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30 January 2018

Dear Ms Fawcett

<b>Application No.</b>	1-5674369146
<b>Application for</b>	Packaged Liquor Licence
<b>Trading hours</b>	Monday to Saturday 9:00 am – 9:00 pm Sunday 10:00 am – 8:00 pm
<b>Applicant</b>	Mr Keith Ross Gregor
<b>Licence name</b>	Southside Liquor
<b>Premises</b>	Shop 7, 94 Bent Street SOUTH GRAFTON NSW 2460
<b>Issue</b>	Whether to grant or refuse an application for a packaged liquor licence
<b>Legislation</b>	Sections 3, 11A, 12, 29, 30, 31, 40, 45 and 48 <i>Liquor Act 2007</i>

**Independent Liquor & Gaming Authority Decision  
Application for a packaged liquor licence – Southside Liquor**

The Independent Liquor and Gaming Authority (“the Authority”) has considered an application by your client Mr Keith Gregor for a new packaged liquor licence (“the Application”). Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority has decided to **approve** the Application subject to the following conditions:

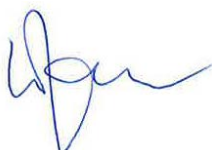
1. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 3:00 am and 9:00 am during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. Restricted trading and NYE (std)

Retail Sales	
Good Friday	Not permitted
December 24 <sup>th</sup>	Normal trading Monday to Saturday, 8:00 am to 10:00 pm Sunday
Christmas Day	Not permitted
December 31 <sup>st</sup>	Normal trading

3. The licensee or its representative must join and be an active participant in the local liquor accord.
4. 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.
5. The premises is to be operated at all times in accordance with the "Southside Liquor Venue Management Plan" dated 16 June 2017 as may be varied from time to time after consultation with the Local Area Commander of NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
6. Closed-circuit television (CCTV) system
  - (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
      - ii. 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 questions, please contact the case manager via email to [andrew.whitehead@liquorandgaming.nsw.gov.au](mailto:andrew.whitehead@liquorandgaming.nsw.gov.au).

Yours faithfully



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

## **STATEMENT OF REASONS**

### **DECISION**

1. On 17 February 2017, Mr Keith Gregor (“the Applicant”) lodged an application for a packaged liquor licence (“the Application”) with Liquor & Gaming NSW (“LGNSW”) for determination by the Independent Liquor & Gaming Authority (“the Authority”) in respect of premises located at Shop 7/94 Bent Street, South Grafton NSW 2460 (“Premises”), to be known as “Southside Liquor”.
2. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority has 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, 12, 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 LGNSW 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 LGNSW 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(1), are 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, to facilitate the balanced development, in the public interest, of the liquor industry and to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
10. In the pursuit of these objectives, section 3(2) requires the Authority to, in determining a liquor licence application, have due regard to the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour), the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor and the need to

ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

#### Trading hours and 6-hour closure period

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

#### Minimum procedural requirements

12. Section 40 of the Act and relevant provisions of the Regulation prescribe the minimum procedural requirements for a liquor licence application to be validly made to the Authority.

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

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

#### Community impact statement

14. Section 48 of the Act requires that relevant applications, including an application for a packaged liquor licence, must be accompanied by a CIS that is prepared in accordance with the relevant legislative requirements.
15. Section 48(5) provides that the Authority may only grant a relevant licence, authorisation or approval 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 the Authority is made aware of during the application process.

#### Provisions specific to packaged liquor licence

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

### **KEY FINDINGS**

18. 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

19. The Authority is satisfied that:

- (a) the Application has been validly made and meets the procedural requirements under section 40 of the Act and the Regulation. This finding is made on the basis of the information provided in the Application and CIS and the Certificate of Advertising signed by the Applicant and dated 27 July 2017.
- (b) the proposed trading hours for the Premises meet the requirements of section 11A for a daily 6-hour closure period and the requirements of section 12 with respect to the standard trading hours for a packaged liquor licence. These findings are made on the basis of the information in a letter from the Applicant dated 28 July 2017.
- (c) the proposed use of the Premises disclosed in the Application, CIS and the plan/diagram of the Premises 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

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

- (a) for the purposes of section 45(3)(a), the Applicant is a fit and proper person to carry on the proposed business or activity to which the licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies including NSW Police ("Police") and LGNSW. The Authority also accepts that the Applicant has extensive experience in managing a liquor outlet, and is familiar with the local and broader communities, accepting that he maintains residence in the Clarence Valley Local Government Area ("Clarence Valley LGA"), and was responsible for the management of a hotel in South Grafton for a period of nine years (as specified in the Applicant's submission dated 28 July 2017).
- (b) for the purposes of section 45(3)(b), practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible service of alcohol and prevent intoxication, having regard to the Applicant's operational practices as detailed in the *Southside Liquor Venue Management Plan*, which the Authority notes has also been signed by Police on 16 June 2017, and the conditions to which the licence will be subject, as consented to by the Applicant in an email dated 28 July 2017, and
- (c) for the purposes of section 45(3)(c), the requisite development consent is in force for the proposed use of the Premises for the purpose of the business or activity to which the licence relates. This finding is made on the basis of the Complying Development Certificate ("CDC") No. 526/14 issued by Building Certificates Australia Pty Ltd dated 15 January 2015 for "Change of use of Shops 6 and 7 to a BWS retail premises and associated internal fitout" and the email advices from Clarence Valley Council ("Council") dated 24 March 2017 and 16 October 2017. The Authority notes that this CDC relates to a proposed BWS liquor store, but Council have advised in an email dated 16 October 2017 that the CDC is still applicable unless there are further works or internal operations proposed to the Premises. Although Design Collaborative Pty Ltd ("Design Collaborative"), consultants engaged by Fostif Pty Ltd trading as Porter's Liquor Grafton ("Commercial Competitor") raised an issue with whether the licensed trading hours fall within the scope of consent, the Authority accepts the advice from Council in its submission dated 16 October 2017 that the hours of operation permitted by the CDC under condition 21(c) are between 7:00 am and 10:00 pm Monday through Sunday.

### Community impact statement

21. For the purposes of section 48(5) of the Act, the Authority has made the following findings on overall social impact of granting the Application upon the local and broader communities.
22. Consistent with Authority *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of South Grafton, and the relevant “broader community” comprises Clarence Valley LGA.

### Positive social impacts

23. The Authority is satisfied, on the basis of the LGNSW licensed premises information dated 1 August 2017, that there is currently only one packaged liquor licensed premises in the suburb of South Grafton.
24. While competitive benefits are difficult to quantify, the Authority infers that taking this local community from having only one devoted packaged liquor licence to two such licensed businesses will more likely than not result in some significant increase in consumer choice, competition and convenience for those in the local community.
25. These consumer benefits are relevant in two senses. First, granting the licence will advance the expectations, needs and aspirations of the communities and serves a statutory object in section 3(1)(a) of the Act. Second, granting a second licence will facilitate the *balanced* development, in the public interest, of the liquor industry serving the local community which is a statutory object in section 3(1)(b).
26. The Applicant makes the specific contention in its submission dated 28 July 2017 that granting this Application will provide the benefit of “cheaper prices”, thus enabling savings in family budgets and providing much needed extras for necessities.
27. However, the Applicant does not specify let alone provide supporting evidence or independent analysis to establish how this new business will provide price benefits for the communities and this reduces the weight that may be given to this potential community benefit, although it remains generally credible to assert that competitive benefits will flow from the introduction of a new competitor in this regional city suburb.
28. The Authority accepts the contention made by the Applicant in Annexure A to the CIS and its submission dated 28 July 2017 that an increase in *convenience* will flow from the location of a new retail facility, complete with onsite parking, within a neighbourhood Shopping Centre that includes a Coles Supermarket and other retail outlets.
29. The Authority is satisfied that granting the licence will meet the expectations of those members of the local and broader community who are patronising this Shopping Centre and seek “one stop shopping” by purchasing liquor at the same time as purchasing groceries and other items.
30. Save for some increase in convenience by way of one stop shopping, the Applicant has not satisfied the Authority as to any substantial increase in respect of competitive benefits for the *broader* community, given that this population is already supplied by **19** packaged liquor outlets that will be more conveniently located to residents in other parts of this extensive regional local government area.

31. This benefit of increased *convenience* is somewhat diminished by the fact that such patrons may already access a packaged liquor outlet less than 100 metres away from the Premises, but some increase in one stop shopping is established on the information before the Authority. This is particularly the case in a regional Shopping Centre where patrons are likely to rely upon driving to the Supermarket.
32. When considering whether or not granting this Application will advance community expectations, it is notable that the only opposition to the Application was from a local Commercial Competitor, whose submissions are discussed below. This further establishes that granting this Application will advance community expectations for the purposes of section 3(1)(a) of the Act.
33. Design Collaborative question the community benefits that will flow from granting this licence and provide a map depicting the surrounding area and existing alternative liquor premises where packaged liquor might be purchased. They contend that the limited benefit of convenience is already met on Skinner Street South Grafton (some 500 metres to the north-west) which has “significant levels” of on-street parking, service stations, restaurants, cafes and grocery stores and is “bookended” by two hotels (Walkers Marina Hotel and Post Office Hotel) permitted to sell liquor for consumption away from the premises.
34. While the Authority accepts that these two hotels are authorised to sell takeaway liquor, their location some half a kilometre away does not diminish the one stop shopping benefits that will be provided by the location of this new licensed business within the Shopping Centre, nor will hotels necessarily serve those patrons who may have a consumer preference to purchase liquor through a devoted packaged liquor business in a Shopping Centre rather than enter a hotel.
35. The Authority has considered the Applicant’s contention in its submission dated 28 July 2017 that granting the Application will relieve “pressure on traffic”. This is a complex assertion that is not readily amenable to inference. It would warrant the provision of expert independent evidence and issues of traffic flow are, on their face, more pertinent to town planning impacts than alcohol related social impacts per se. In the absence of supporting evidence identifying how a new business will actually reduce overall traffic and *alcohol related* impacts, such as drink driving, alcohol related pedestrian accidents or otherwise, the Authority gives this contention little weight.

#### Negative social impacts

36. Having reviewed all the material before it, the Authority considers that over time there is a risk that liquor sold from this new packaged liquor licensed Premises (whose primary purpose is the sale or supply of liquor for consumption away from the licensed Premises) will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse packaged liquor.
37. The licence type sought by this Applicant is a packaged liquor licence, with the primary purpose being the sale or supply of liquor for consumption away from the licensed Premises. The trading hours sought by the Applicant are consistent with the CDC and while not trading to the night time limit of standard trading hours are nevertheless quite extensive across the course of the week.
38. The Authority notes, on the basis of the email from the Applicant’s legal representative dated 29 August 2017, that the proposed liquor store is of a medium scale, at

approximately 171 square metres. This is larger than many standalone liquor stores throughout the State.

39. The scale of the Premises and licensed trading hours sought by the Applicant are factors that objectively increase the scope for this new licensed business to contribute, along with other licensed premises, to prevailing adverse social impacts associated with the abuse of packaged liquor in the local and broader communities.
40. With regard to prevailing liquor licence density, information provided to the Authority by licensing staff on the basis of the 2016 ABS Census data and LGNSW licensed premises information as at 1 August 2017 establishes that the density of packaged liquor licences in the local community of South Grafton is **15.6** per 100,000 persons, which is substantially below the rate for New South Wales as a whole at **33.1** per 100,000 persons. Packaged liquor licence density across the broader community of the Clarence Valley LGA is moderately above State-wide rates at **38.3** per 100,000 persons. The Authority is satisfied that licence density for packaged liquor licences is not particularly elevated in either of the communities.
41. Design Collaborative has provided analysis of licence density across licence types that are *potentially* authorised to sell takeaway liquor (combining *packaged liquor licences, hotel and club licences*), submitting that the density of liquor outlets is “already greater” than that on average across the State of NSW.
42. While licence density across all of these three licence categories is elevated in both communities, the Authority finds it more probative, in the context of assessing the social impact of a new off premises licence, to consider the prevailing density of packaged liquor licences. In the absence of specific information as to the nature and extent of any actual takeaway liquor businesses that are actually provided by the local hotels or clubs, licence density is not at levels that pose a decisive adverse factor in respect of either community.
43. The elevated licence density across the *broader* community is somewhat ameliorated by reason of the broad geographic area covered by this regional local government area and the fact that any contribution to adverse social impact made by liquor sales from this new business will be more diffuse by reason of the **19** incumbent liquor stores more conveniently located for the population in other towns and suburbs comprising this community.
44. Crime data discloses rates of crime in the relevant communities that are adverse to the Applicant when considering the *location* of the Premises.
45. BOCSAR data for the year ending March 2017 indicates that the local community of South Grafton and the broader community of Clarence Valley LGA both recorded higher rates per 100,000 persons of population than the New South Wales wide rates in the following crime categories:
  - *alcohol-related domestic assault* (**276.6** for South Grafton and **176.3** for Clarence Valley LGA, compared to the NSW rate of **114.7**)
  - *alcohol-related non-domestic assault* (**353.5** for South Grafton and **195.9** for Clarence Valley LGA, compared to the NSW rate of **133.9**) and
  - *malicious damage to property* (**2950.7** for South Grafton and **1159.9** for Clarence Valley LGA, compared to the NSW rate of **816.4**).



46. However, during the year to March 2016 and the year to March 2017 there has been a substantial *decrease* in the *number of alcohol-related domestic assaults* (from **28** to **18** in the suburb of South Grafton and from **97** to **90** across the Clarence Valley LGA) and *alcohol related non-domestic assaults* (from **34** to **23** in the suburb of South Grafton and from **110** to **100** in Clarence Valley LGA) and some more modest decrease in the number of malicious damage incidents in the broader community (from a count of **626** to **592** in Clarence Valley LGA).
47. Furthermore, BOCSAR Crime Maps for the year ending March 2017 provide some degree of reassurance to the Authority in that the Premises is not located within any hotspots for *alcohol related assault or domestic assault*.
48. HealthStats NSW data obtained by licensing staff in respect of alcohol-attributable hospitalisations for the period between 2013 to 2015 and alcohol-attributable deaths for the period between 2012 to 2013, indicates that the Clarence Valley LGA had a smoothed standardised mortality ratio of **126.5** (between 2012 to 2013) and a smoothed standardised separation ratio of **110.1** (between 2013 to 2015), with the NSW average fixed at 100.
49. The Healthstats data (including both alcohol related deaths and hospitalisations) provides another moderate cause for concern with respect to the broader community. Notably however, no submission was made in response to the Application by the Department of Health, the Local Health District or any other health organisation.
50. The Authority has also had regard to the ABS Socio-Economic Indexes For Areas (“SEIFA”) data which indicates that, as at 2011, South Grafton was very disadvantaged in comparison with other suburbs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage, ranking in the 1<sup>st</sup> decile. Clarence Valley LGA is also very disadvantaged, ranking in the 1<sup>st</sup> decile when compared to other local government areas in NSW. This data indicates that socio-economic disadvantage is a compounding factor of concern at the level of both communities when assessing the scope for packaged liquor to have an adverse social impact, in that neither community is particularly well resourced to respond to alcohol related social problems. There is also a well-established association in the literature between lower socio-economic status and domestic violence (see for example, as noted in *Guideline 6*, Livingston, M “A longitudinal analysis of alcohol outlet density and domestic violence” *Addiction* (2011) Society for the Study of Addiction).
51. The Authority has considered submissions from Kingston Swift Lawyers dated 13 June 2017 (re-submitted via email dated 27 June 2017) and Design Collaborative dated 13 June 2016 on behalf of the Commercial Competitor which refer to, *inter alia*, relatively higher levels of alcohol-related crime in South Grafton and the LGA, a relatively higher proportion of residents of Aboriginal and Torres Strait Islander (“ATSI”) background and SEIFA data indicating social disadvantage in the communities.
52. These are all legitimate adverse factors of concern to the Authority when assessing the suitability of licensing a new liquor store in this location. The Authority accepts the contentions made by Design Collaborative in their letter dated 13 June 2016 that the local and broader communities face “significant” social disadvantage, with the local community one of the most disadvantaged in NSW (noting that South Grafton ranks in the lowest decile on the Index of Socio Economic Advantage and Disadvantage compared to other state suburbs in New South Wales) and with “high levels” of disadvantage “relatively common” throughout the Clarence Valley LGA (noting that this

LGA ranks in the 1<sup>st</sup> decile on this index compared to other local government areas in the State).

53. The Authority further accepts the contention (which the Authority assumes is based upon ABS data from the 2011 Census), that a significant proportion of the population of the local community are of an ATSI background - **11.6%** for South Grafton, compared to 2.9% for the broader community and 2.5% for New South Wales as a whole.
54. The Authority accepts that a new licence will likely bring with it competitive pressure, which may also include downward pressure upon pricing although it is difficult to gain a sense to which low cost liquor may be facilitated through this new licensee. There is insufficient data before the Authority to discern whether the addition of this new licence to the local or broader community will mean an overall increase, decrease or no change to the overall level of liquor consumed across the relevant communities.
55. New South Wales does not mandate the collection of wholesale liquor sales data that has enabled researchers in other jurisdictions (see for example, as noted in Authority *Guideline 6* Liang W and Chikritzhs T: "Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability" (2011) Drug and Alcohol Review (September 2011)) to identify a relationship between increasing volumes of liquor sold in a given local government area and assault rates.
56. The Commercial Competitor's legal representative, Kingston Swift Lawyers, refer to Council's *Community and Cultural Environment Report* of 2017 in its submission dated 27 June 2017. The Authority notes that neither a full copy or link to this report has been provided. Design Collaborative refer to Council's observations to the effect that those crimes recorded by BOCSAR as most likely to occur in the Clarence Valley LGA are "usually associated with alcohol use and abuse – liquor offences, offensive language and conduct, harassment, malicious damage and assaults (both sexual, domestic and non-domestic)".
57. The Authority accepts that it is Council's position that alcohol abuse is a factor in crime across the broader community, and notes that both on premises and off premises liquor sales may play a role in these incidents. The domestic violence rate in the communities is of particular concern to the Authority, noting the BOCSAR data provided by licensing staff and the Commercial Objector.
58. Design Collaborative submit that the following socio demographic data is relevant to an assessment of the overall social impact of granting the Application:
  - The high proportion of persons of ATSI descent. Design Collaborative cite Section 2.16 of a report from Commonwealth Department of Prime Minister and Cabinet: *ATSI Health Performance Framework 2014 Report* which indicates that persons of ATSI background are particularly at risk to increased access to alcohol, being up to six times more likely to die from alcohol related causes than the general population. Design Collaborative submit that the ATSI population is growing, by reference to the 2017 *Community and Cultural Environment Report*, which states that the Aboriginal proportion of the Clarence Valley LGA population will double over the next 20 years.
  - Socio demographic data (which the Authority assumes to be sourced from ABS Quickstats data from the 2011 Census) indicating that 4.1% of the population of

South Grafton attends University or tertiary institutions compared to 10.7% in Clarence Valley LGA and 14.2% in NSW. Without referring to any research on this point Design Collaborative infer (credibly in the Authority's view) that higher education levels are broadly associated with greater levels of advantage and consequently, lower levels of education represent a higher risk to alcohol related impacts.

- Socio demographic data (which the Authority assumes to be based off the ABS Quickstats data from the 2011 Census) indicating that 11.8% of the South Grafton population are unemployed compared to 4.9% of Clarence Valley LGA and 5.9% of NSW. Design Collaborative cite Popovici and French *Does Unemployment Lead to Greater Alcohol Consumption*, Ind Relat (Berkeley) published on 18 March 2013 in support of the proposition that higher levels of unemployment in a community are associated with higher levels of "at-risk" drinking.
- Socio demographic data (which the Authority assumes to be based off the ABS Quickstats data from the 2011 Census) indicating lower personal and family incomes for the communities. Design Collaborative contend that lower disposable income means that purchases of alcohol that may have been forgone, but for lower prices, may be taken up with increased competition and lower prices. [The Authority notes that Design Collaborative does not refer to any literature in support of this contention, nor analysis of competition impacts pertaining to the local or broader community].

59. The Authority accepts that the BOCSAR crime data, SEIFA data, Healthstats data and the declaration of local alcohol-free zones ("AFZs"), all present prima facie risk factors that are adverse to this Application when considering the overall social impact of granting another licence in this location in respect of this local community.
60. It is for this reason that the Authority pressed, by way of letters dated 26 October 2017, local Police and Bulgarr Ngaru Medical Aboriginal Corporation ("BNMAC") to make any submissions on the social impact of granting this Application. Notwithstanding the Authority's prima facie concerns, no objection to the Application was advanced by either of these significant local agencies.
61. In an internal email from the Authority Secretariat dated 9 November 2017, BNMAC advised the Authority Secretariat over the phone that they had received the correspondence and do not object to the Application.
62. Police responded to the Authority's invitation for further submissions in a letter dated 8 November 2017 from A/Sergeant Ben Cruickshank of Coffs/Clarence Local Area Command ("LAC") of Police to LGNSW. Police extract two tables in this submission, firstly the Coffs/Clarence crime statistics focusing on alcohol related incidents within the South Grafton Suburb from November 2016 to November 2017 and secondly, the number of these incidents occurring by time of day between 00:00 – 12:00 and 12:00 and 24:00. Police submit that although this data does not specify the originating source of the alcohol supply, for example the percentage of alcohol purchased via packaged liquor licence, it does "highlight the increasing harm on the South Grafton community from 12:00pm – 12:00am". Police contend that an "evident link exists between the consumption of alcohol and crime in the South Grafton area".

63. However, Police conclude that “it is unlikely” that an additional packaged liquor licence will “drastically effect” the rate of alcohol related crime in the South Grafton area and Police “hold no objection” to the licence being granted provided that the new business is operated in accordance with the Alcohol Plan of Management dated 16 June 2017.
64. The Authority has considered Design Collaborative’s observations regarding the location of AFZs in South Grafton, which they submit demonstrates prevailing issues with the public consumption of liquor in the local community. Design Collaborative also note local news media reports (providing footnotes with links to the articles) reporting resident concerns as to drinking in public parks and the links between such behaviour and vandalism.
65. The Authority accepts, on the basis of the Clarence Valley Council Map depicting the AFZs in Grafton and South Grafton that the Premises is surrounded by AFZs. This is another adverse risk factor when assessing the suitability of the *location* of the site. However, the Authority reiterates the absence of any adverse position taken by local law enforcement, when pressed, about the social impact of the Application. The Authority would expect local public agencies with a law enforcement capacity to identify any local issues with managing the AFZs, yet neither Council nor Police have provided any adverse information about these areas, nor have any local residents or other agencies raised issues with the extent of public drinking or other abuses of packaged liquor either on the site of the Shopping Centre or in the nearby AFZs.
66. The Commercial Competitor’s legal representatives, Kingston Swift, refer to a local news media article (with an online link provided in the Design Collaborative submission) published in *The Daily Examiner* dated 30 January 2017 “*Vandalism spree linked to illegal drinking in park*”. The article reports a local businessman who claims that there have been six attacks on South Grafton businesses since Christmas (2016) and a rise in vandalism and thefts which are claimed to be linked to people gathering in the local park to drink liquor, despite that park being located in an AFZ.
67. Kingston Swift refer to another news article (with Design Collaborative also providing an online link) from *The Independent* dated 5 May 2017 entitled “*Positive Outcome from Crime Prevention Meeting*” whereby NSW Police Superintendent Mark Holahan gave local businesses the opportunity to ask Police what they were doing about ongoing drinking problems in the Park at the end of Skinner Street, South Grafton. The reporter writes that Police acknowledged that South Grafton is of concern to them and have taken on board observations regarding the “Sunshine Bar” (an apparent reference to outdoor public drinking in this park).
68. These two reports provide *some* evidence of public drinking in this local park and *some* incidence of associated assaults and anti-social conduct in the form of vandalism. The nature and scope of any localised alcohol related misconduct is a matter for which the Authority would have benefited from the insights of local agencies with a law enforcement capacity, including Council and Police, yet no objection was forthcoming from either agency on the basis of public drinking or the challenges of managing the AFZs. This leaves the Authority at some disadvantage when trying to assess the extent of prevailing local sensitivities in this regard. The two media reports note *several* incidents during late 2016/2017 but do not provide a complete picture of the extent of such impacts.

69. The absence of any opposition from the local or broader community (save for a direct Commercial Competitor), and the sanguine position adopted by local agencies concerned with law enforcement and the delivery of health services has somewhat ameliorated the Authority's concerns arising from the BOCSAR and SEIFA data for these communities.
70. The Authority has also taken into account the detailed harm minimisation measures specified in the Applicant's "Southside Liquor Venue Management Plan" dated 16 June 2017 including measures pertaining to staff induction and training, maintaining an incident register, responsible service of alcohol practices, the banning of violent persons, measures designed to address the risk of pre-loading using packaged liquor, use of lighting, measures directed towards outlaw motorcycle gangs, measures requiring the use of CCTV, measures requiring compliance with crime scene preservation, participation in the local liquor accord and fire safety. While the Authority notes that the Applicant and its staff will only meaningfully be able to monitor and respond to abuses of packaged liquor occurring on or near the Premises, the location of the new business within a local Shopping Centre provides further opportunity for passive surveillance from patrons of the Centre, and cumulative benefits by way of any shared lighting, CCTV and security measures provided at the Centre.
71. The Authority has considered a procedural issue raised by Design Collaborative with respect to the Applicant not notifying the local Aboriginal community located at 45 Skinner Street, South Grafton, which is said to be in "much closer proximity" than the aboriginal medical office at 131 Bacon Street Grafton which was notified. The Authority accepts the Applicant's submission dated 28 July 2017 that the premises at 131 Bacon Street is the "head office" and most appropriate point of contact.
72. The Commercial Competitor's legal representative contends, in a submission dated 13 June 2017 and 27 June 2017, that the Application fails to deal with the impact that granting another licence would have upon the health services within the local community, noting the 2017 Council *Community and Cultural Environment Report* which states that there is immense pressure on the emergency departments of both hospitals, caused by a lack of General Practitioners and an increasing number of people with mental illness and insufficient outreach support. The Authority notes that Kingston Swift Lawyers concede that whilst the Council report is dated 2017, the statistics upon which this part of the report is based may arise from a previous report in 2010.
73. While Healthstats data records a moderately higher than State wide rate of alcohol related hospitalisation across this LGA, no adverse submission was made by the Department of Health, any Local Health District or local health organisation. While the concerns raised by Council in the *Community and Cultural Environmental Report of 2017* (as discussed by the Commercial Competitor's legal representative) are credible concerns about the availability of services for persons suffering from mental illness, the alcohol related health admissions data is not at such levels as to warrant decisive weight.
74. The Commercial Competitor's representative submits that the Applicant failed to identify and consult with a number of special interest groups. While there is an argument that such further consultation may have been prudent, the Authority is satisfied that the Application satisfies the minimum consultation requirements of the legislation.

75. The Authority does not accept the Commercial Objector's submission that the Applicant has not identified any protective factors in its proposal. Harm minimisation measures are apparent from the Applicant's "Southside Liquor Venue Management Plan" dated 16 June 2017 (made enforceable through the operation of a licence condition) and the other licence conditions consented to by the Applicant in a submission dated 28 July 2017. The Applicant's ability to implement harm minimisation measures presents another significant protective factor, noting the Applicant's considerable local experience and the absence of any regulatory concerns raised by the law enforcement agencies consulted on this Application (including NSW Police and LGNSW Compliance) as to the Applicant's regulatory history.
76. This is a finely balanced decision. The Applicant has established a credible positive case in a suburb with only one established packaged liquor licence, but there are several risk factors that are plainly adverse to the proposed location of the premises particularly the higher local crime data, poor SEIFA data, ABS data indicating potential social vulnerability through high ATSI representation, adverse broader community health data and limited media reports of local public drinking and related anti- social conduct. These factors may ordinarily point towards refusal of a new licence, but on the material and submissions before it the Authority has given weight to the absence of any objection, when pressed, from local law enforcement and those agencies who are best placed to have knowledge of local health issues (including the Local Health District and the BNMAC). This is in the context of a local and broader community that does not oppose the Application save for a local commercial competitor.

#### Overall social impact

77. Having considered the positive and negative impacts that are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the Act that the overall social impact of granting the packaged liquor licence would not be detrimental to the well-being of the local and broader communities.
78. The Authority has had regard to all of the statutory objects and considerations in section 3 of the Act.
79. Accordingly, the Authority has decided to grant the Application pursuant to section 45 of the Act.



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 South Grafton and the Clarence Valley LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol related deaths for the period 2012-2013 and alcohol related hospitalisations for the period 2013-2015 in the Clarence Valley LGA.
3. A completed application form for a packaged liquor licence, lodged 17 February 2017.
4. A picture of the proposed area, indicating its location within the shopping centre lodged with the Application on 17 February 2017.
5. A completed Category B CIS form signed by the Applicant and dated 17 February 2017 accompanied by a map from Clarence Valley Council depicting the AFZs in Grafton and a document titled Annexure A providing additional information under Part 7 your View of the CIS.
6. 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 South Grafton, the Clarence Valley LGA and NSW.
7. BOCSAR Crime Hotspot Maps for the local community of South Grafton between April 2016 to March 2017 for incidents of *alcohol related assault, domestic assault, non-domestic assault and malicious damage to property*.
8. Email from Council to LGNSW dated 24 March 2017 advising that “the activity can go ahead without Council consent as it is in accordance with the approved/previous use of the shop within the shopping complex on bent Street”.
9. Email from Senior Constable Michael Jones of Woolgoolga Police Station of Police to LGNSW dated 11 May 2017 requesting an extension to lodge a submission.
10. Email from Design Collaborative, acting for the Commercial Objector Fostif Pty Ltd, to LGNSW dated 18 May 2017 seeking an extension for providing a submission.
11. Email from Mr Chris Kingston, Kingston Swift Lawyers, acting for the Commercial Objector Fostif Pty Ltd to LGNSW dated 21 May 2017 requesting an extension for filing submissions.
12. Email correspondence from Mr Chris Kingston, Kingston Swift Lawyers, acting for the Commercial Objector Fostif Pty Ltd to LGNSW dated 26 May 2017 requesting an extension for filing submissions.
13. Email correspondence from Mr Chris Kingston, Kingston Swift Lawyers, acting for the Commercial Objector Fostif Pty Ltd to LGNSW dated 26 May 2017 seeking the outcome for an extension for filing submissions.
14. Email from licensing staff to Mr Chris Kingston, Kingston Swift Lawyers, acting for the Commercial Objector Fostif Pty Ltd, dated 1 June 2017 approving the extension.
15. The email from Mr Chris Kingston, Kingston Swift Lawyers to LGNSW dated 13 June 2017 attempting to lodge a submission from Design Collaborative of the same date (on



behalf of the Commercial Objector Fostif Pty Ltd). The correspondence dated 13 June 2017 advising that the submission was not delivered to LGNSW is also before the Authority.

16. Sixteen-page submission from Design Collaborative Pty Ltd (retained by Kingston Swift Lawyers on behalf of the Commercial Objector Fostif Pty Ltd) dated 13 June 2016 objecting to the Application. This submission is accompanied by a map from Council depicting the AFZs in Grafton and South Grafton.
17. Email from Mr Chris Kingston, Kingston Swift Lawyers, acting for the Commercial Objector Fostif Pty Ltd to LGNSW dated 14 June 2017 regarding the lodgement of a submission.
18. Submission from Mr Chris Kingston, Kingston Swift Lawyers, acting for the Commercial Objector Fostif Pty Ltd to LGNSW dated 13 June 2017 raising concerns about the Application.
19. Email submission from Mr Chris Kingston, Kingston Swift Lawyers, acting for the Commercial Objector Fostif Pty Ltd to LGNSW dated 27 June 2016 attaching a five-page document, which is a copy of the 13 June 2017 submission in a more “user friendly format”.
20. Email submission from Constable Tegan Baker of Coffs Harbour Police Station of Police to LGNSW dated 28 June 2017 advising no objections to the Application provided the Applicant abides by the management plan dated 16 June 2017.
21. Email from the Applicant to LGNSW dated 28 July 2017 responding to an email from licensing staff dated 24 July 2017. In this one-page email, the Applicant consents to the conditions to be imposed on the licence and agrees to the 10:00 am commencement of Sunday trading. The Applicant attaches the following documents:
  - Email from Council to LGNSW dated 16 October 2017 advising that there “does not appear to be any time restrictions on operation for shops in the shopping complex at South Grafton”, the hours of operation are identified in subclause (c) and the CDC issued on 15 January 2015 is still applicable unless there are further works or internal operations proposed to the Premises.
  - Plan/diagram of the Premises highlighting the licensed area in red.
  - Certification of Advertising signed by the Applicant, dated 27 July 2017.
  - Submission from the Applicant dated 28 July 2017, responding to the objection received from Kingstown Swift Lawyers via Design Collaborative Pty Ltd on behalf of the Commercial Competitor.
22. LGNSW licensed premises information for Clarence Valley LGA and the suburb of South Grafton as at 1 August 2017.
23. Licence density information calculated by licensing staff on the basis of 2016 ABS Census data and the LGNSW licensed premises information as at 1 August 2017.
24. Google maps indicating the location of the Premises, extracted by licensing staff on 15 August 2017.

25. Email from the Applicant to LGNSW dated 29 August 2017 advising that the shop is 171 sqm.
26. Email from the Applicant to LGNSW dated 12 September 2017 attaching the following documents:
  - CDC No. 526/14 issued by Building Certificates Australia Pty Ltd on 15 January 2015 for “Change of use of Shops 6 and 7 to a BWS retail premises and associated internal fitout”.
  - Applicant’s “Southside Liquor Venue Management Plan” dated 16 June 2017.
27. Email from the Applicant to LGNSW dated 13 September 2017 providing an update on the missing page 8 of the Venue Management Plan.
28. Email correspondence from LGNSW to Bulgarr Ngaru Medical Aboriginal Corporation on 18 September 2017 extending the opportunity to comment on the Application.
29. Email from the Applicant to LGNSW dated 6 October 2017 consenting to a copy of the updated plan/diagram of the proposed licensed area amended by licensing staff.
30. Email from the Applicant to LGNSW dated 4 October 2017 seeking an update on the progress of the Application.
31. Letters from Authority Secretariat to BNMAC and Police dated 26 October 2017 inviting comment on the Applications.
32. Letter from A/Sergeant Ben Cruickshank Coffs/Clarence LAC of Police to LGNSW dated 8 November 2017 in response to the Authority’s request with further input to the Application.
33. Internal email from the Authority Secretariat dated 9 November 2017 noting that BNMAC have advised the Secretariat by telephone that they have received the correspondence and do not object to the Application.
34. Aerial photograph and a geographical map depicting the location of the Premises and surrounding area provided by the Applicant.