



Mr Tony Schwartz
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Dear Mr Schwartz

**Application for Packaged Liquor Licence Removal
BWS – Pyrmont**

I am writing to you about the application made on 2 December 2014 by Mr Anthony Charles Leybourne on behalf of Woolworths Limited to the Independent Liquor and Gaming Authority (Authority). The Application seeks the removal of a packaged liquor licence from premises located at 100 Bulwara Road, Pyrmont previously trading as "Mac's Liquor", to new premises at Lower Ground Level, 61-79 Quay Street, Haymarket to be known as "BWS - Beer Wine Spirits".

Following preliminary consideration of the matter on 25 March 2015 and further submissions from the Applicant on 2 June 2015, the Authority gave further consideration to the Application at its meeting on 24 June 2015 and decided to grant the Application to remove the licence pursuant to section 59 of the *Liquor Act 2007*.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.

This letter attaches the Authority's statement of reasons. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as is practicable. The conditions to which the licence is subject are set out in the OneGov record of the liquor licence, provided separately by Authority staff.

Please contact the case manager, Ms Trudy Tafea via email at trudy.tafea@ilga.nsw.gov.au if you have any questions.

Yours sincerely

Micheil Brodie
Chief Executive

1 8 SEP 2015

STATEMENT OF REASONS

INTRODUCTION

1. On 23 September 2014 the Independent Liquor and Gaming Authority (Authority) received an (Application) regarding premises located at 100 Bulwara Road, Pyrmont trading as "Mac's Liquor" (Premises).
2. The Application is made under section 59 of the *Liquor Act 2007* (Act) by Mr Anthony Charles Leybourne Smith on behalf of Woolworths Limited (Applicant) and seeks the removal of a packaged liquor licence within the meaning of section 29 of the Act.
3. The Applicant seeks to remove the licence for premises that formerly traded as "Mac's Liquor", from its present location at 100 Bulwara Road (Current Premises) to Lower Ground Level, 61-79 Quay Street, Haymarket to be known as BWS (Proposed Premises). The Proposed Premises are at a distance of approximately 1.25kms from the Current Premises.
4. The Proposed Premises will be located within a recently opened Woolworths supermarket which is located on the ground floor of a mixed use development.
5. The proposed licensed trading hours of the business to be conducted on the Proposed Premises are from 8:00am to 10:00pm, Monday through Saturday and from 10:00am to 8:00pm on Sunday.
6. By way of background, this is the third time the Applicant has lodged an application in relation to the Proposed Premises. The original application was lodged with the Authority on 6 December 2013 but was withdrawn due to the removal of the site notice by "an unknown person".
7. A second application was lodged with the Authority on 9 April 2014. In early September 2014 as the Woolworths supermarket neared completion, it was necessary to place further site notices on display, as the removal of the building's hoarding was imminent.
8. The Applicant received a direction from the Authority by email dated 5 September 2014 to lodge the third (and present) Application.
9. The Authority gave preliminary consideration to the Application at its meeting on 25 March 2015 and decided to defer the matter so to enable the Applicant to address the matters raised in the NSW Bureau of Crime and Statistics (BOCSAR) report "The effect of liquor licence concentrations in local areas on rates of assault in NSW" published during December 2014 (BOCSAR Report).
10. Following receipt of further submissions from the Applicant on 2 June 2015, the Authority again considered the Application at its meeting on 24 June 2015 and after careful consideration of the Application material and submissions made in relation to the Application, decided to grant the Application pursuant to section 59 of the Act.
11. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008.

12. Staff assisting the Authority informally notified the Authority's decision by email on 8 July 2015. This letter provides a statement of reasons for the Authority's decision to grant the Application. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.
13. The actual conditions to which the licence is granted are set out in the OneGov record of the liquor licence, which was provided to the Applicant on 8 July 2015.

MATERIAL BEFORE THE AUTHORITY

Before the Authority was the Application, the accompanying community impact statement (CIS), further submissions and other relevant material as follows:

14. Liquor Licence Application Form dated 2 December 2013 received by the Authority on 23 September 2014.
15. Category B CIS Form and supporting material dated 2 December 2013.
16. Floor Plan for the Premises accompanying the Application which provides a diagram outlining proposed licensed area.
17. Notice of intention to apply for a liquor licence authorisation dated 2 December 2013.
18. Development Approval (DA) D/2008/1748/C issued by City of Sydney on 22 August 2013. The DA describes the approved development as a use a portion of the approved supermarket as a packaged liquor store.
19. Submission from NSW Roads & Maritimes Services (RMS) dated 2 October 2013 received by the Authority on 13 December 2013. RMS has commented on the potential road safety impacts of granting the Application and notes its concern to reduce the incidence of road crashes involving drivers, riders and pedestrians who are impaired by alcohol. RMS note that in 2011, alcohol affected pedestrians represent 25 per cent of the pedestrian fatalities and 12 per cent of fatal crashes in the Sydney region. RMS add that within the Sydney LGA there were 32 alcohol-related crashes resulting in 31 casualties.
20. RMS recommend that countermeasures to prevent and decrease the likelihood of alcohol involvement in road crashes in the Haymarket area should be discussed in the approval process. RMS recommend that should the Application be approved, the licensee attend the LGA's liquor accord and that public education material focused on drink drive and pedestrian alcohol issues be displayed at the Premises.
21. Submission from City of Sydney (Council) dated 14 October 2013 and received by the Authority on 13 December 2013. Council submitted that it has "...no matters of concern with this application". Council advised that under the DA, the hours of use of the Premises are (for planning law purposes) to between 8:00am and 10:00pm Monday to Saturday and between 10:00am and 8:00pm Sunday, and that the Proposed Premises are restricted to selling packaged liquor only.
22. Undated submission from NSW Health received by the Authority on 13 December 2013. NSW Health do not support the Application on the basis that its granting "...is likely to contribute to further alcohol-related harm and negative health outcomes for the local community".

23. NSW Health submit that the Sydney LGA experiences high levels of alcohol-related harm due to both acute and chronic excessive consumption of alcohol. In support of this, NSW Health note:
- (a) *Smoothed alcohol-related hospital separations are significantly higher than the NSW state average*
 - (b) *Smoothed alcohol-related acute Emergency Department presentations are significantly higher than the NSW state average*
 - (c) *Smoothed alcohol-related ambulance call-outs are significantly higher than the NSW state average.*
24. NSW Health add that alcohol-related harm places a significant strain on the health system and that the "...granting of an additional licence in the area is likely to add to that burden and detract from the health system's overall ability to provide care and treatment to the entire community".
25. Submission from NSW Family & Community Services (FACS) dated 6 January 2014. NSW FACS briefly noted that "...we do not have a response in relation to your application and will not be providing input into the submission".
26. Submission from NSW Police, Sydney City Local Area Command (LAC) (Police) dated 30 January 2014. The submission is provided by Sergeant Paul Ryan of the Sydney City Licensing Unit and submits that there is no Police objection to the Application.
27. Submission from a delegate of the Secretary of NSW Trade and Investment (Secretary) dated 13 May 2014. In this short submission, the Secretary noted that the Application was assessed using the Automated Liquor Application Risk Matrix and has been categorised as "...lower risk and has not been referred for assessment by a Compliance Officer".
28. Submission from local resident, Mr Alan Sauran, dated 26 September 2013. Mr Sauran, who resides 50 metres away from the Premises, responded to an online CIS Survey form. Mr Sauran submits that he believes the Premises could adversely affect him due to "...noise from rowdy alcohol purchasers late at night". Mr Sauran adds that the Premises could benefit him by "...improved shopping convenience, which I would use other than late at night".
29. Submission from local resident, Mr Sven Banton, dated 17 May 2014. Mr Banton, who resides across the street, provided the following submission in support of the Application:

I write as a senior citizen...I cannot have a BWS store beside Woolworths at the corner of Quay St/Ultimo Road soon enough. I find it exhausting to walk to World Square where there is a Coles Liquorland to bring back a case of beer or wine. This means because of my age (a 60 year old does not have the strength of a younger person) I have to buy smaller and more expensive quantities. I am still capable of enjoying two beers while watching a game of football on my tv.

There are so few alternatives. There is a Red Bottle liquor shop in Market City – rather small, expensive and has a limited range – which one would expect given its size. Otherwise there is a Chinese supermarket in Thomas St that does have a small range of beer and wine. Again somewhat limited in range. That is all I have discovered within walking distance. There is a karaoke café across the Ultimo Road – opposite the Peak. I doubt that it has takeaway liquor licences. There were two security guards there last night – Friday. That strikes me as rather excessive as I have never seen any trouble in Haymarket – by enlarge a very peaceful place for all the years that I have lived in the area. Being 60 years old I am sensitive to any signs of trouble of an evening – and I have just never seen any signs of violence or drunkenness. Though there used to be some

difficulties on George St by the cinemas before the CCTV was installed – but that was 10 or 15 years ago. That said – my son who lives with me, 19 years and does not drink alcohol – tells me once he did hear a quarrelsome individual growling at passers by late at night. A local bottle shop from a national chain with a decent range and good prices will be a boon. Especially to us older folk in the locality.

30. Submission from local resident, Mr Peter Bannister, dated 18 May 2014. Mr Bannister provided the following submission in objection to the Application:

I write to express my dismay that Chinatown, a quiet, peaceful, modest neighbourhood may receive another liquor takeaway outlet. As a long term resident and small business owner, I noticed no evidence that liquor outlets – shops or hotels, of which there are many here – were under demand pressure and couldn't keep up a satisfactory supply or range of alcoholic products. There are at least half a dozen retail outlets within a 100 yards of my front door, and as many (well-run) hotels within a furlong. Nor did I notice evidence of overcharging through there being insufficient commercial competition among either hoteliers or retailers.

Granting another licence at this time must be hard for the applicant to justify on any of these objective grounds and may even send the wrong signal to other enterprises looking for opportunities to sell more beer, wines and spirits. Please give us a break from our current dose of 'development'. We are currently oppressed on all sides by government regulators failing to see that some areas can sustain only so much 'development' at a time, and that those regulators are in a position to assess and refuse on solid grounds.

Our dense, tiny precinct is the most historically fascinating, commercially successful, best educated AND best behaved, peaceful and artistically cultivated of each of the identifiable zones in Central Sydney. You will do its residents and businesses a service in rejecting the application as unlikely [sic] to improve it in any of these dimensions, immediately or (in my view) in the longer term, future. Please contact me if you are interested to discuss a decision which may easily blight one of the few parts of our city that is doing fine in this particular regard.

31. Submission from local resident, Mr David Champion, dated 22 May 2014. The submission is prepared by Design Collaborative Pty Limited (DC) who has been engaged by Mr Champion and provides a number of objections to the Application.
32. First, DC submits that the Applicant has failed to identify the premises on the OLGR Application. DC contends that the listed address, 61-79 Quay Street covers about 3,000 square metres and that such uncertainty should not exist, particularly, in a densely settled area such as Haymarket.
33. Second, DC submits that there are supplementary attachments missing from the CIS. In particular, DC contends that in the CIS the Applicant made reference to, but did not provide "...an aerial photograph to be filed with the Authority illustrating the neighbouring premises notified of this application" nor was the Applicant's Statement of Impact provided. DC submits that "...this failure to supply information for OLGR to post on its website subverts the intent of the CIS process which is to provide transparency by giving the public details of applications so that they may assess whether or not they consider the applications to be desirable".
34. Third, DC submits that the Applicant has omitted data from the CIS including, for example, a number of doctors with rooms located within 100 metres of the Premises, a Lutheran Church within 150 metres and Ultimo College of TAFE within 200 metres.

35. Fourth, DC submits that the Applicant failed to notify occupiers of neighbouring premises. DC notes that clause 6 of the Liquor Regulation 2008 (Regulations) defines 'neighbouring premises' to be those within 100 metres (when a Category B CIS is required). DC notes that diagonally opposite 61-79 Quay Street lies the multi-storey mixed use building, part of which is known as The Peak Apartments where approximately 120 tenants (including Mr Champion) reside alongside Paddy's Market and Market City. DC submits that it seems the applicant served, in September 2013, a notice of intention to make an application on the strata manager of The Peak who arranged for copies of it to be distributed to occupiers of that building but similar notices were not served on the occupiers of Market City or Paddy's Market.
36. DC attached two statutory declarations, one from a business owner in Market City and one from a tenant of a stand in Paddy's Market, each averring that they were not served with any notice about the Application. DC submits that:
- ...in light of the Authority's decision in Black Head Surf Life Saving Club Inc. matter (14/9/12), it would appear that the applicant's failure to notify the occupiers of all premises in Market City and Paddy's Market, each of which is located on a lot which extends to within 100 metres of the proposed premises, renders the application void and that the Authority has no jurisdiction to deal with it.*
37. DC then provided a number of reasons why Mr Champion objects to the Application. First, DC notes that the licence being removed was granted "...many years ago and has not been exercised for a decade or more" at its present location in Pyrmont. DC submits that, while the removal of the licence to Haymarket may not alter the liquor licence density in the City of Sydney, it will "...in reality, result in an increase in the number of trading packaged liquor licences in that LGA". DC notes the recent media attention on alcohol-related problems and submits that "...creating another active outlet can only exacerbate those problems and that would not be in the public interest".
38. Second, DC expresses concern in relation to the location of the Premises. DC submits that it is unclear where in the Woolworths supermarket the Premises will be located and that "...it seems evident that, if the application is granted, anyone purchasing liquor in the proposed premises would emerge onto the public street directly opposite to the entrance of the Peak Apartments". In addition, DC expresses concern that there will be "...multiple opportunities to consume liquor in the centre without supervision and that they could emerge on to the street affected by liquor to the detriment of the area, generally, and to residents of The Peak Apartments, in particular".
39. Third, DC submits that the suburb of Haymarket has a very atypical population in that, for example, its median age is 27 (11 years below the NSW median); contains the highest proportion of migrants in its population (88 per cent) of any suburb in Australia; the median weekly personal income is \$358 compared to \$561 in NSW; and 63 per cent of persons rent their accommodation at a median weekly rent of \$640 which is far above the NSW median. DC submits that there is "...no good reason how it could be in the public interest to approve an additional packaged liquor outlet in Haymarket given the present density of licensed premises and the atypical characteristics of its population".
40. Fourth, DC submits that because the Applicant "...has not made its Statement of Impact available for public scrutiny, the CIS provides no assessment what [sic] the applicant sees as its likely impacts" and that "...this is an unsatisfactory state of affairs which undermines the worth of the CIS process".
41. Fifth, DC submits that the Authority has recently refused an application for a new packaged liquor licence in Pyrmont but, on a per capita basis, the density of licensed

premises in that State Suburb is considerably lower than in Haymarket and that it is not in the public interest to remove a licence from one part of the City to another which already has a very high density of licensed premises.

42. Lastly, DC submits that the licence could be better utilised in Pyrmont with its much larger, older and wealthier population than in Haymarket where there is a high proportion of young adults living away from their families in an unfamiliar country and culture.
43. Additional submission from local resident, Mr David Champion, dated 24 October 2014. This submission was again prepared by DC and repeated some of the points made in the previous submission while adding further objections to the Application. DC begins by outlining the procedural history of the Application and noting that the present Application is the third occasion where the Applicant seeks to license the Premises.
44. In respect of the present Application, DC contends that "...some occupiers of premises within 100 metres of the proposed premises were advised on the lodging of the application" and that it, unlike the previous applications, contains the Statement of Impact report. DC outlines a number of defects with the present Application.
45. First, DC submits that the form used for notice of the lodging of the Application is "out of date" and consequently it contains erroneous information in relation to the standard trading hours of packed liquor licences.
46. Second, DC submits that the Applicant has failed to comply with clause 9(4)(a) of the Regulations which requires the posting of the notice on the premises to be affixed in such a position that is legible to members of the public premises. DC contends that the notice was affixed to "...what appears to be a temporary wall of the proposed licensed premises which is located inside a Woolworths store" and as a result the "...only people who might see that notice would be customers of that store" and that "...the public have not been, and will not be, alerted to the lodging of the application".
47. Third, DC submits that the CIS prepared by the Applicant contains misleading and/or incorrect information. In support of this submission, DC identifies four parts of the CIS that are alleged to be misleading and/or incorrect. DC contends that the information provided in part 2 of the CIS is incorrect for a number of reasons including non-disclosure of various stakeholders such as the Lutheran Church on Valentine Street.
48. DC contends that the Applicant has created a false impression by "...conveying that the proposed premises are to be free-standing in a shopping centre but this is not the case" as the Premises "...is not a full-line supermarket but rather one of that chain's [Woolworths] new breed of '*small format stores*'".
49. DC adds that "...granting such a store a packed liquor licence on the basis of the conventional argument that a full-line supermarket provides a one-stop shop offering most day-to-day household requirements, which should reasonably include liquor, does not apply".
50. DC contends that there are many misstatements of facts in the CIS including the down-playing of the IGA supermarket (which is probably larger in area than the Woolworths store) in the nearby Market City complex and the claim that the Red Bottle packaged liquor outlet in Market City is 30-40 metres from the IGA when it is "about 20 metres from its checkouts".

51. DC contends that the Applicant has attempted to "...dilute some of the atypical characteristics of the population of the State Suburb of Haymarket, which would normally be accepted as the local community, by adding the State Suburb of Ultimo to it".
52. DC adds that the only reason for departing from the Authority's protocol of defining the local community as the State Suburb within which a proposed premises is located "...is to attempt to dilute the density of outlets in the suggested local community".
53. DC concluded by reiterating Mr Champion's concerns regarding the Application as outlined above and querying "...how the applicant could sign Part 9 Form when it is clear that some of the information provided is obviously not true and not correct".
54. Submission from Mr William Figueira, business owner and licensee of nearby packaged liquor business, Red Bottle, dated 24 October 2014. The submission is prepared by JDK Legal (JDK) and provides a number of objections to the Application.
55. First, JDK submits that the Applicant has failed to comply with the advertising requirements prescribed by clause 9(4)(a) of the Regulations and therefore the Authority should refuse the Application. JDK contends that upon inspection of the Premises, the notification of application was "affixed to the left hand side" of a black sheet that was draped over the public entrance of the Premises and so it is "...problematic as to whether the notice, in its present position, is affixed to the premises". JDK adds that a more concerning aspect is that "...it is certainly not possible to see the notice from street level: and so members of the public passing 61-79 Quay Street at street level would be oblivious to the notice, rendering nugatory the whole purpose of the notice".
56. Second, JDK submits that the "...common tread in the Authority's decisions has been that a lack of notification defeats the purpose of the legislative intention". JDK notes that in refusing a previous application for a hotel licence for "Wild Rover" in Surry Hills on 7 December 2012, the Authority noted: "...the right to make submissions about applications under Section 44 of the Act would be rendered ineffectual if persons were not made aware of the existence of applications by compliance with the advertising requirements". JDK submits that "...practically speaking, despite a notice being posted to or near the premises, it fails to satisfy its most fundamental purpose to put members of the public on clear and actual notice of the application".
57. JDK notes a further previous Authority decision in relation to Australian Liquor and Food Pty Limited dated 5 February 2013 where the "...notification of the application was displayed on the front door of the applicant's home (in a room of which was located at the proposed premises)" but where the "...home was set back some distance from an adjacent street and, therefore, the notice during the relevant period was not visible or legible to passers-by". JDK contends that the Authority refused the application on the grounds that the applicant had not satisfied s44(4) of the Act.
58. JDK concludes that "...the only members of the public who might have become aware of this application were those attending Woolworths" and "...there can be little argument that to give effect to the legislative intent – a prudent applicant, especially one as well versed in making applications as this applicant – would have affixed a copy of the notice on the building at street level, but the applicant for his own reasons and purposes chose not to do so".
59. Email from staff assisting the Authority to the Applicant's legal representative, Mr Tony Schwartz, dated 12 November 2014. The Applicant was provided with the submissions received from Police, Council, OLGR and local residents and was invited to provide comment on any aspects considered adverse to the Application.

60. The Applicant was requested to provide a "change of licence name" application form to change the trading name associated with the licence from "Mac's Liquor" to "BWS - Beer Wine Spirits". The Applicant was also informed that:
- (a) should the Authority be minded to grant the Application, certain standard conditions imposed in relation to packaged liquor licences may be imposed upon the licence, including a requirement fixing the 6-hour closure period for the purposes of section 11A of the Act as between 2:00am and 8:00am
 - (b) a requirement that the licence not operate with a greater overall social impact on the wellbeing of the community
 - (c) active liquor accord participation
 - (d) the provision of evidence that the Premises are complete and ready to trade
 - (e) that the liquor licence remains at the current address subject to the same conditions and trading hours that were immediately in force before the Application approval until the Authority is notified that the licence has been moved.
61. Submission from Mr Tony Schwartz to staff assisting the Authority dated 14 November 2014. Mr Schwartz provided the Authority with submissions received by the Applicant from the NSW Aboriginal Land Council, the Family and Community Services and RMS and submits that "...there are no outstanding matters with any of these groups". Mr Schwartz notes that none of these stakeholders object to the Application and that the Premises will support the initiatives proposed by RMS.
62. Mr Schwartz agreed to all of the standard licence conditions indicated by staff assisting the Authority while noting that the final condition regarding the licence remaining at the current address is not necessary as the licence is dormant. Mr Schwartz notes that neither Police nor Council object to the Application.
63. In addition, Mr Schwartz notes that OLGR do not intend to carry out any further assessment of the Application and do not intend to provide any further comment. Mr Schwartz submits that this "type of submission clearly supports the Applicant's position, as detailed within the Statement of Impact (SOI), that the approval of this Application is highly unlikely to cause social detriment to either the Local or Broader Communities".
64. Mr Schwartz provided a detailed response to the submission prepared by DC on behalf of Mr Champion. Mr Schwartz notes that the DC firm are "very well known to our office" and that "...no explanation has been provided as to why there was no contact made by his office to request any of the Applicant's material". In response to the concerns raised by Mr Champion, Mr Schwartz provided detailed submissions in reply.
65. In response to DC's concern that there has not been compliance with the Act and Regulations, Mr Schwartz submits that the Authority is "well aware of the circumstances" surrounding the lodgement of the previous applications and that "...needless to say...there has been full compliance" with Section 40(4)(c) of the Act and clauses 7,8 and 9 of the Regulations.
66. The Authority notes that Mr Schwartz is here making the point that the latest filing of the Application dated 2 December 2014 is compliant with the legislation.
67. In response to DC's concern that the Applicant failed to identify the Premises, Mr Schwartz disagrees and submits that the Premises have been properly identified through material lodged with the Authority.
68. On the issue of what part of the Application material is made publically available Mr Schwartz submits that this is a matter relating to the procedures taken by the

Authority and OLGR as to what is available on the liquor applications noticeboard (which the Authority notes was previously published on the OLGR website www.olgr.nsw.gov.au but is now published on the Authority website www.ilqa.nsw.gov.au).

69. In response to DC's concern that the Applicant failed to provide supplementary attachments, Mr Schwartz reiterated the above point and noted that the Applicant lodged a "very detailed neighbouring premises map" with the Application.
70. In response to DC's concern that data was omitted from the CIS document (including potentially sensitive facilities), Mr Schwartz submits that these facilities are "clearly not near" the Premises. Mr Schwartz disagrees with DC's suggestion that a business, service or facility located a distance of 200 metres away from the Premises should have been disclosed on the CIS. Mr Schwartz submits that the word "near" is not defined within the Act, Regulations or Authority Guidelines and thus must be given its plain or everyday meaning.
71. Mr Schwartz submits that what "...can reasonably and logically be considered *near* the New Store is limited because the New Store is located below ground and cannot be seen or *heard* from any person or premises at street level".
72. Mr Schwartz reiterates that that all neighbouring premises within 100 metres of the Proposed Premises were notified of the Application. Mr Schwartz concludes on this point by submitting that "...despite the DCPL author being incorrect as to what is required to be disclosed in the CIS Form, if there was any concern with this proposal by any potentially sensitive facility within the notification area, it is very reasonable that they would have taken the opportunity to provide feedback detailing their concern" and that no such feedback was received.
73. In response to DC's concern that the Applicant has failed to notify occupiers of neighbouring premises, Mr Schwartz again submits there has been full compliance with the Act and Regulations and notes the certificate of advertising application that was lodged with all three applications.
74. In response to DC's concern that the licence in question is better suited in its present location, Mr Schwartz submits that "...the fact is that while the licence exists at its current location, it cannot be exercised there" and accordingly, the Applicant is entitled to relocate the licence to an alternative site in accordance with the proper procedure.
75. Mr Schwartz adds that throughout the Application process, the Applicant has "...addressed the potential impacts of operating the licence at this new location, as if it were an application for the grant of a new licence at this location" and thus "...all of the matters raised by DCPL have been addressed by the Applicant's material".
76. In response to DC's concern regarding the location of the Proposed Premises and the limited parking available to its customers, Mr Schwartz submits that this has been "acknowledged" by the Applicant's material.
77. Mr Schwartz adds that the "...Supermarket will **not** operate in the same way that a traditional suburban Woolworths Supermarket operates" and contends that the Proposed Premises are "small" at 121sqm and do not include a cool-room.
78. In response to DC's concern that persons may make purchases from the Proposed Premises and then consume the liquor in the centre without supervision, and that this will detrimentally affect the residents of the Peak Apartments, Mr Schwartz submits that this claim is unsubstantiated and should be disregarded. Mr Schwartz adds that this type of

behaviour is not 'typical' of shopping centres and even if it were, the licensee would not allow it and centre security would do something about it immediately.

79. Mr Schwartz adds that the building in which Mr Champion resides (ie, Peak Apartments) has a direct access doorway into Market City where the Red Bottle liquor store is operating and that it is logical and reasonable that the New Store would operate with the same level of impact (that is, little to no concern to anyone).
80. In response to DC's concern over the atypical characteristics of the Haymarket community, Mr Schwartz notes that the community has been identified, reviewed, analysed and responded to in much detail within the Applicant's Statement of Impact and that this should be preferred over the selection of information offered by DC.
81. In response to DC's concern regarding the Applicant's alleged non-disclosure of responses to the Application, Mr Schwartz reiterated the above comments in that it is "...not Woolworths who makes the decision as to what is published on OLGR's public noticeboard, but rather the Regulator".
82. In response to DC's concern that this Application is similar to a recently refused application made in Pyrmont and for this reason should be refused, Mr Schwartz submits that that previous application "...was for the grant of a new packaged liquor licence in completely different circumstances to this Application".
83. Mr Schwartz adds that if DC's position were accepted "...it would be difficult for this Applicant to re-activate this Licence anywhere within inner Sydney again, as all those locations have a combination of matters which might concern someone" and that this is "...clearly at odds with the intention of Parliament" in allowing for the removal and relocation of liquor licences.
84. In response to the submission received from local resident, Mr Peter Bannister, Mr Schwartz makes a number of submissions. First, Mr Schwartz contends that Mr Bannister is "...clearly exaggerating the circumstances that actually apply to this location by saying there are 'at least half a dozen retail outlets' within 100 yards of his front door". Mr Schwartz submits that there are only two licensed premises within 100 metres of the Premises (and Mr Bannister's home); namely "Jade Tavern" (which Mr Schwartz notes has now closed) and "Chan's International Development Pty Limited".
85. Second, Mr Schwartz submits that Mr Bannister has himself acknowledged that despite the number of licensed premises within Haymarket, it is a safe area and one that is "...best behaved, peaceful and artistically cultivated".
86. Third, Mr Schwartz notes that Mr Bannister resides within the Peak Apartments and as mentioned above, this building has a direct access doorway into Market City (where the Red Bottle shop is operating) and thus "...it can be assumed that this submitter believes the Red Bottle facility operates without incident due to his above comments about how safe Haymarket is". Mr Schwartz adds that there is no evidence that the Premises could result in the deterioration of consumer behaviour.
87. In response to the submission received from local resident, Mr Sven Banton, Mr Schwartz notes that Mr Banton is "in full support of the proposal".
88. Lastly, Mr Schwartz provided a map illustrating the licensed premises within 100 metres of the Premises; a completed change licence name application form; and a certificate of registration of business name to "BWS - Beer Wine Spirits".

89. Email from staff assisting the Authority to Tony Schwartz dated 21 November 2014. Mr Schwartz was provided with the second submission received from DC and the submission received on behalf of the Red Bottle.
90. Submission from Tony Schwartz to staff assisting the Authority dated 8 December 2014. Mr Schwartz provided detailed responses to the submissions received from DC and the Red Bottle.
91. In response to DC's concern that the Applicant did not comply with clause 9 of the Regulations, Mr Schwartz submits that "...while there is some history in relation to the display of the site notice at this location (which the Authority is aware of) the DCPL author fails to acknowledge that the third Application lodged with the Authority on 18 September 2014 is the one to be determined and the previous concerns with the display of the earlier site notice(s) are irrelevant". Mr Schwartz provided a number of photographs showing that the site notice has been fixed to the Premises and thus there has been full compliance with clause 9 of the Regulations.
92. In response to DC's concern that the Applicant used an out of date notice form, Mr Schwartz notes that the concern relates to the fact that the form used contains standard fine print that outlines the previously existing standard trading hours (to 12:00 midnight on Monday to Saturday). Mr Schwartz adds that the use of an out of date form should not negate the entire process.
93. In response to DC's concern that the Applicant did not properly affix the notice to the Premises, Mr Schwartz submits that "...there has been full compliance with the Act and Regulation concerning the posting of the Site Notice with respect to the third Application". Mr Schwartz notes that the Regulations state that the site notice can be affixed to the "...land on which it is proposed to erect the premises" and that the site notice was posted at the entrance to the newly opened Woolworths Shopping Centre. Mr Schwartz adds that "...there is nothing unusual or non-compliant about this practice where the Site Notice is in a prominent position at the premises which is an area accessible to the public". Mr Schwartz points out that the site notice was on public display for almost 12 months which is "...an extraordinary length of time when compared to many other liquor applications".
94. In response to DC's concern that the CIS did not list the "Local Liquor" on Macarthur Street and misplaced the location of "Red Bottle" in Market City, Mr Schwartz submits first that "Local Liquor" is shown but is named "Liquor and Wattle" and is located "outside the local community"; and second, that the distance of the "Red Bottle" is correctly listed as being located 214 metres away.
95. In response to DC's concern that the Applicant has created a contrived local community, Mr Schwartz makes a number of detailed submissions. First, Mr Schwartz points out that a trade area assessment report was prepared by the consultancy firm, Duane Location, who are recognised industry experts on these matters. Mr Schwartz adds that "...it would be completely unreasonable to discount an assessment by an industry expert, over the DCPL author who does not provide any evidence or assertion that they are trained in this area".
96. Second, Mr Schwartz submits that the Premises are located on the boundary of two suburbs (ie, Ultimo and Haymarket) and thus "...it would be a completely illogical finding to suggest the local community (being an area where the majority but not all customers will be drawn from) did not encompass parts of both Ultimo and Haymarket".

97. In response to DC's concern that the Applicant has ill-defined the location of the Premises, Mr Schwartz submits that "...the plan of the New Store has been lodged with the Authority and it shows the matters identified by the DCPL Report".
98. Mr Schwartz concludes that "...the Authority should lend little to no weight to the DCPL Report due to certain statements and positions taken within it that are unsupported by factual evidence and/or which appear to be unsubstantiated views of its author".
99. In response to the submission from the Red Bottle, Mr Schwartz notes that the submission raises concerns regarding the display of the site notice and that this was addressed in the above comments. Mr Schwartz then distinguishes the two Authority decisions relied upon by the Red Bottle from the present Application.
100. First, in respect of the "Wild Rover" decision, Mr Schwartz submits that there "...was a gap in the display of the site notice" meaning that there was "...a period of time when the site notice did not appear at all". Mr Schwartz submits that since the site notice has been continuously displayed at the Premises, the Wild Rover decision is completely irrelevant to the present Application.
101. Second, in respect of the "Australian Liquor and Food Pty Limited" decision, Mr Schwartz submits that the site notice was "...placed on the front door of the applicant's home, a position set back from the street and where no members of the public could see it unless they approached the front door of the home". Mr Schwartz distinguishes this decision from the present Application in that here the site notice "...has been fixed to the site of the New Store, being a highly visible and prominent location at the foot of a busy escalator leading to a very well patronised Supermarket". Mr Schwartz provided photographs of the displayed site notice to strengthen this point and submitted that the Australian Liquor and Food decision is "clearly irrelevant" to the present Application.
102. Email from staff assisting the Authority to Tony Schwartz dated 31 March 2015. Mr Schwartz was informed that the Authority considered the Application at its meeting held on 25 March 2015 and decided to defer the Application in order to provide the Applicant with an opportunity to address the matters raised in the BOCSAR Report.
103. Email from Tony Schwartz to staff assisting the Authority dated 2 June 2015. Mr Schwartz submits that the BOCSAR Report is "...technical in nature and therefore Woolworths made arrangements (at considerable cost) for the data the subject of the BOCSAR Report to be released by NSW BOCSAR and made available to an expert independent statistician for review". Mr Schwartz provided a comprehensive and detailed report of Dr Henstridge of Data Analysis Australia Pty Limited dated May 2015 (Henstridge Report).
104. The Henstridge Report contends that "...while the data itself is of reasonable quality, it is observational in nature" and that the BOCSAR Report "...uses data that is not ideal for verifying casual relationships and analyses that data inappropriately". The Henstridge Report adds that the BOCSAR Report "...does little to advance the knowledge of the effects of outlet density and is potentially misleading, particularly in its suggestion of a threshold effect". The Henstridge Report concludes by submitting that until reanalysis of the data used in the BOCSAR Report is conducted, it is of "...little or no value in informing debate on the effects of outlet density" and that "...even then there are likely to remain questions regarding alternative explanations for relationships that might be found".
105. Liquor licensing information sourced from Authority licensing records noting the licence type and address for all registered club, hotel and packaged liquor licenced premises for

the suburbs of Sydney, East Sydney, Haymarket, Surry Hills, Ultimo, Darlinghurst, Darling Harbour, Pyrmont, Potts Point, Paddington and The Rocks.

106. BOCSAR crime data for the City of Sydney LGA regarding incidents of liquor offences, malicious damage to property, assault (domestic assault) and assault (non-domestic assault) offences for the calendar year 2014.

LEGISLATION

107. An application for the removal of an existing packaging liquor licence from its current location to another location is made under section 59 of the Act. Pursuant to section 59(3) of the Act, an application for approval to remove a licence to another premises is to be dealt with and determined by the Authority as if it were an application for the granting of a licence in respect of those other premises. Accordingly, the provisions of Division 1 of the Act, in particular, extend to an application for the removal of a licence to other premises as if it were an application for a licence.

108. Section 59 of the Act states:

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 Authority 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.**
109. As section 48(2)(b) of the Act specifies, an application to remove a packaged liquor licence is a "relevant application" which, pursuant to sections 48(3) and 48(4) must be accompanied by a Category B CIS and satisfy the overall social impact test prescribed by section 48(5).
110. The Authority has considered the Application guided by the statutory objects of section 3(1) and turning its mind to the statutory considerations under section 3(2) of the Act:

- 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.*

COMMUNITY IMPACT TEST

111. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

112. Section 48(5) of the Act states:

- 48 *Community impact*
- (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.*

113. The CIS usually provides the Authority with information about the views of relevant stakeholders and other aspects of the local community in which the proposed licensed premises is to be located. This includes, for example, the proximity of the licensed premises to hospitals or health facilities, nursing homes, schools and places of worship.

APPLICANT SUBMISSIONS ON OVERALL SOCIAL IMPACT

114. In the CIS, the Applicant made the following submissions:

The LC [local community] is a stable population but has a significant transient element to it.

The local population is relatively advantaged in terms of low or similar representation of indigenous persons, older Australians, persons with disabilities and one parent families. The local population is also culturally diverse, with many living in expensive rental properties by choice for convenience, education; cultural and lifestyle reasons. They are supported by their family with many not needing to work, but others working part-time. Relevantly, they are not drawing upon public housing nor requiring assistance of services or facilities that deal with issues surrounding alcohol abuse. Because the local population is largely from an Asian ancestry, they are also driven from an education perspective; where their tuition fees are high and where there is an expectation upon

them to complete their studies to the highest standard. This is not an indicator for potential social harm surrounding this Application.

*The Police and Council are **not** opposed to the Application.*

The statistical evidence at Section 8 suggests that there are low levels of alcohol related crime occurring within the LC of the New Store.

The LC has therefore not been identified as having a high vulnerability to alcohol related health problems associated with operating the Licence at the New Store.

It is considered that there is support for increasing the density of licences at this location, as it is clear that by adding the New Store to the community that it will meet the reasonable expectations and current needs of that community (being residents, tourists and visitors alike) as well as the future growth of that community.

In addition, the conditions of Development Consent will protect neighbourhood amenity.

The following analysis concludes that the overall social impact of the Application will not be detrimental to the well-being of the LC or BC. As such it is the Applicant's submission that the test under Section 48 of the Act has been satisfied.

REASONS

115. The Authority has critically examined the Application and all the material before it pertaining to that Application. The Authority has decided to grant the Application pursuant to section 59 of the Act.
116. The Authority is satisfied, on the basis of the Application, CIS material and the Applicant's submissions to this point, that notwithstanding some procedural difficulties encountered by the Applicant with previous attempts to remove the licence, the Application now before the Authority has been validly made for the purposes of section 40 of the Act and that the minimum procedural requirements including advertising, CIS and consultation requirements have been satisfied.
117. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant company has previously established that it is a fit and proper corporate person from a probity perspective. There is no adverse information before the Authority regarding the probity of the Applicant company or its directors in the response from Police.
118. The Authority notes that the Applicant company is a repeat applicant for packaged liquor licences and that there are numerous licensed BWS premises currently operating in NSW.
119. The Authority is satisfied, for the purposes of section 45(3)(b), that responsible service practices will be in place with the commencement of licensed trading, on the basis of the *House Policy* and *Best Practice Policies and Interventions* and submissions provided by the Applicant and noting an absence of adverse submission from OLGR or from Police with regard to the Applicant in this regard.
120. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent is in place for use of a packaged liquor licence at the proposed retail Premises, on the basis of the City of Sydney DA provided by the Applicant.

Local and Broader Community

121. As noted in Authority *Guideline 6: Consideration of Social Impact*, the Authority will identify the relevant *local* community by reference to the locality in which the licensed premises is situated, while the broader community will usually be the local government area in which the licensed *premises* is situated.
122. For the purposes of this Application, the Authority is satisfied that the relevant *local community* comprises the community located within the State suburb of Haymarket while the *broader community* comprises the Sydney LGA.
123. The Applicant has posited a local community comprising both the suburb of Ultimo and half the suburb of Haymarket by reason that this accords with the expected trade catchment area of the Supermarket identified by the Applicant's consultant, Duane Location. The Authority accepts that the supermarket may well have a trade catchment area that extends beyond the suburb in which it is located, but has indicated in its guideline that it will usually regard the local community as the locality in which the actual premises is situated.
124. The Authority will usually identify the local community, for the sake of certainty and consistency, as the community comprising the State suburb or town within which the licensed premises are located. The Authority is satisfied that the local community is the community within the State suburb of Haymarket. Noting the Applicant's submission that the Premises is located near the border of Haymarket and Ultimo, assessment of the overall social impact of granting the Application will still involve some consideration of Ultimo as it forms part of the broader community of the Sydney LGA.

Overall Social Impact

125. The Authority is satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting the Application will not be detrimental to the wellbeing of the local or broader community.
126. Determining the overall social impact of granting the Application requires a degree of speculation about what is likely to occur in the event that the Application is granted – albeit speculation that is informed by the prevailing circumstances in the relevant local and broader communities.
127. As noted above, with regard to the overall social impact test prescribed by section 48(5) of the Act, the Authority is satisfied that the local community comprises the suburb of Haymarket and the broader community comprises the Sydney LGA.

Positive Benefits

128. The Applicant has provided substantial submissions and explanation in support of the positive benefits that it contends will flow to the local or broader community from permitting this new Woolworths Supermarket to sell packaged liquor by retail.
129. The Authority accepts the Applicant's contention that granting the Application will provide some additional measure of convenience to those members of the local and broader community who wish to purchase liquor for consumption off the Premises at the same time as buying their groceries from this supermarket, as they will be able to do so during the licensed trading hours at this BWS (from 8:30am to 10:00pm Monday to Saturday and 10:00am to 8:00pm on Sunday). This is particularly the case to those who may wish

to access the liquor store by foot, which is highly likely given the inner city location in a high density area.

130. The Authority further notes that the liquor outlet will be servicing an area of rapid growth in terms of high density residential premises in the City. The Authority notes that the Premises are located on ground level and accepts the Applicant's submission that "...residential apartments (ie, comprising approximately 270 individual apartments) will be located on levels 1 to 17" and that this will likely house well in excess of 600 people.
131. The Authority is satisfied that by granting the Application, the enhanced choice and convenience for customers of the supermarket will be consistent with the expectations, needs and aspirations of the community within the meaning of section 3(1)(a) of the Act. The Authority is also satisfied, that the removal of the licence from one area of the Sydney LGA to another in order to better serve a supermarket and local residential development may serve the purpose of the responsible development of the liquor industry in the broader community.
132. While the Applicant contends that granting the Application will support employment opportunities within the supermarket, in terms of extra staff needed to service the licensed area of the Premises, the Applicant has not provided clear or unequivocal undertakings that employees will actually be sourced from within the local or broader communities and little weight is given to those purported positive community benefits.

Negative Impacts

133. The Authority accepts that over time there will more likely than not be some contribution from the liquor sold at the Premises to alcohol related crime, disturbance or adverse impact on amenity from a minority of customers who abuse packaged liquor that is purchased from the Premises.
134. This Application concerns the removal of a licence from one part of the City of Sydney LGA to another part of that LGA and the negative social impacts have been considered in that context. In this sense granting the Application will not increase licence density in the broader community, which is a relevant point of distinction to an application that seeks to increase the number of packaged licences premises in the City of Sydney.
135. The Authority is satisfied that a minority of patrons of the new business may contribute over time to adverse impacts upon local amenity, including drinking in public, pre-fuelling before attending licensed premises or alcohol related litter.
136. The 2014 BOCSAR *Report on Crime by Local Government Area and Alcohol Related Status* for 2014 (based on data from January to December 2013) satisfies the Authority that the rate for Sydney LGA for alcohol related incidents well exceeds the average compared to NSW. This no doubt reflects the City's concentration of licensed premises and the great many workers, residents and visitors that those establishments cater for.
137. The report indicates that in the Sydney LGA, the rate per 100,000 population of *alcohol related assault police* incidents was **112.4** compared with a NSW total of **22.6**. The rate per 100,000 population for *alcohol related domestic violence offences* was **236** compared with a NSW total of **137.2**. The rate of *alcohol related non-domestic violence related offences* was **1019.4** compared with a NSW total of **181.0**.
138. In relation to the suburb of Haymarket, BOCSAR crime mapping data for the period from July 2013 to June 2014, reveal that the Premises is located in a relatively sensitive location in terms of concentration of prevailing crime impacts, in that within the Sydney

LGA, the Premises is situated within a high concentration hotspot for the occurrence of reported domestic assault, non-domestic assault, alcohol related assault, and malicious damage offences (noting that such matters may or may not be recorded as alcohol related).

139. However, in addition to the fact that this is a removal application and not an application for another licence in the Sydney LGA, the Authority is satisfied that the following aspects of the proposal will operate to constrain the extent of contribution that this outlet may otherwise make to the prevailing alcohol related social problems in the local and broader communities associated with the abuse of packaged liquor:
140. The Authority notes that neither Council, a representative body for the broader community, nor Police object to the Application. The Authority further notes that no adverse submission has been made by OLGR, albeit that due to the type of licence the Application has only received an automated risk assessment and not an individual assessment from that agency.
141. The Authority is satisfied that the location of the Premises, without direct street access and next to a new supermarket will facilitate good opportunities for surveillance and some additional measure of security. The Premises are located on the lower ground floor and are not visible at street level. The Premises will be accessible only through a ramp/escalator from the corner of Quay Street and Ultimo Road to the lower ground floor.
142. The Authority is satisfied on the basis of the Application and material provided by the Applicant that there are well-developed business, CCTV and security practices and plans for the new business.
143. Furthermore, the Authority accepts that overall crime statistics indicate a slight decline (from 2010 to 2013) for the Haymarket suburb for both alcohol and non-alcohol related crime.
144. Additionally, the Authority notes the Applicant's submission that on 12 November 2013, the Applicant's solicitors, together with James Scott-Mackenzie (a representative of Woolworths) met with Sergeant Ryan and Senior Constable David Theodore of the City Central LAC to discuss the Application and that "...Police confirmed during this meeting that they have no concerns with alcohol abuse at the location caused by the sale of take away packaged liquor".
145. Further, the Authority notes and accepts the Applicant's submission that Police "...confirmed (during the abovementioned meeting) that there are no specific areas *near* the New Store that are of particular concern to the Police caused by the sale of take away packaged liquor". The Authority accepts that there are no particular issues identified by Police pertaining to the *immediate area* in which the Premises is situated within the local community.
146. Furthermore, the Authority notes that the Premises will not have a cool-room, reducing to some extent the attractiveness of liquor purchased from this business for impulse consumption in public places or nearby the location of the supermarket. The comprehensive harm minimisation measures outlined in the *House Policy* and *Best Practice Policies and Intervention* provided by the Applicant as part of the Application also satisfy the Authority that steps will be taken by the Applicant and its staff to ensure that the extent of adverse impact arising from the abuse of liquor sold at the Premises is constrained.

147. At 121 square metres the licensed business is not of a small scale and the extensive trading hours (closing at 10:00pm six days per week) objectively increase the scope for liquor sales generated by *this* business to contribute to prevailing alcohol related social problems, associated with the use of packaged liquor, in the local and broader community.
148. The extensive trading hours sought in this Application is a negative factor that objectively extends the scope for this local business to contribute to adverse alcohol related impacts in this local and broader community that are associated with the abuse of packaged liquor.
149. The Authority has considered the Applicant's submission that because the Application concerns the removal of the licence from the Current Premises to the Proposed Premises, the outlet density will remain unchanged in the broader community following the approval of the Application.
150. The Authority accepts that granting this Application will not increase the density of packaged liquor licences in the broader community but rejects the submission that there is no net social impact posed by a removal in the present circumstances because the licence currently exists in a dormant state and is now being re-activated. Consequentially, the grant of the Application will lead to some increase in active licence density in the local community of Haymarket, while reducing the overall licence density in Pymont.
151. The Authority notes there has been some community objection to the Application and detailed submissions have been provided by both a local resident and local licensee. While the Authority accepts that some of these concerns are relevant to the granting of the Application, many of the concerns (including those surrounding the affixing of the site notice and notification of neighbouring premises) are procedural in nature and have not been found to be substantiated by the Authority. The Authority is not moved by the content of those two submissions to the extent that they concern overall social impact at the level of the local or broader community to refuse this removal Application. Those submissions did not provide sufficient evidence of prevailing localised adverse packaged liquor impacts in Haymarket to persuade the Authority to refuse this removal Application.

CONCLUSION

152. The Authority is satisfied that the above mentioned aspects of the particular proposal and the relevant communities concerned will operate to constrain or reduce the extent of contribution that this outlet may otherwise make to the alcohol related social problems in the local and broader communities.
153. Having considered together the reasonably well substantiated positive benefits and the factors noted above that objectively reduce the negative impacts as found by the Authority with respect to the circumstances of this Application and these communities, the Authority is satisfied that the overall social impact of granting the Application will not be detrimental to the local and broader community for the purposes of section 48(5) of the Act.
154. In making this decision, the Authority has determined that the 6-hour daily closure period for the purposes of section 11A(3) of the Act shall be fixed at between 2:00am and 8:00am. This is consistent with the Authority's usual policy position on 8.00 am opening times for packaged liquor stores associated with a supermarket.

155. In making this decision the Authority has considered all of the statutory objects and considerations prescribed by section 3(2) of the Act. The Authority has had regard to the need to minimise harm associated with the misuse and abuse of liquor within the meaning of section 3(2)(a) 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 within the meaning of section 3(2)(c).



Micheil Brodie

Chief Executive

for and on behalf of the **Independent Liquor and Gaming Authority**

DATED 18 / 9 / 2015