting the Applicant to make any submissions in reply.

46. Email from the Applicant to the Authority dated 9 March 2015 seeking clarification as to what further information the Applicant is required to provide in response to the OLGR submission.
47. Email from Authority staff to the Applicant dated 9 March 2015 advising the Applicant that he may address each of the issues raised in the OLGR submission so that any further submissions from the Applicant are before the Delegate when the Application is determined. Authority staff advised the Applicant that he may provide, for example, an amended *House Policy* for the Premises or more detailed information about his experience as a licensee; nightly patrols of the Park at 6:00pm and 10:00pm and the number of campers that use the park. The Applicant was also invited to comment on the number and nature of offences against the Act that occurred while the Applicant was previously a licensee of licensed premises, the reasons for the offences and the ways in which any breaches were rectified.
48. Email submission from the Applicant to the Authority dated 12 March 2015 addressing the issues raised in the OLGR Report. Briefly, the Applicant makes the following submissions:
- a) The duties of the managers of the Premises will include nightly patrols throughout the Park at 6:00pm and 10:00pm.
  - b) There is only one entrance into and out of the Park through the boom gates, which is monitored by electronic surveillance.
  - c) All vehicle registrations are entered into the booking program (Newbook) which in turn generates an access code. Vehicles with swipe cards are recorded on the Evolution program attached to the boom gate. The booking program also provides a nightly report on campers and site holders that are staying in the Park.
  - d) The boom gate operates from 6:00am to 8:00pm for those visitors without swipe card access.
  - e) Visitors requiring an access/exit code must come to the office and pay for a code.
  - f) The Applicant submits that he was the licensee of the Club House Hotel in Gunnedah between 31 August 2004 and 8 December 2012, during which time he "had numerous amounts of off-premises licence functions". The Applicant was also the President of the Gunnedah Jockey Club for 10 years, during which time no incident had ever arisen from any race meetings.
  - g) During his tenure as licensee, the Applicant submits that he worked with the local licensing sergeant of NSW Police and also Gunnedah Shire Council to address any issues of concern regarding late trading on Friday nights by "voluntarily increasing security, placing security cameras throughout the hotel, no shots after 10:00pm, no glass after 10:00pm".
  - h) The Applicant further submits that he had various meetings with Inspector Paul Johnstone of Gunnedah Police and also met with the Raptor Squad Sergeant in relation to issues and concerns resulting from a local outlaw motorcycle gang (Gladiators). The Applicant contends that he moved a motion at the Local Liquor Accord meeting to ban outlaw motorcycle gangs wearing their club colours in the hotel, and the Club House Hotel was "the first hotel in Gunnedah" to implement this on its House Policy.
  - i) The Applicant believes that he had "done everything within my power as Licensee" to ensure a safe, responsible place of entertainment and that he had built a "good rapport" with Inspector Paul Johnstone of Gunnedah Police and Gunnedah Shire Council.
49. Attached to this submission is a copy of the access code for the boom gate and a revised *House Policy* for the "Cudgegong River Holiday Park Kiosk", which states as follows:

*It is a policy of this Park to endorse the following:*

- *Takeaway alcohol is NOT to be consumed on the Kiosk premises*
- *Takeaway alcohol will NOT be sold to customers who are intoxicated*
- *Takeaway alcohol MUST NOT be purchased and given to minors*
- *Photo ID MUST be provided upon request*
- *Speed limits within the park at all times are 15km*
- *No loud noise after 10pm*
- *No unregistered vehicles (bikes, cars, boats) allowed in the park*
- *No weapons of any kind (guns, bows, hunting knives, etc.) allowed in the park*
- *Helmets must be worn while riding bicycles, skateboards, scooters, etc.*
- *No illicit drugs allowed in the park.*

50. Email from Licensing Senior Constable Jason Turnbull of NSW Police, Mudgee Police Station (Police) dated 31 March 2015 providing a brief submission on the Application. The full text of this email states:

*I have reviewed the application for the Cudgegong River Park Kiosk to hold a packaged liquor licence. The only issues of which I would have concerns are that the location would take about 40 minutes for the nearest emergency vehicle (Police or Ambulance) to arrive if an incident were to arise requiring a response at the Park. I am unable to provide any submission relating to the Application as the Applicant has previous experience working in the hospitality industry, however my concerns are how will they police intoxication issues once complaints are received from other patrons/campers. Therefore I would request that the Applicant submit a detailed Plan of Management outlining the procedures should an incident occur involving alcohol and underage drinking, etc.*

51. Email from Authority staff to the Applicant dated 1 April 2015 providing the brief submission received from NSW Police and inviting the Applicant to make any submissions in reply, noting that Police request that the Applicant provide a Plan of Management in relation to the operation of the Premises.
52. Email submission from the Applicant to the Authority dated 15 May 2015 attaching an email from the Applicant to Licensing Senior Constable Jason Turnbull dated 27 April 2015.
53. Attached to that email is a one-and-a-half page Plan of Management for the Premises which contains conditions pertaining to the *House Policy*, employees' duties; trading hours; signage; neighbourhood amenity; noise control; deliveries and waste removal; maintenance; security and incident procedures.
54. The Applicant also attached a copy of the revised *House Policy* for the Kiosk; the access code for the boom gate; the additional information provided in the Applicant's previous submission dated 12 March 2015; photographs of the Premises and a diagram of the Premises showing the proposed licensed area.
55. Email from Authority staff to the Applicant dated 6 August 2015 advising that the Authority considered the Application at its meeting on 29 July 2015 but deferred its determination by reason that the "liquor sales area" (as defined by section 30 of the Act) must have a separate cash register and be adequately separated from those parts of the Premises in which other activities are carried out.
56. The Applicant was requested to address section 30 of the Act to show how the Premises will properly satisfy this requirement and to further amend the floor plan to show the location of the separate cash register in the liquor sales area. The Applicant was also advised that if the Authority is minded to grant the Application, the following further condition will be imposed on the licence:



*The licensee will ensure the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.*

57. Email submission from the Applicant to the Authority dated 28 August 2015 providing an amended floor plan and photograph showing the liquor sales area and cash register.
58. Email from Authority staff to the Applicant dated 13 October 2015 seeking the Applicant's consent to the condition referred to in the email from Authority staff dated 6 August 2015 in relation to the separation of the liquor sales area from the other areas of the Premises by means of a fixed, solid and permanent barrier.
59. Email submission from the Applicant to the Authority dated 14 October 2015 providing the Applicant's consent to the above condition and attaching a photograph of the Kiosk with the liquor sales area separated from the other areas of the Premises.
60. Email from Authority staff to the Applicant dated 26 October 2015 advising that the Delegate had considered the new information provided, but the Delegate was not satisfied that the photographs provided by the Applicant are sufficient evidence that there was a separate cash register for the liquor sales area of the Premises. Authority staff further advised the Applicant that the material provided did not indicate the presence of any other cash register. The Applicant was requested to confirm whether there is a separate cash register on the Premises for the parts of the business that are unrelated to the sale or supply of packaged liquor, as per the requirement in section 30 of the Act.
61. Email submission from the Applicant to the Authority dated 27 October 2015 providing an amended floor plan confirming that there is a point-of-sale cash register for non-liquor sales and five further photographs showing the inside of the Premises.
62. Email submission dated 20 November 2015. The Applicant was invited to consent to a licence condition prescribing a 7:00pm close time to apply Monday through Sunday. The Applicant provided consent to a 7:00pm closing time via telephone on 20 November 2015.
63. Authority licence density data, recording that the Wellington LGA has:
  - a) a rate of 152.94 packaged liquor licences per 100,000 persons, compared with a rate of 32.85 packaged liquor licences per 100,000 persons for NSW as a whole
  - b) a rate of 58.82 club licences per 100,000 persons, compared with a rate of 20.48 club licences per 100,000 persons for NSW as a whole
  - c) a rate of 117.65 "full" hotel licences per 100,000 persons, compared with a rate of 30.36 "full" hotel licences per 100,000 persons for NSW as a whole.
64. Authority licensing records dated June 2015. These records, which are updated regularly and available for purchase from the OLGR, indicate that as of June 2015 within the Wellington LGA, there are:
  - a) twelve packaged liquor licensed premises
  - b) thirteen "full" hotel licensed premises
  - c) three registered club licensed premises.
65. The Delegate notes that packaged liquor licensed premises, "full" hotel licensed premises (as distinct from hotels designated as general bars) and club licensed premises are all liquor licence types that have the authorisation to sell liquor for takeaway and consumption off the licensed premises. Authority licensing records disclose a total of 28 licensed premises falling within those three categories across the Wellington LGA.

66. The Delegate notes that the permanent population of the State suburb of Yarrabin is fewer than 3,000 persons.
67. Authority licensing records indicate that there are currently no licensed premises within the State suburb of Yarrabin. However, within the neighbouring suburb of Grattai (to the east of Yarrabin), there is one packaged liquor licensed premises.
68. Publicly available BOCSAR mapping data before the Delegate for January 2014 to December 2014. This mapping data indicates that the Premises is not located within or near any hotspots for the concentration of *domestic assault* events, *non-domestic assault* events or events involving *malicious damage to property*.
69. Data sourced from BOCSAR for calendar year 2013 detailing rates of offences for the Wellington LGA compared to NSW as a whole. This data details rates of both *alcohol related incidents* and *non-alcohol related incidents*. It indicates that for calendar year 2013, for the Wellington LGA:
- a) the rate of *domestic violence assault* incidents recorded across the LGA was 659 per 100,000 persons, substantially above the rate of 410 for the State as a whole
  - b) the rate of *non-domestic assault* incidents recorded across the LGA was 1,083 per 100,000 persons, substantially above the rate of 489 for the State as a whole
  - c) the rate of *malicious damage to property* incidents recorded across the LGA was 3,306 per 100,000 persons, substantially above the rate of 1,102 for the State as a whole
  - d) the rate of *offensive conduct* incidents recorded across the LGA was 165 per 100,000 persons, substantially above the rate of 107 for the State as a whole.
70. With regard to the rate of offences that were also recorded by Police as "alcohol related", the BOCSAR data discloses that:
- a) the rate of *alcohol related domestic assault* incidents across the Wellington LGA was 200 per 100,000 persons, substantially above the rate of 145 for the State as a whole
  - b) the rate of *alcohol related non-domestic assault* incidents in the LGA was 271 per 100,000 persons, substantially above the rate of 191 for the State as a whole
  - c) the rate of *alcohol related malicious damage to property* incidents across the LGA was 212 per 100,000 persons, substantially above the rate of 122 for the State as a whole
  - d) the rate of *alcohol related offensive conduct* incidents recorded across the LGA was 106 per 100,000 persons, substantially above the rate of 83 for the State as a whole.
71. Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS) in 2011. This data indicates that the State suburb of Grattai [the Delegate notes that data for the suburb of Yarrabin is not available] is ranked in the fifth decile on the Index of Relative Socioeconomic Advantage and Disadvantage (IRSAD) for all suburbs in NSW. The Wellington LGA as a whole is ranked in only the first decile on the IRSAD for all LGAs in NSW (with a ranking of 10 being the most socioeconomically advantaged).

## LEGISLATION

72. In determining the Application, the Delegate has considered the relevant provisions of the Act, including the statutory objects and considerations that are prescribed by section 3, which states as follows:

### **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.*

73. Section 45 of the Act provides the power pursuant to which the Delegate may grant, or refuse to grant, an application for a new liquor licence. Relevantly, this section states as follows:

#### **45 Decision of Authority in relation to licence applications**

- (1) *The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.*
- (2) *The Authority may, in such circumstances as the Authority considers appropriate, treat an application for a licence as having been withdrawn.*
- (3) *The Authority must not grant a licence unless the Authority is satisfied that:*
  - (a) *the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and*
  - (b) *practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and*
  - (c) *if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates – that development consent or approval is in force.*

*Note: Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.*

74. Division 5 of the Act makes provision for packaged liquor licences. Relevantly, sections 29 to 31 of the Act state as follows:

#### **29 Authorisation conferred by packaged liquor licence**

- (1) *Retail sales*

*A packaged liquor licence authorises the licensee to sell liquor by retail in sealed containers on the licensed premises, for consumption away from the licensed premises only:*

  - (a) *during the standard trading period or such other period as may be authorised by an extended trading authorisation, or*
  - (b) *in the case of any Sunday that falls on 24 December-from 8 am (or such earlier time as may be authorised by an extended trading authorisation) to 10 pm on that day.*
- (2) *No retail trading on restricted trading days*

*Despite subsection (1), a packaged liquor licence does not authorise the licensee to sell liquor by retail on a restricted trading day.*
- (3) *Selling liquor by wholesale or to employees*

*A packaged liquor licence also authorises the licensee:*

- (a) to sell liquor by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and
  - (b) to sell or supply liquor, at any time on the licensed premises, to the employees of the licensee or of a related corporation of the licensee.
- (3A) An extended trading authorisation must not authorise the sale after 10 pm on any day of liquor for consumption away from the licensed premises.
- (4) **Tastings**  
A packaged liquor licence also authorises the licensee to sell or supply liquor, on the licensed premises and during the trading hours permitted by subsection (1), otherwise than in sealed containers to customers and intending customers for consumption while on the licensed premises, but only for the purposes of tasting.

**30 Liquor sales area required if bottle shop is part of another business activity**

- (1) If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises ("the liquor sales area") that is adequately separated from those parts of the premises in which other activities are carried out.
- (2) The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.

**31 Restrictions on granting packaged liquor licences**

- (1) A packaged liquor licence must not be granted for premises that comprise a general store unless the Authority is satisfied that:
  - (a) in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and
  - (b) the grant of the licence would not encourage drink-driving or other liquor-related harm.
- (2) A packaged liquor licence must not be granted for premises comprising a service station or take-away food shop.
- (3) In this section:
  - "**general store**" means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.
  - "**service station**" means premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.
  - "**take-away food shop**" means premises that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises).

**COMMUNITY IMPACT TEST**

75. Under section 48(5) of the Act, the Delegate *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Delegate is satisfied, having regard to the CIS and any other matter the Delegate is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

76. Section 48(5) of the Act states as follows:

**48 Community impact**

- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
  - (a) the community impact statement provided with the application, and
  - (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions), that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.

77. The CIS usually provides the Delegate with information about the views of relevant stakeholders and other aspects of the local community in which the proposed licensed premises is to be located. This includes, for example, the proximity of the licensed premises to hospitals or health facilities, nursing homes, schools and places of worship.
78. While this Application for a packaged liquor licence is a "relevant application" for the purposes of section 48(2) of the Act, and the material before the Delegate gives rise to substantial concerns as to whether the requirements of section 48(5) will be satisfied, the Delegate has not considered it necessary to make findings on the community impact test prescribed by section 48(5) of the Act by reason that the Application has been refused on the grounds stated below.

## REASONS FOR REFUSAL

79. The Delegate has critically examined the Application and all of the material before it and has decided to *refuse* the Application pursuant to section 45 of the Act, by reason that the Delegate is not satisfied, on the material before it, that the proposed new licensed premises will satisfy the requirements of section 45(3)(b) of the Act should the Application be granted.
80. The Delegate is not satisfied that there is sufficient certainty or clarity as to *how* the Applicant will satisfy the requirements of section 45(3)(b) of the Act that practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the Premises and that all reasonable steps are taken to prevent intoxication on the Premises, and that those practices will remain in place.
81. First, the submissions made by the Applicant in the Application Form in relation to the practices that will be in place on the Premises to ensure that liquor is sold, supplied or served responsibly on the Premises were very limited. The Delegate notes that three of the five brief points stated by the Applicant (all staff to have RSA qualifications and training; photo ID required for proof of age upon request and no packaged liquor to be opened on Kiosk premises) are minimum legislative requirements.
82. The Delegate notes the Applicant's briefly stated submissions in the Application Form that light beer, soft drink and water will also be available for sale and that hot food will be available during the licensed trading hours. However, there is insufficient evidence or material before the Delegate demonstrating how these practices will be in place and how they apply in the context of a packaged liquor licensed premises.
83. The Delegate notes that the Applicant has only provided a very brief list of the products and/or services available at the Premises, and has not submitted a menu or any other document detailing the nature of the "hot food" that will be sold on the Premises.
84. Further, the revised *House Policy* provided by the Applicant in May 2015 is very brief, containing only four points in relation to the responsible service of alcohol, all of which are legislative requirements. The Delegate observes that this *House Policy* appears to be a general policy with regard to the operation of the Caravan Park with four liquor related points inserted at the beginning. It does not present as a comprehensive or even adequate plan designed to deal with the supply of liquor by a packaged liquor licensed business in the circumstances identified by the Applicant.
85. The Delegate also notes that Police have requested that the Applicant provide a detailed Plan of Management in relation to the Premises. The Delegate is not satisfied that the

one-and-a-half page Plan of Management submitted by the Applicant in response to that enquiry from Police is adequate for the purposes of this Application.

86. Second, the location of the Premises is problematic and the proposed patronage, as indicated by the Applicant, will be transient (campers on the site). The Premises is situated in a very remote location within the Cudgegong River Park, which has an area of over 150 hectares. The Delegate notes with concern the Police advice that it would take approximately 40 minutes for Police or other emergency services to respond to any liquor related incidents that may occur on or near the Premises.
87. The Delegate notes and accepts that the Applicant was previously the licensee of the Club House Hotel in Gunnedah for a period of eight years, and that he has provided an overview of some of the comprehensive harm minimisation measures that he implemented during his tenure as licensee. However, the Authority is not satisfied, despite this experience, that the Applicant has provided an adequate Plan of Management or House Policy for the supply of packaged liquor in the particular circumstances proposed by the Application.
88. Further, the Delegate notes with concern that the Applicant was provided an opportunity to make submissions addressing these alleged breaches of the Act specified in the email from Authority staff dated 9 March 2015, yet he failed to do so.

## CONCLUSION

89. The Delegate notes that the proposed licensed area of the Premises is of a very small scale (14 square metres) and the intention is for the business to supply liquor for consumption off the Premises by visitors to the Caravan Park.
90. The Delegate is satisfied that the requirements of section 30 of the Act have been met, in that the liquor sales area of the Premises will be adequately separated from those parts of the Premises where other activities are carried out by way of a physical rope barrier.
91. The Delegate also notes the Applicant's statement that if the Application is granted, the licensee of the Premises will participate in the local liquor accord. The hours proposed by the Applicant have been reduced by consent so that liquor sales will close at 7:00pm on each night of the week, a reduction from the scope of the initial Application.
92. However, the Delegate is not satisfied that the Applicant has demonstrated with sufficient specificity, certainty and clarity *how* the Applicant will satisfy the requirements of section 45(3)(b) of the Act which requires that practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the Premises and that all reasonable steps are taken to prevent intoxication on the Premises, and that those practices will remain in place.
93. The Delegate is satisfied that the Application, revised *House Policy* and Plan of Management submitted by the Applicant are inadequate, and mostly concern matters pertaining to the operation of the Caravan Park generally rather than controls and procedures addressing the specific issues and hazards likely to be encountered over time by a business that sells packaged liquor by retail.
94. Although the Application is refused and finalised, it would be open to the Applicant to consider making a fresh application with a better developed CIS and supporting documents that attend to the deficiencies identified in this decision letter while attending to the other minimum requirements of the legislation, including the social impact test. The

Delegate observes that the Applicant may well benefit from professional advice, but that is a matter for the Applicant.

95. By reason that the Application has been refused by a failure to satisfy the Delegate as to section 45(3)(b) of the Act, the Delegate has not needed to make findings on the overall social impact test prescribed by section 48(5) of the Act.
96. In making this decision, the Delegate has had regard to all of the objects and considerations prescribed by section 3 of the Act, but must consider section 3(2)(a), the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour); section 3(2)(b), the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor and section 3(2)(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. These statutory considerations should have been better addressed when the Applicant framed its proposal in respect of the Premises.
97. The Application is refused pursuant to section 45(1) of the Act.



Micheil Brodie  
Chief Executive

DATED 17 FEB 2016