



Mr Tony Schwartz
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19 March 2018

Dear Mr Schwartz

Application No.	1-6446498825
Applicant	Mr Anthony Charles Leybourne Smith
Application for	Removal of a packaged liquor licence
Licence name	BWS – Beer Wine Spirits
Trading hours	Monday to Wednesday 9:00 am – 9:00 pm Thursday to Saturday 9:00 am – 10:00 pm Sunday 10:00 am – 8:00 pm
Current Premises	35 Hill Street Roseville NSW 2069
Proposed Premises	Shop 1, 23-41 Lindfield Avenue Lindfield NSW 2070
Issue	Whether to grant an application for the removal of a packaged liquor licence
Legislation	Sections 3, 11A, 12, 29, 30, 31, 40, 45, 48 and 59 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for the removal of a packaged liquor licence – BWS – Beer Wine Spirits**

The Independent Liquor and Gaming Authority (“Authority”) considered the Applicant’s application above for the removal of a packaged liquor licence (“Application”) and, pursuant to section 59 of the *Liquor Act 2007*, decided to **grant** 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 24th Normal trading Monday to Saturday
8:00 am to 10:00 pm Sunday
Christmas Day Not permitted
December 31st 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 reasonably be 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 Endeavour Drinks Group (EDG) “Liquor Store House Policy” and “Best Practice Policies and Interventions” documents, as submitted to the Independent Liquor and Gaming Authority (“the Authority”) in support of the application and as may be varied from time to time after consultation with the Authority. A copy 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 Authority.
6. 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.

Removal of the packaged liquor licence

Notwithstanding the Authority's approval of the Application, the packaged liquor licence the subject of the Application is not to be exercised at Shop 1, 23-41 Lindfield Avenue, Lindfield NSW unless and until:

- the Authority has been provided with evidence that the premises is complete and ready to trade, and
- Liquor and Gaming NSW has granted a transfer of the licence to a suitable qualified person.

The packaged liquor licence remains at 35 Hill Street, Roseville NSW subject to the same conditions and trading hours that were immediately in force before this Application was approved until such time as the Authority is notified that the licence has been removed.

Trading between 10 pm and 11 pm, Monday to Saturday

Please note that pursuant to section 12 of the *Liquor Act 2007*, the standard trading period during which liquor can be sold for consumption away from the licensed premises must end at 10 pm on all trading days. Nevertheless, the exemption provision under section 70AB of the *Liquor Regulation 2008* permits takeaway liquor sales between 10 pm and 11 pm on days other than Sundays and restricted trading days.

In the case of the current licence, liquor can be sold or supplied at the licensed premises between 10 pm and 11pm, Thursday to Saturday.

Trading on a Sunday that falls on 24 December

Please note that in the case of any Sunday that falls on 24 December, the 6-hour closure period overrides the statutory provision that would otherwise allow the licence to trade from 8:00 am. In accordance with the 6-hour closure period for the current licence, the Premises must not trade earlier than 9:00 am.

If you have any questions, please contact the case manager at kieran.mcsherry@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 27 October 2017, Mr Anthony Charles Smith (“Applicant”) lodged an application (“Application”) with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”). The Application sought the removal of a packaged liquor licence (“Licence”) from the premises at 35 Hill Street, Roseville NSW (“Current Premises”) to the premises at Shop 1, 23-41 Lindfield Avenue, Lindfield NSW (“Proposed Premises”).
2. The Authority considered the Application at its board meeting on 19 January 2018 and, pursuant to section 59 of the *Liquor Act 2007* (“Act”), decided to grant the Application. A preliminary advice letter was issued on 3 February 2018 advising the Applicant of this decision.
3. In reaching 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, 48 and 59 of the Act, and relevant provisions of the *Liquor Act Regulation 2008* (“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 and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
7. A list of the material considered by the Authority is set out in the Schedule.

Legislative framework

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

Objects of the Act

9. The key objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations, needs and aspirations 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 exercising its powers, have due regard to the need to minimise harm associated with misuse and abuse of liquor, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Removal of liquor licence

11. Section 59 of the Act requires the Authority to determine an application to remove a licence to another premises as if it were an application for a licence at that premises, and provides that the provisions in respect of a licence application extend to a licence removal application.
12. Section 59 also provides that the Authority must not approve the removal application unless it is satisfied that practices will be in place following the removal and remain in place to reasonably ensure the responsible service of alcohol and to prevent intoxication on the premises to which the license is proposed to be removed.

Trading hours and 6-hour closure period

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

Minimum procedural requirements

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

15. Section 59(2) of the Act prescribes the minimum procedural requirements for a valid application to remove the licence to another premises.

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

16. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:

- a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
- b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
- c) the applicable development consent required for use of the premises for the proposed business is in force.

Community impact statement

17. 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.

18. 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 a packaged liquor licence

19. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.

20. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.

21. 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.

22. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

Key findings

23. 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 hour requirements

24. The Authority is satisfied on the material before it that:

- a) the Application has been validly made and meets the procedural requirements under sections 40 and 59 of the Act,
- b) the proposed trading hours for the Proposed Premises meet the requirements under sections 11A, 12 and 29 of the Act in respect of trading and 6-hour closure periods,
- c) if the Application were to be granted, liquor will be sold in accordance with the authorisation conferred by the Licence as required by section 29 of the Act, and

- d) sections 30 and 31 of the Act do not apply to the Application, as the Proposed Premises is not intended to be used for any of the purposes specified in the sections.

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

25. Pursuant to sections 45 and 59 of the Act, the Authority is satisfied that if the Application were to be approved, practices will be in place from the commencement of licensed trading at the Proposed Premises, and will remain in place, to ensure the responsible serving of alcohol. In making this finding the Authority has had regard to the material before it, including the Applicant's Plan of Management documents titled "Endeavour Drinks Group Liquor Store House Policy" and "Best Practice Policy and Interventions".
26. The Authority is also satisfied that, for the purposes of section 45 of the Act:
- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies, and
 - b) the requisite development consent is in force, based on the modification of Minister's Approval in respect of the Proposed Premises, issued by NSW Department of Planning & Environment on 29 January 2016, and a Complying Development Certificate on 18 October 2017 in respect of the Proposed Premises.

Community impact statement

27. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Proposed Premises on the local and broader communities.
28. 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 Lindfield, and the relevant "broader community" comprises Ku-ring-gai Local Government Area ("the LGA").

Positive social impacts

29. The Authority notes that the Proposed Premises will be located within a new multi-purpose development comprising residential apartments and retail stores including an IGA supermarket.
30. The Authority accepts, on the material before it, the Applicant's contention that granting the removal of the Licence to the Proposed Premises would:
- a) provide local residents with a more conveniently located, modern and secure packaged liquor facility,
 - b) offer consumers more liquor choices through a large range of packaged liquor products; and
 - c) facilitate a 'one stop shop' experience for consumers who wish to purchase packaged liquor while shopping at the IGA supermarket and other stores under the same roof.
31. The Authority nevertheless considers the proposed social benefits above to be somewhat limited by the lack of evident community support for the Application. The only indication of any such support is the fact that no submissions in opposition to the Application were received from the community.
32. The Authority notes that the Licence has ceased to trade and become dormant since May 2014. The Authority also notes that a different packaged liquor licence has been granted in September 2017 for the Current Premises and is in operation. Accordingly, the Authority is satisfied that the removal of the Licence would not result in any reduction in access to packaged liquor for customers at the Current Premises.

33. Having regard to the information available, the Authority is satisfied that approving the Application would be in line with the expectations, needs and aspirations of the local and broader communities, and contribute to the responsible and balanced development of the liquor and retail industries.

Negative social impacts

34. The Authority notes from the BOCSAR data that:

- a) for the two years to September 2017, the rates of alcohol related assault (both domestic and non-domestic) and malicious damage to property in both Lindfield and the LGA were considerably lower than the NSW state average,
- b) Lindfield recorded one incident of alcohol related domestic assault and one incident of alcohol related non-domestic assault for the year to September 2016, and no incident of alcohol related assault (domestic or non-domestic) for the year to September 2017,
- c) for the year to September 2017, the Proposed Premises was not located within any hotspots for incidents of domestic assault, non-domestic assault or alcohol related assault, and was within medium to high hotspots for incidents of malicious damage to property..

35. The Authority also notes from the most recent HealthStats NSW data available at the time of its consideration that the LGA recorded a lower than average level of alcohol attributable deaths for the period 2012-13, and a higher than average level of alcohol attributable hospitalisations for the period 2013-15.

36. On the basis of the above, the Authority considers that the prevailing level of alcohol related crime and mortality does not raise immediate concerns. The Authority is nonetheless concerned by the relatively high rate of alcohol attributable hospitalisations recorded for the LGA.

37. The Authority further notes that both Lindfield and the LGA have a lower than average density of packaged liquor licences and all other types of liquor licences, and that approving the Application would:

- a) have no impact on the density for the LGA, in which both the Current Premises and Proposed Premises are located, but
- b) result in a higher than average density of packaged liquor outlets in Lindfield.

38. Having regard to the relevant statistics, and notwithstanding that some of them are of less concern, the Authority accepts that there is a risk that liquor sold or supplied at the Proposed Premises, over time, would contribute to an increase in alcohol related crime, health and other social issues in the local and broader communities.

39. Given that the Licence is currently dormant, removing the Licence from the Current Premises would not offset or reduce any potential harms associated with the sale or supply of liquor at the Proposed Premises.

40. The Authority is nevertheless satisfied that the risk identified is adequately mitigated by:

- a) the absence of any objections from any members of the public, or other key stakeholders such as NSW Police, NSW Health or Council, in relation to the Application, and
- b) the comprehensive practices and procedures in the Applicant's Plan of Management documents and the proposed licence conditions in respect of the responsible service of alcohol.

Overall social impact

41. The Authority has had regard to the ABS Socio-Economic Indexes for Areas ("SEIFA") data indicating that as at 2011, Lindfield and the LGA were among the most advantaged in comparison with other suburbs and Local Government Areas in NSW, on the Index of Relative Socio-economic Advantages and Disadvantages. The Authority notes that this data is seven

years old and does not draw any specific inferences from it, other than to note that it does not raise any concerns.

42. Having considered the positive and negative social impacts that are likely to flow from the removal of the Licence, the Authority is satisfied that the overall social impact of approving the Application would not be detrimental to the well-being of the local and broader communities.
43. The Authority is also satisfied that a decision to approve the Application would be consistent with the objects of the Act to regulate liquor supply and facilitate responsible industry development in line with community expectations and needs.
44. Accordingly, the Authority has decided to grant the removal of the Licence from the Current Premises to the Proposed Premises.



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 <https://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

Material considered by the Authority

1. ABS SEIFA data based on the 2011 Census ranking Lindfield and the LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol attributable deaths in the LGA for the period 2012-13 and alcohol attributable hospitalisations in the LGA for the period 2013-15.
3. Modification of Minister's Approval issued by NSW Department of Planning & Environment, dated 29 January 2016, in respect of the Proposed Premises.
4. NSW Recorded Crime Statistics 2016 setting out the proportion of incidents by offence type, day of week and time of day in the LGA.
5. Floor plan dated 4 April 2017 for the Proposed Premises.
6. Letter from NSW Transport Roads & Maritime Services, dated 25 May 2017, in relation to the Application.
7. Letter from NSW Family & Community Services, dated 26 May 2017, in relation to the Application.
8. Letter from Ku-ring-gai Council, dated 2 June 2017, in relation to the Application.
9. Emails from NSW Education Aboriginal Affairs, dated 16 June and 10 July 2017, in relation to the Application.
10. BOCSAR Crime Hotspot Maps for the year to September 2017, indicating the location of the Proposed Premises relative to hotspots for incidents of alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
11. NSW crime statistics for the two years to September 2017, published by BOCSAR, showing the counts, rates and two year trends of alcohol related assault (domestic and non-domestic) and malicious damage to property in Lindfield and the LGA.
12. Complying Development Certificate issued by Vic Lilli & Partners, dated 18 October 2017, in respect of the Proposed Premises.
13. Completed application dated 19 October 2017 and its attachment.
14. Completed Category B CIS dated 19 October 2017 and its supporting documents.
15. L&GNSW liquor licensing records as at 1 November 2017, outlining the density of all types of liquor licences in Lindfield, the LGA and NSW, and listing all packaged liquor licences in Lindfield and the LGA.
16. Completed Certification of Advertising Applications dated 15 November 2017.
17. L&GNSW liquor licensing records as at 20 December 2017, setting out the key liquor details for the Licence held at the Current Premises.
18. Google map images extracted from the Google website on 21 December 2017, showing the location and photos of the Proposed Premises in map view, earth view and street view.
19. Plan of Management documents titled "Endeavour Drinks Group Liquor Store House Policy – NSW", and "Endeavour Drinks Group Woolworths Best Practice Policy and Interventions".
20. Correspondence between L&GNSW and the Applicant between 24 and 28 November 2017 in relation to the assessment of the Application.