



George Smith  
c/o Design Collaborative  
Level 3, 225 Clarence Street  
Sydney NSW 2000

23 August 2016

Dear Mr Smith,

**APPLICATION NO:** 1-4280008121  
**APPLICATION FOR:** Packaged Liquor Licence Removal  
**CURRENT TRADING HOURS:** Monday to Saturday 5:00AM – 10:00PM  
Sunday 10:00AM – 10:00PM  
**PROPOSED TRADING HOURS:** Monday to Sunday 10:00AM-10:00PM  
**APPLICANT:** Christopher Loth  
**PROPOSED LICENSED PREMISES NAME:** Annandale Cellars  
**PREMISES ADDRESS:** Removal from 119 Johnston St, Annandale, NSW 2038 (Current Premises) to 91 Booth St, Annandale, NSW 2038 (Proposed Premises)  
**ISSUE:** Whether to grant or refuse an application for packaged liquor licence removal and/or impose conditions for that licence.  
**LEGISLATION** Sections 3, 29, 30, 31, 40, 45, 48 and 59  
*Liquor Act 2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION - APPLICATION TO REMOVE LIQUOR LICENCE – ANNANDALE CELLARS**

The Independent Liquor and Gaming Authority considered the Application at its meeting on 27 July 2016 and pursuant to section 59 of the *Liquor Act 2007* (Act), decided to **approve** the removal of the licence on Application number 1-4280008121 subject to the following conditions:

1. Trading Hours  
Monday to Sunday 10:00AM – 10:00PM

2. The liquor licence remains at 119 Johnston St, ANNANDALE, NSW 2038 subject to the same conditions and trading hours that were immediately in force before this approval was granted until such time as the Independent Liquor & Gaming Authority is notified that the licence has been moved.
3. Retail Sales

Good Friday	Not permitted
December 24 <sup>th</sup>	Normal trading Monday to Saturday, 8:00AM to 10:00PM Sunday
Christmas Day	Not permitted
December 31 <sup>st</sup>	Normal trading
4. Notwithstanding this approval, the licence is not to be exercised at 91 Booth Street, Annandale NSW 2038 unless and until the Independent Liquor and Gaming Authority has been provided with evidence that the premises is complete and ready to trade.
5. Section 11A of the Liquor Act 2007 applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 4:00AM and 10:00AM 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.
6. The business authorised by this licence must not operate with a greater overall level of social impact on the well being of the local and broader community than what could be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of removing this licence to premises at 91 Booth Street, Annandale NSW 2038
7. The licensee must join and be an active participant in the local liquor accord.
8. The premises are to be operated at all times in accordance with the Plan of Management dated July as may be varied from time to time after consultation with the Local Area Commander.

Yours faithfully



Philip Crawford

**Chairperson**

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

## STATEMENT OF REASONS

### Material Before The Authority

1. The following is a summary only of the material and submissions before the Independent Liquor and Gaming Authority (Authority) for the purposes of publication of a statement of reasons, as soon as practicable, in a high volume jurisdiction.
2. In making this decision, the Authority has considered the removal Application (Application), the accompanying community impact statement (CIS) and all submissions received in relation to the Application. As foreshadowed in Authority Guideline 6, the Authority has also had regard to relevant liquor licensing records and licence density data maintained by Liquor and Gaming NSW (LGNSW), Bureau of Crime Statistics and Research (BOCSAR) crime data and Australian Bureau of Statistics (ABS) data pertaining to the local and broader communities sourced by licensing staff from publicly available sources. That material is listed and briefly summarised in the Schedule.

### Summary of Further Submissions

3. On 9 May 2016 a submission was received from the Department of Justice via the Compliance Branch of LGNSW advising that the Application was assessed using the Environment and Venue Assessment Tool (EVAT). This means that LGNSW have not performed a specific assessment of the Application. The automated report notes that LGNSW “does not intend to carry out any further assessment”.
4. On 11 May 2016 a submission was received from Leichardt Municipal Council (Council) advising “no objection” to the Application provided the Development Approval (DA) is complied with.
5. On 18 July 2016 a submission was received from Council advising that a DA is required for the proposed use and is in place through DA 62/87.
6. On 5 May 2016 a submission was received from Licensing Supervisor, Scott West, of Leichardt Local Area Command (LAC) on behalf of NSW Police advising that Police have reviewed the Application and unless there are complaints from the community Police have “no sufficient grounds to pose an objection”.

### Legislative Framework

7. An application for the removal of an existing packaged liquor licence from its current location to another location is made under section 59 of the *Liquor Act 2007* (Act).
8. Pursuant to section 59(3) of the Act, an application for approval to remove a licence to another premises, is to be dealt with and determined by the Authority as if it were an application for the granting of a licence in respect of those other premises. Accordingly, the provisions of Division 1 of the Act, in particular, extend to an application for the removal of a licence to other premises as if it were an application for a licence.
9. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the Act and the *Liquor Regulations 2008* (Liquor

Regulations). Power to grant an application for a new liquor licence is provided by section 45 of the Act.

10. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
  - (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.*
11. Section 48(5) of the Act requires the Authority, in certain circumstances, to consider a CIS (as well as any other matter the Authority is made aware of during the application process) in order to ensure that the overall impact of the licence, authorisation or approval being considered will not be detrimental to the local or broader community.
12. An application under section 59 of the Act to remove a packaged liquor licence is a “relevant application” within the meaning of section 48(2) of the Act for which a CIS is required.
13. Section 48(5) of the Act requires that the Authority must not grant the Application unless satisfied 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”.
14. For the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Annandale while the “broader community” comprises the responsible Local Government Area (LGA), the Leichardt LGA.

## **Analysis of Relevant Facts**

15. The Authority is satisfied, on the basis of the Application material before the Authority and the absence of any submissions to the contrary that, for the purposes of section 59 of the Act, the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have

been satisfied. This finding is made on the basis of the Application and CIS material provided by the Applicant.

16. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a packaged liquor licenced venue of the kind proposed in the Application material. The Authority is satisfied on the basis that no issues of concern were raised with regard to the Applicant's probity following consultation with relevant law enforcement agencies including Police and LGNSW.
17. The Authority is satisfied, for the purposes of section 45(3)(b) of the Act that responsible service practices will be in place with the commencement of licensed trading. This finding is made on the basis of the undated *Plan of Management* provided by the Applicant.
18. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act that the required development consent is in place for use of a packaged liquor licence at the Proposed Premises, on the basis of DA No. 62/87 issued by Council.

#### **Social Impact – Positive Benefits**

19. The Authority is satisfied on the basis of the information provided by the Applicant that the license will be removed from one location to another 150 metres away within the suburb of Annandale, to a location within the Annandale shopping centre
20. The Authority is satisfied on the Application and CIS material that the Applicant distributed notices to the surrounding community which resulted in no objection from the local community, Police, LGNSW, Council or any relevant stakeholders. On this basis the Authority is satisfied that granting the removal of the licence would be consistent with the "expectations needs and aspirations" of the local or broader community within the meaning of section 3(1)(a) of the Act.
21. The Authority is satisfied that the proposal will contribute in a modest sense to the development of the liquor industry for the purposes of section 3(1)(b) of the Act by enabling this business to move to another nearby premises for the commercial purposes of that business.

#### **Social Impact – Negative Impacts**

22. The Authority is satisfied that over time there will likely be some contribution from the liquor sold at the Proposed Premises to alcohol related crime, disturbances or impact on amenity from a minority of customers who abuse packaged liquor purchased from the Proposed Premises. Given that the Application proposes the removal of a licence distance of 150 metres within the same local community, there will be no increase in licence density and no compelling submissions have been made to indicate a net change in impact or increase in sensitivity from moving the licence from one location to another.
23. The scale of the Proposed Premises is slightly smaller than the Current Premises and the Proposed Premises will be open to trade 30 fewer hours per week than the Current


Premises. These are factors that reduce the potential adverse impacts of the business over time.

24. Taking into account the harm minimisation measures outlined in the *Plan of Management* provided by the Applicant as part of the Application, steps will be taken by the Applicant and its staff to ensure that the extent of adverse impact arising from the abuse of liquor sold from the Proposed Premises would be constrained.
25. The Authority has imposed conditions (specified at the start of this letter), which have been taken into account when assessing the overall social impact of granting the Application.

## **Conclusion**

26. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, as all of those required to be notified of the application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision. The interested parties are NSW Police, the Licensee, Council, NSW Roads and Maritime Services (RMS), neighbouring occupiers, NSW Health and Family and Community Services and all other parties required to be consulted under the legislation.
27. Having considered together the positive benefits and negative impacts that have been found to flow from approving the removal, the Authority is satisfied that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.
28. Removal of the licence approved pursuant to section 59 of the Act.
29. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) – including (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.

Decision Date: 23 August 2016



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 in the liquor and gaming website

<https://www.liquorandgaming.justice.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

### Material Before The Authority

1. Application form – lodged on 7 April 2016.
2. CIS document and supporting material that accompanies the Application dated 7 April 2016. Briefly, the Applicant makes the following contentions on the overall social impact of removing the licence:
  - (a) Travelling by foot, the Proposed Premises is about 150 metres from the Current Premises.
  - (b) The subject licence (LIQP700350083) has been attached to other premises in Annandale for “at least” 45 years and to the Current Premises “for about 30 years”.
  - (c) Both the Current Premises and the Proposed Premises are located in the Annandale shopping centre.
  - (d) The Application is the result of being unable to negotiate a satisfactory lease with the owner of the Current Premises.
  - (e) The Proposed Premises are “slightly smaller in area” than the Current Premises.
  - (f) The state suburb of Annandale (the local community) is developed primarily for residential purposes.
  - (g) At the 2011 Census, 8669 people lived in the state suburb of Annandale and this data indicated that: 0.7% were of Aboriginal and Torres Strait Islander (ATSI) descent; professionals and managers made up 61.4% of the workforce while labourers made up 2.2%; the median weekly personal and family incomes were almost twice those in NSW; the median weekly household income was about 70% higher than that in NSW; and the suburb had a Socio-economic Indexes for Areas (SEIFA) (Advantaged and Disadvantaged) of 1108 which placed it in the highest decile in NSW and Australia.
  - (h) This 2011 Census data also indicated that the broader community, Leichardt LGA had a population of 52,198 in 2011 with 1% being of ATSI descent; professionals and managers made up 62% of the workforce; and the median weekly incomes were very similar to those in the suburb of Annandale.
  - (i) Neither the local or broader community “exhibits the indicia which are usually associated with the excessive consumption of alcohol”.
  - (j) There will be “minimal changes in the mode of operation” of the business and Annandale cellars will “continue to cater for the top end of the market”. Granting the Application to remove the licence “would have minimal, if any, impact on either the local or broader community”.
3. Aerial geographical map depicting the 100-metre radius of notifying the Application.
4. Aerial map depicting the location of the Proposed Premises in relation to the Current Premises.



5. Google Geographical Map depicting an aerial view of the state suburb of Annandale.
6. DA No. 62/87 dated 25 March 1987 issued by Council subject to the conditions that the trading hours are limited to between the hours of 10:00AM and 10:00PM.
7. Plan of Management for the Premises undated.
8. Submission from Kel Riordan, lessee of 89 Booth Street (Yay Yoi), dated 23 February 2016 advising that they have no objection to the removal Application as they have a “very good reputation in their industry and would be an asset to the retail environment in the street”.
9. Submission from RMS dated 22 February 2016 advising that data for the Leichardt LGA indicates that during 2013 there were 11 alcohol-related crashes, resulting in 5 casualties including 2 fatalities. RMS recommend that the licensee maintain awareness of local alcohol-related issues; attend the LGA’s Liquor Accord and that public education material focusing on drink drive and pedestrian-alcohol issues be supported and displayed within the Premises. RMS also recommends that the licensee draw attention to the *Safe Party Strategies* available on the NSW Police website for customers buying large quantities of alcohol or alternatively display a list of tips for people hosting social events.
10. Applicant’s response to an email from licensing staff dated 8 July 2016 advising that: Advertising Certificates were lodged the day after the Application; there was no submission attached to the email from licensing staff dated 4 July 2016; there will be no change to the name of the licence; the trading hours proposed are accepted; the Proposed Premises are now fitted out and will be stocked ready to open for trade by 22 July 2016; the proposed condition relating to not trading before providing evidence of the completion of the Proposed Premises is accepted; the Applicant accepts the proposed conditions; there is no proposal to transfer the licence to another person; and the Applicant is a member of the Local Accord and will remain a member.
11. List of Interested Parties
12. Google Geographical Map depicting the walking distance between the Proposed Premises and Current Premises as 170 metres or 2 minutes.
13. Plan of the Proposed Premises clearly highlighting in red the proposed licensed area.
14. Liquor licensing records indicating that the suburb of Annandale already has:
  - (a) 0 registered club licences
  - (b) 4 hotel licences
  - (c) 4 packaged liquor licences
15. Liquor licence density data obtained by the Authority from licensing records that are publicly available from LGNSW indicate that the Leichardt LGA as a whole recorded:
  - (a) A rate of **24.91 packaged liquor licences** per 100,000 persons, which is below the NSW state wide rate of **32.85**.
  - (b) A rate of **9.58 registered club licences** per 100,000 persons, which is well below the NSW state wide rate of **20.48**.

- (c) A rate of **19.16 full hotel licences** per 100,000 persons, which is well below the NSW state wide rate of **30.36**.
16. Report on *Crime by LGA and Alcohol Related Status* obtained from published BOCSAR sources for calendar year 2013. This data indicates that:
- (a) The rate of *domestic violence related assault* incidents recorded by reporting Police as *alcohol related* across the Leichardt LGA was **92** per 100,000 persons, less than the New South Wales rate of **145** per 100,000 persons.
  - (b) The rate of *non-domestic violence related assault* incidents flagged by reporting Police as *alcohol related* in the Leichardt LGA for 2013 was **132**, less than the State wide rate of **191**.
  - (c) The rate of *offensive conduct* offences flagged by reporting Police as *alcohol related* across this LGA was **61** per 100,000 persons, less than the State wide rate of **83**.
  - (d) The rate of *assault police* incidents flagged by reporting Police as alcohol related across the Leichardt LGA was **31**, higher than the rate of **24** per 100,000 for New South Wales as a whole.
  - (e) The rate of *malicious damage to property* offences flagged by reporting Police as *alcohol related* across this LGA was **82** per 100,000 persons, less than the State wide rate of **122**.
17. ABS SEIFA data prepared on the basis of the 2011 census which indicates that:
- (a) The Leichardt LGA ranked in the 10<sup>th</sup> decile, compared to other local government areas in the state on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).
  - (b) The state suburb of Annandale ranked in the 10<sup>th</sup> decile, compared to other state suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage.
18. On 9 May 2016 a submission was received from the Department of Justice via the Compliance Branch of LGNSW.
19. On 11 May 2016 a submission was received from Council.
20. On 18 July 2016 a submission was received from Council.
21. On 5 May 2016 a submission was received from Licensing Supervisor, Scott West, of Leichardt LAC on behalf of NSW Police.