

Mr Tony Schwartz

tschwartz@bsv.com.au

20 December 2017

Dear Mr Schwartz

APPLICATION NO: APP-0003139664

APPLICATION FOR: Packaged Liquor Licence

TRADING HOURS: Monday to Saturday 8:00am – 9:59pm
Sunday 10:00am – 8:00pm

APPLICANT: Mr Anthony Charles Smith

LICENCE NAME: BWS – Beer Wine Spirits

LICENSED PREMISES: Corner of Beecroft Road and Hannah Street,
Beecroft, NSW 2119

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 – BWS – Beer Wine Spirits**

The Independent Liquor & Gaming Authority considered application number APP-0003139664 at its meeting on 18 October 2017 and, pursuant to section 45 of the *Liquor Act 2007*, decided to **grant** the application, subject to the following conditions:

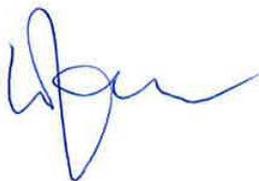
1. The premises can only trade between 8:00am and 8:00pm on public holidays (other than public holidays that fall on a Sunday, when it can only trade between 10:00am and 8:00pm).
2. Section 11A of the Liquor Act 2007 applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 2:00 AM and 8:00 AM 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.
3. Restricted trading & NYE (std)

Retail sales	
Good Friday	Not permitted
December 24th	Normal trading Monday to Saturday, 8:00 AM to 10:00 PM Sunday
Christmas Day	Not permitted
December 31st	Normal trading

4. The licensee or its representative must join and be an active participant in the local liquor accord.
5. 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 be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
6. The premises must be operated at all times in accordance with the Endeavour Drinks Group Liquor Store House Policy and Best Practice Policies and Interventions documents, as submitted to the Independent Liquor and Gaming Authority in support of the licence application, or as varied from time to time after consultation with the Commander of the Alcohol Licensing Enforcement Command of NSW Police. A copy of these documents 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.
7. (1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises ("the premises") in accordance with the following requirements:
 - a) the system must record continuously from opening time until one hour after the premises is required to close,
 - b) recordings must be in digital format and at a minimum of six (6) frames per second,
 - c) any recorded image must specify the time and date of the recorded image,
 - d) the system's cameras must cover the following areas:
 - (i) all entry and exit points on the premises, and
 - (iii) all publicly accessible areas (other than toilets) within the premises.
- (2) The licensee must also:
 - a) keep all recordings made by the CCTV system for at least 30 days,
 - 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
 - c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

If you have any enquiries about this letter, please contact the case manager via email to wendy.yeung.wye.kong@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 26 June 2017, Mr Anthony Charles Smith (“the Applicant”) lodged an application for a packaged liquor licence for premises located at Corner of Beecroft Road and Hannah Street, Beecroft, NSW 2119 (“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 grant 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.
12. Clause 70AB of the Regulation provides for an exemption from the requirements of section 12(1B) of the Act, which otherwise restricts the standard trading period to until 10:00pm, to allow the sale and supply of liquor between 10:00pm – 11:00pm for take-away liquor licences. If the premises are otherwise authorised to trade until 10pm, the exemption enables lawful trade until 11pm.

Minimum procedural requirements

13. 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

14. 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 proposed 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 business to which the proposed licence relates is in force.

Community impact statement

15. 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.
16. 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

17. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.
18. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.
19. 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.
20. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

KEY FINDINGS

21. 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

22. 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 Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods, and
- c) the proposed use of the Premises as a bottle shop satisfies the requirements of section 29 of the Act and renders sections 30 and 31 not applicable.

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

23. 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 proposed business, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- b) practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible service of alcohol, having regard to the Applicant's operational practices as detailed in "Endeavour Drinks Group Liquor Store House Policy – NSW" and "Endeavour Drinks Group Woolworths Best Practice Policy and Interventions" documents and the conditions to be imposed on the licence, and
- c) the requisite development consent is in force, based on Complying Development Certificate No. 17/124061-1 issued by McKenzie Group Consulting (NSW) Pty Ltd on 23 June 2017, the Notice of Determination of Development Application DA/1006/2014/B issued by Hornsby Shire Council on 17 December 2014 and the completed Local Consent Authority Notice dated 8 November 2017.
- d) It is appropriate to impose a closing time of 9:59pm Monday to Saturday in order to prevent the Premises from trading until 11:00pm in accordance with the exemption afforded by clause 70AB of the Regulation, given that the Premises only has development consent to trade until 10:00pm.

Community impact statement

24. 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 Premises on the local and broader communities.

25. 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 Beecroft, and the relevant "broader community" comprises Hornsby Local Government Area ("the LGA").

Positive social impacts

26. The Authority notes that there are currently two packaged liquor licences in Beecroft. The density of packaged liquor licences per 100,000 persons in both the suburb and LGA is lower than the corresponding NSW figure.
27. The Premises will be located in Beecroft Market Place which is a newly developed residential centre. This centre comprises of a Woolworths Supermarket (which is directly opposite the Premises), specialty shops, over 130 residential apartments and on-site car parking. The Authority accepts that some population growth is likely to occur in Beecroft in the coming years given the development of these additional residences. The Authority also accepts that the anticipated population growth will create further demand for packaged liquor in the local community.
28. The Authority accepts the Applicant's contention that the granting of the licence will provide an additional measure of convenience and choice to the local and broader communities, particularly to the residents of and visitors to Beecroft Market Place who wish to engage in "one stop shopping" by purchasing liquor items together with grocery and other items from stores that are in close proximity to one another.
29. The Authority notes the Applicant's contention that the Premises will offer customers a "comfortable and convenient experience" by providing a "state of the art" liquor outlet with modern fixtures and fittings, a large range of liquor products and significant off-street car parking. Further, the Applicant states that the Premises has been designed to provide a convenient and safe shopping environment by incorporating various features to maximise ease of access for customers and minimise opportunities for crime.
30. The Authority is satisfied that no stakeholders, including NSW Police, object to the Application.
31. On the basis of the above, the Authority is satisfied that the Premises will provide additional convenience and choice to local consumers wishing to purchase liquor, and will contribute to the balanced and responsible development of the liquor industry.

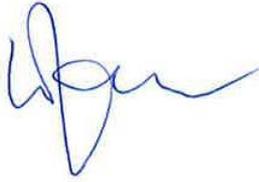
Negative social impacts

32. The Authority acknowledges the ten public submissions received from residents and workers in the area opposing the Application which focused on the number of packaged liquor licences in the suburb, the potential for increases in crime and anti-social behaviour and parking issues. However, the Authority accepts that these concerns were not raised by the relevant stakeholder agencies that oversee these matters namely Ryde Local Area Command, NSW Roads & Maritime Services and NSW Family & Community Services, all whom did not object to the Application. In relation to parking, the Authority notes that no objection was received from Hornsby Shire Council.
33. Further, the Authority also notes that the public opposition is countered by three public submissions received from residents in the area supporting the Application on the basis of the additional convenience it will offer to the local community.
34. The Authority is satisfied that although the granting of this licence will increase the suburb's density of packaged liquor licences per 100,000 persons to a rate that slightly exceeds the corresponding NSW figure, the density of packaged liquor licences in the LGA will still be lower than that of NSW.

35. The Authority notes from the BOCSAR Crime Maps that for the year ending March 2017, that the Premises was not located in any hotspots for incidents of domestic, non-domestic or alcohol-related assault, or malicious damage to property.
36. The Authority is satisfied that alcohol-related offences are occurring at lower than average rates in Beecroft and the LGA compared to the average rates in NSW, noting that for the year ending March 2017:
 - i) the rate of alcohol-related domestic assault incidents were 25.3 and 34.6 per 100,000 persons for the suburb and LGA respectively, which is significantly lower than the NSW rate of 114.7;
 - ii) the rate of alcohol-related non-domestic assault incidents were 50.6 and 44.6 per 100,000 persons for the suburb and LGA respectively, which is significantly lower than the NSW rate of 133.9; and
 - iii) the rate of malicious damage to property incidents were 134.9 and 405.7 per 100,000 persons for the suburb and LGA respectively, which is significantly lower than the NSW rate of 816.4.
37. The Authority accepts that data provided by HealthStats NSW indicates that residents of the Hornsby LGA are dying from alcohol-related health issues at a lower than average rate and are being hospitalised as a result of alcohol-related health problems at a rate that is similar to that of NSW.
38. The Authority has had regard to the ABS data indicating that, as at 2011, Beecroft suburb and Hornsby LGA were among the most advantaged in comparison with other suburbs and LGAs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage.
39. On this basis, the Authority considers that the level of alcohol-related crime and health issues in Beecroft and the LGA does not give rise to any immediate concern, or indicate that an additional packaged liquor licence would exacerbate any existing such problems attributable to alcohol.
40. The Authority is also satisfied that any risk associated with the granting of the Application will be further mitigated by the business owner's experience as an operator of many packaged liquor outlets, the imposition of special licence conditions and the Applicant's adherence to the "Endeavour Drinks Group Liquor Store House Policy – NSW" and "Endeavour Drinks Group Woolworths Best Practice Policy and Interventions" documents lodged with the Application.

Overall social impact

41. Having considered the positive and negative impacts that are likely to flow from granting the licence, the Authority is satisfied that the overall social impact of granting the licence would not be detrimental to the well-being of the local and broader communities.
42. Furthermore, the Authority is 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.
43. Accordingly, the Authority has decided 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 ranking Hornsby LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol related deaths for the period 2001-2002 to 2012-2013 and hospitalisations in the LGA for the period 2001-2003 to 2013-2015.
3. NSW crime statistics for the two years to March 2017, published by BOCSAR, showing the rates of alcohol related domestic and non-domestic assault and malicious damage to property in Beecroft and the LGA.
4. BOCSAR Crime Hotspot Maps for Beecroft and surrounding suburbs for the year ending March 2017.
5. A letter to the Applicant from Department of Family & Community Services NSW, dated 20 April 2017.
6. A letter to the Applicant from Transport Roads & Maritime Services dated 21 April 2017, making a number of recommendations.
7. Three public submissions in favour of the Application, in the form of emails and a response to an online survey created by the Applicant, dated between 23 April and 26 May 2017.
8. Ten public submissions opposing the Application in the form of emails and responses to an on-line survey created by the Applicant, dated between 26 April and 21 May 2017.
9. Submission lodged by Ryde Local Area Command dated 15 May 2017.
10. A completed online Application form for a packaged liquor licence, lodged 20 June 2017, accompanied by the following documents:
 - Local Consent Authority Notice;
 - Public Consultation – Site Notice; and
 - Police Notice.
11. Document titled “Application in support of 6 hour closure period between 2am – 8am, 7 days a week”, lodged with the Application on 20 June 2017.
12. A completed Category B CIS form, signed by the Applicant and dated 20 June 2017, with accompanying documents provided by the Applicant in support of the CIS, including:
 - Document titled “Statement of Impact”;
 - Endeavour Drinks Group – Liquor Store “House Policy” NSW; and
 - Endeavour Drinks Group – Woolworths Best Practice Policy and Interventions.
13. Plan of the proposed licensed area lodged with the Application on 20 June 2017.
14. Probity documents provided by the Applicant including National Police Certificate dated 20 February 2015, copies of the Applicant’s identification and valid NSW

competency card, and a copy of ASIC Current Organisation Extract of the Applicant, lodged with the Application on 20 June 2017.

15. Complying Development Certificate No. 17/124061-1 issued by McKenzie Group Consulting (NSW) Pty Ltd on 23 June 2017 which included a Notice of Determination of Development Application DA/1006/2014/B issued by Hornsby Shire Council on 17 December 2014.
16. A document titled "Review and Response to Submissions", provided by the Applicant in response to submissions received dated 4 July 2017.
17. Certification of Advertising Application signed by the Applicant and Mr Schwartz, solicitor for the Applicant, dated 11 July 2017 and 11 August 2017 respectively.
18. Correspondence between the Applicant and Hornsby Council between 31 July and 2 August 2017 and 8-9 November 2017, in relation to trading hours and use.
19. An email to the Applicant from Aboriginal Affairs dated 4 August 2017 advising no objection to the application on the basis that the applicant has also notified the NSW Aboriginal Land Council and Local Aboriginal Land Council of the proposal and objection process.
20. Google maps showing the location of the Premises, extracted from the Google website on 25 August 2017.
21. Correspondence between L&GNSW and the Applicant's representative between 29 August 2017 and 27 September 2017, in relation to the information required for the Application.
22. Liquor licensing records from L&GNSW as at 7 September 2017 setting out the liquor licence density in the suburb and LGA, based on 2016 Census population figures.