



Mr Tony Schwartz  
Back Schwartz Vaughan  
[tschwartz@bsv.com.au](mailto:tschwartz@bsv.com.au)

29 October 2018

Dear Mr Schwartz

<b>Application No.</b>	1-6684694025, 1-6684928179
<b>Applicant</b>	Mr Anthony Charles Leybourne Smith
<b>Application for</b>	Removal of a packaged liquor licence Variation of the 6-hour closure period
<b>Licence number</b>	LIQP724013748
<b>Current licence name</b>	The Liquor Cabinet
<b>Current Premises</b>	3A Amy Cl WYONG NSW 2259
<b>Proposed licence name</b>	BWS – Beer Wine Spirits
<b>Proposed Premises</b>	1 Figtree Boulevard WADALBA NSW 2259
<b>Trading hours</b>	Monday to Saturday 9:00 AM – 9:00 PM Sunday 10:00 AM – 8:00 PM
<b>Legislation</b>	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, with a change of conditions  
BWS – Beer Wine Spirits**

The Independent Liquor and Gaming Authority ("Authority") considered the Application above at its meeting on 13 June 2018 and, pursuant to sections 59 and 11A of the *Liquor Act 2007*, 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 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 "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 licence 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.

The conditions above are to replace all of the existing conditions on the packaged liquor licence the subject of the Application (LIQP724013748).

#### **Trading on a Sunday that falls on 24 December**

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 set out in the relevant condition above, the premises must not commence trading earlier than 9:00 AM.

A statement of reasons for this decision is attached at the end of this letter.

If you have any questions, please contact the case manager at [danielle.hatton@liquorandgaming.nsw.gov.au](mailto:danielle.hatton@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 16 February 2018, Mr Anthony Charles Leybourne 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 to remove a packaged liquor licence numbered LIQP724013748 (“Licence”) from 3A Amy Cl, Wyong (“Current Premises”) to 1 Figtree Boulevard, Wadalba (“Proposed Premises”).
2. The Authority considered the Application at its board meeting on 13 June 2018 and granted the Application pursuant to section 59 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the material before it and the legislative requirements under the Act and the Liquor Regulation 2008 (“Regulation”).
4. A preliminary advice letter advising of the Authority’s decision was issued to the Applicant on 15 June 2018.
5. On 10 July 2018 the Licence was transferred to a suitably qualified individual, Cory Joel Williams, as the new licensee. On 30 July 2018 L&GNSW was provided with evidence that the Proposed Premises was complete and ready to trade. The Licence has since been exercised at the Proposed Premises.

### Material considered by the Authority

6. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
7. 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.
8. 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”).
9. A list of the material considered by the Authority is set out in Schedule 1.

### Legislative framework

10. The Authority has considered the Application in the context of the following legislative provisions under the Act:
  - a) Section 3: Statutory objects of the Act and relevant considerations.
  - b) Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6 hour period during which liquor cannot be sold.
  - c) Sections 29-31: Specific provisions in respect of a packaged liquor licence.
  - d) Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
  - e) Section 45: Criteria for granting a liquor licence.
  - f) Section 48: Requirements in respect of a CIS.
  - g) Section 59: Requirements for an application to remove a liquor licence to another premises and the determination of such an application.
11. An extract of these sections is set out in Schedule 2.

## **Key findings**

12. 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

13. 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

14. Pursuant to sections 45 and 59 of the Act, the Authority accepts on the material provided by the Applicant 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.

15. 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 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, noting the development consent issued by Central Coast Council on 28 September 2017 in respect of the Proposed Premises.

### Community impact statement

16. 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.

17. For the purpose of this decision and consistent with its position in Guideline 6, the Authority is satisfied that:

- a) the relevant "local community" is the community within the suburb of Wadalba, and
- b) the relevant "broader community" refers to the community within the Local Government Area ("LGA") of Central Coast.

### Positive social impacts

18. The Authority notes that the Proposed Premises is located alongside a Woolworths supermarket in a new shopping centre complex. The Authority accepts the Applicant's contention that granting the removal of the Licence to the Proposed Premises would provide the local residents in Wadalba with access to a modern packaged liquor facility, increased liquor choices and the convenience of a "one stop shop" experience.

19. The Authority nevertheless considers the proposed benefits above to be limited by the absence of any substantive evidence of community support for the Application.

20. The density of packaged liquor licences in Wadalba is marginally above the NSW state average, though there is only one packaged liquor licence in the local community. The

Authority accepts that the higher than average density is attributable to the small population in Wadalba.

21. Central Coast LGA has a lower than average density of packaged liquor licences, but the suburb of Wyong, which is in the same LGA as Wadalba and is where the Current Premises is located, has a very high density even after excluding the Licence. On this basis, and noting that the Licence has not been exercised at the Current Premises since April 2017, the Authority is satisfied that the removal of the Licence would:
  - a) likely result in a more balanced distribution of packaged liquor licences within Central Coast LGA without changing the overall density at the LGA level, and
  - b) unlikely cause any inconvenience for the local community of Wyong, or reduce its existing access to packaged liquor.
22. 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 industry.

#### Negative social impacts

23. The BOCSAR data before the Authority at the time of its decision indicates that, for the year to March 2018:
  - a) the Proposed Premises was located on the edge of a low density hotspot for incidents of domestic assault, and not within any hotspot for incidents of alcohol-related assault, non-domestic assault or malicious damage to property,
  - b) Central Coast LGA recorded higher rates of alcohol-related domestic and non-domestic assault, malicious damage to property, and a lower rate of alcohol-related disorderly conduct, compared to the NSW state average,
  - c) Wadalba recorded higher rates of alcohol-related domestic assault and malicious damage to property, and lower rates of alcohol-related non-domestic assault and alcohol-related disorderly conduct, compared to the NSW state average, and
  - d) Wyong recorded considerably higher rates of alcohol-related domestic and non-domestic assault, malicious damage to property and alcohol-related disorderly conduct compared to the NSW state average.
24. The most recent HealthStats NSW data available at the time of the Authority's decision indicates that the former Wyong LGA, in which the Proposed Premises is located, recorded a higher than average level of alcohol attributable deaths for the period 2012-13, and a lower than average level of alcohol attributable hospitalisations for the period 2013-15.
25. The ABS Socio-Economic Index for Areas ("SEIFA") data as at 2016 indicates that Wadalba was moderately disadvantaged compared to other suburbs in NSW, ranking in the bottom 40 percent on the Index of Relative Socio-economic Advantage and Disadvantage. Central Coast LGA was a relatively advantaged LGA, ranking in the top 40 percent on the same index.
26. Mindful of the requirement under section 59 of the Act to deal with the Application as if it were an application for a new packaged liquor licence at the Proposed Premises, the Authority considers that the statistics above:
  - a) give rise to concerns in respect of the prevailing level of alcohol-related harm experienced in the local and broader communities, and
  - b) are indicative of a risk that if the licence were to be granted, liquor sold at the Proposed Premises may, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues to the detriment of the local and broader communities.

27. The Authority nevertheless accepts that the risk of negative overall social impacts associated with the sale of liquor at the Proposed Premises is sufficiently mitigated by the following:
- a) NSW Police Force (“Police”) did not oppose the granting of the Application, commenting in its submission that Police had been thoroughly consulted throughout the application process, and was content that appropriate measures would be in place to prevent adverse impacts on the community.
  - b) The Proposed Premises will trade for reduced hours compared to what the Licence previously authorises for the Current Premises.
  - c) The community in which the Current Premises is located is subject to considerably higher levels of liquor licence density, alcohol-related crime and socio-economic disadvantages compared to Wadalba and the state average. The Authority accepts that the removal of the Licence would contribute to a more balanced distribution of packaged liquor licences and the associated social impacts within Central Coast LGA.
  - d) The experience of Woolworths Group Limited as an operator of a large number of packaged liquor facilities, and the practices and procedures set out in its plan of management documents.
28. A submission was received from the Central Coast Local Health District (“CCLHD”) opposing the granting of the Application, citing concerns over the current level of alcohol-attributable health problems in the LGA and social-economic disadvantages in Wadalba, and the likely exacerbation of alcohol-related harm if the Application were to be granted.
29. The Authority has considered CCLHD’s submission and the Applicant’s response, and accepts that CCLHD’s submission does not appear to have taken into account the fact that the Application seeks to remove the Licence within the same LGA, and that Wadalba is less disadvantaged than Wyong according to the SEIFA data.
30. The Authority has also considered a submission from a member of the public opposing the granting of the application, but notes that the objection was based on an incorrect assertion about the number of existing packaged liquor outlets in Wadalba.

#### CCTV condition

31. The Authority has considered the Applicant’s request to amend the standard CCTV condition to be imposed on the Licence, so that the timeframe within which CCTV recordings must be produced on request is extended from 24 to 72 hours.
32. The Authority does not consider it appropriate to vary the current wording of the CCTV condition, noting that it was developed following consultation with a range of stakeholders including Woolworths, and is imposed on all packaged liquor licences as a matter of policy.

#### Overall social impact

33. 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.
34. The Authority is also satisfied that the other legislative criteria for the granting of the Application have been met.
35. 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 1 – Material considered by the Authority**

1. HealthStats NSW data showing that the former Wyong LGA recorded, compared to a state benchmark of 100:
  - a. a smoothed standardised mortality ration of 128.2 for the period 2012-13, and
  - b. a smoothed standardised separation ratio of 98.3 for the period 2013-15.
2. ABS SEIFA data based on the 2016 Census indicating that, on the Index of Relative Socio-economic Advantage and Disadvantage for NSW on a scale of 1 to 10, with the 10<sup>th</sup> decile being the most advantaged and 1<sup>st</sup> decile the most disadvantaged, Wadalba ranked in the 4<sup>th</sup> decile, Wyong ranked in the 1<sup>st</sup> decile and Central Coast LGA ranked in the 7<sup>th</sup> decile.
3. Notice of determination issued by Central Coast Council on 28 September 2017, approving development application DA/111/2015/D for the Proposed Premises.
4. Email from a member of the public on 27 November 2017 in relation to the Application.
5. Premises plan dated 15 December 2017 for, and an aerial view of, the Proposed Premises.
6. BOCSAR NSW Recorded Crime Statistics 2017 in respect of crime data in Central Coast LGA compared to NSW.
7. Completed application form dated 5 February 2018 and the relevant notices of application, ASIC and other probity documentation attached to the form.
8. Completed Category B CIS form dated 5 February 2018, with supporting attachments attached.
9. Completed certifications of advertising dated 7 March 2018.
10. BOCSAR Crime Hotspot Maps for the year to March 2018, 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 published by BOCSAR indicating that, for the year to March 2018, the rates of:
  - a. alcohol-related domestic assault in Central Coast LGA, Wadalba and Wyong were 175.7, 414.1 and 429.0 respectively, compared to the NSW average of 114.1,
  - b. alcohol-related non-domestic assault in Central Coast LGA, Wadalba and Wyong were 159.9, 34.5 and 812.8 respectively, compared to the NSW average of 130.4,
  - c. malicious damage to property in Central Coast LGA, Wadalba and Wyong were 907.2, 862.7 and 3296.5 respectively, compared to the NSW average of 779.5, and
  - d. alcohol-related offensive conduct in Central Coast LGA, Wadalba and Wyong were 46.8, 0 and 361.3 respectively, compared to the NSW average of 63.0.
12. Email from Police on 3 April 2018 in relation to the Application.
13. Submission from CCLHD on 6 April 2018 in relation to the Application.
14. Emails from Central Coast Council on 6 and 13 April 2018 in relation to the Application.
15. L&GNSW liquor licensing records as at 19 April 2018 setting out the number and density (in terms of licences per 100,000 persons of the population) of all types of liquor licences in Wadalba, Wyong, Central Coast LGA and NSW. The density of packaged liquor licences is 34.17 in NSW, 31.12 in Central Coast LGA, 35.32 in Wadalba and 115.58 in Wyong.
16. Google map images extracted from the Google website on 24 April 2018, showing the location and photo of the Proposed Premises in map view, earth view and street view.
17. The Applicant's response to the submissions received.
18. Plan of Management documents titled "Endeavour Drinks Group Liquor Store House Policy – NSW", and "Endeavour Drinks Group Woolworths Best Practice Policy and Interventions".



## Schedule 2 – Relevant extracts from the *Liquor Act 2007*

### 3 Objects of Act

- (1) The objects of this Act are as follows:
  - (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
  - (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
  - (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
  - (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
  - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
  - (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

### 11A Special licence condition—6-hour closure period for licensed premises

- (1) This section applies in relation to:
  - (a) any licence granted on or after 30 October 2008, and
  - (b) any licence in force before that date, but only if an extended trading authorisation granted on or after that date is in force in relation to the licensed premises concerned.
- (2) A licence to which this section applies is subject to the condition that liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours (as determined in accordance with this section) during each consecutive period of 24 hours (the 6-hour closure period).
- (3) Except as provided by subsection (4), the 6-hour closure period for any particular licensed premises is the period that is approved for the time being by the Authority.
- (4) In the case of a licence:
  - (a) granted on or after 30 October 2008 but before the date on which this section (as inserted by the Liquor Legislation Amendment Act 2008) commenced, or
  - (b) granted by the Local Court (as provided by clause 25 of Schedule 1) at any time after the date on which this section commenced,the 6-hour closure period for the licensed premises is, subject to subsection (5), the period from 4 am to 10 am.
- (5) The Authority may at any time, on application by the licensee or by the Secretary or the Commissioner of Police, or on its own initiative, approve of licensed premises having a different 6-hour closure period than:
  - (a) the period as last approved by the Authority, or
  - (b) the period specified in subsection (4).
- (6) Any such application by the licensee must be accompanied by the fee prescribed by the regulations.
- (7) To avoid doubt, during the 6-hour closure period for any licensed premises:
  - (a) the licensed premises are not authorised to stay open for the retail sale of liquor on the premises, and
  - (b) the licensee is not authorised to sell liquor by retail for consumption away from the licensed premises.
- (8) This section has effect despite any other provision of this Act (in particular, those provisions relating to the standard trading period for licensed premises).
- (9) This section does not, however, apply to the sale or supply of liquor to a resident of licensed premises if the liquor is sold or supplied for consumption in the room in which the resident is residing or staying.
- (10) The regulations may also create exceptions to this section.

### 12 Standard trading period for certain licensed premises

- (1) For the purposes of this Act, the standard trading period means:
  - (a) for any day of the week other than a Sunday:
    - (i) the period from 5 am to midnight, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed, and
  - (b) for a Sunday:
    - (i) the period from 10 am to 10 pm, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed.
- (1A) Despite subsection (1), the standard trading period for a small bar is the period from noon to midnight on any day of the week.

**Note.** Small bars are subject to the 6-hour closure period under section 11A.

- (1B) Despite subsection (1) (a), the standard trading period for premises to which this subsection applies ends at 10 pm.
- (1C) Subsection (1B) applies to the following premises or part of premises:
- (a) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is the sale or supply of liquor for consumption away from the licensed premises—the licensed premises,
  - (b) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is not the sale or supply of liquor for consumption away from the licensed premises—the part of the premises that is a liquor sales area (within the meaning of section 30) of the licensed premises,
  - (c) if a hotel licence, club licence, on-premises licence or producer/wholesaler licence authorises the licensee to sell liquor for consumption away from the licensed premises—any part of the licensed premises to the extent that it is used for that purpose.
- (2) Any regulation that prescribes a shorter period for the purposes of subsection (1) may:
- (a) apply to a specified class of licensed premises, and
  - (b) apply in relation to a specified day or days, and
  - (c) in the case of licensed premises on which liquor may be sold or supplied for consumption on the premises as well as for consumption away from the premises—specify different periods for the sale or supply of liquor for consumption on the premises and for the sale or supply of liquor for consumption away from the premises.
- (3) Without limiting subsection (2) (a), a class of licensed premises may be specified by reference to licensed premises that are located in a particular area (however described).

## 29 Authorisation conferred by packaged liquor licence

### (1) Retail sales

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

- (a) during the standard trading period or such other period as may be authorised by an extended trading authorisation, or
- (b) in the case of any Sunday that falls on 24 December—from 8 am (or such earlier time as may be authorised by an extended trading authorisation) to 10 pm on that day.

### (2) No retail trading on restricted trading days

Despite subsection (1), a packaged liquor licence does not authorise the licensee to sell liquor by retail on a restricted trading day.

### (3) Selling liquor by wholesale or to employees

A packaged liquor licence also authorises the licensee:

- (a) to sell liquor by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and
- (b) to sell or supply liquor, at any time on the licensed premises, to the employees of the licensee or of a related corporation of the licensee.

(3A) An extended trading authorisation must not authorise the sale after 10 pm on any day of liquor for consumption away from the licensed premises.

### (4) Tastings

A packaged liquor licence also authorises the licensee to sell or supply liquor, on the licensed premises and during the trading hours permitted by subsection (1), otherwise than in sealed containers to customers and intending customers for consumption while on the licensed premises, but only for the purposes of tasting.

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

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

## 31 Restrictions on granting packaged liquor licences

- (1) A packaged liquor licence must not be granted for premises that comprise a general store unless the Authority is satisfied that:
  - (a) in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and
  - (b) the grant of the licence would not encourage drink-driving or other liquor-related harm.
- (2) A packaged liquor licence must not be granted for premises comprising a service station or take-away food shop.
- (3) In this section:

**general store** means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.

**service station** means premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.

**take-away food shop** means premises that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises).

#### 40 Licence applications

- (1) Licence applications are to be made to the Authority.
- (2) An application for a licence may be made by:
  - (a) an individual, or
  - (b) a corporation, or
  - (c) in the case of a club licence—a club (or a person on behalf of a club) that meets the requirements specified in section 10 (1) of the Registered Clubs Act 1976.
- (3) An application for a licence may not be made by:
  - (a) an individual who is under the age of 18 years, or
  - (b) a person who is disqualified from holding a licence or who holds a suspended licence, or
  - (c) an individual who is a controlled member of a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012.

**Note.** Controlled members are prohibited from applying for licences—see section 27 of the Crimes (Criminal Organisations Control) Act 2012.

- (4) An application for a licence must:
  - (a) be in the form and manner approved by the Authority, and
  - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
  - (c) be advertised in accordance with the regulations, and
  - (d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.

**Note.** See also section 48 which requires a community impact statement to be provided with certain licence applications.

- (5) If, before an application for a licence is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including any information provided in accordance with this subsection), the applicant must immediately notify the Authority of the particulars of the change.

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

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

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

- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.
- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
  - (a) that the person:
    - (i) is a member of, or
    - (ii) is a close associate of, or
    - (iii) regularly associates with one or more members of,a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and

- (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.
- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
  - (a) is of good repute, having regard to character, honesty and integrity, and
  - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.

#### 48 Community impact

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
  - (a) the views of the local community, and
  - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
- (2) In this section:
 

**relevant application** means any of the following:

  - (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
  - (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),
  - (e) an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),
  - (f) any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,
  - (g) any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,

but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).
- (3) A relevant application must be accompanied by a community impact statement.
- (3A) However, a small bar application is not required to be accompanied by a community impact statement if:
  - (a) development consent is required under the Environmental Planning and Assessment Act 1979 to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
  - (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.
- (3B) For the purposes of subsection (3A), a **small bar application** means any of the following:
  - (a) an application for a small bar licence,
  - (b) an application for approval to remove a small bar licence to other premises,
  - (c) an application for an extended trading authorisation for a small bar,
  - (d) an application to vary an extended trading authorisation for a small bar.
- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:
  - (a) the application relates to the same premises as the premises to which a general bar licence relates, and
  - (b) development consent has been obtained under the Environmental Planning and Assessment Act 1979 to sell liquor during the times to which the application relates and those times are specified in the development consent.
- (3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:
  - (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
  - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the Registered Clubs Act 1976.
- (4) The community impact statement must:

- (a) be prepared in accordance with the regulations and any requirements of the Authority, and
  - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
- (a) the community impact statement provided with the application, and
  - (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),
- that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.
- (6) The regulations may make provision for or with respect to the following:
- (a) the requirements that must be satisfied in relation to the preparation of a community impact statement (including consultation requirements),
  - (b) the matters to be addressed by a community impact statement,
  - (c) the information to be provided in a community impact statement,
  - (d) the criteria for determining the local and broader community for the purposes of a relevant application,
  - (e) any other matter relating to the preparation and content of a community impact statement.
- (7) Without limiting subsection (6), the regulations may provide that the matters to be addressed by a community impact statement are, in the case of an application for an extended trading authorisation in relation to a hotel licence, to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.

### **59 Removal of licence to other premises**

- (1) A licensee may apply to the Authority for approval to remove the licence to premises other than those specified in the licence.
- (2) An application for approval to remove a licence to other premises must:
- (a) be in the form and manner approved by the Authority, and
  - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
  - (c) be advertised in accordance with the regulations, and
  - (d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.
- (3) An application for approval to remove a licence to other premises is to be dealt with and determined by the Authority as if it were an application for the granting of a licence in respect of those other premises. Accordingly, the provisions of Division 1, in particular, extend to an application for the removal of a licence to other premises as if it were an application for a licence.
- (4) The Authority may refuse an application for approval to remove a hotel licence if the Authority is satisfied that the removal of the licence would adversely affect the interest of the owner or a lessee or mortgagee of the premises from which it is proposed to remove the hotel licence, or a sublessee from a lessee or sublessee of those premises.
- (5) The Authority must refuse an application for approval to remove a licence unless the Authority is satisfied that:
- (a) practices will, as soon as the removal of the licence takes effect, be in place at the premises to which the licence is proposed to be removed that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on those premises and that all reasonable steps are taken to prevent intoxication on those premises, and
  - (b) those practices will remain in place.
- (6) The regulations may provide additional mandatory or discretionary grounds for refusing to approve the removal of a licence.
- (7) The approval to remove a licence to other premises takes effect:
- (a) on payment to the Secretary of the fee prescribed by the regulations, and
  - (b) when the Authority endorses the licence to the effect that those other premises are the premises to which the licence relates.