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Dear Mr Martin

**Application for Packaged Liquor Licence  
Liquorland, Morisset**

I refer to an application received by the Independent Liquor and Gaming Authority on 22 January 2015 (Application) made on behalf of Liquorland (Australia) Pty Limited, seeking the grant of a new packaged liquor licence within the meaning of section 29 of the *Liquor Act 2007* (Act).

The licence is sought for a proposed new "Liquorland" store to be located within the Morisset Square Shopping Centre, which is located at 35 Yambo Street, Morisset (Premises). The Premises is situated within close proximity to an existing Coles Supermarket that is also located within the Shopping Centre.

The Authority considered the Application at its meeting on 27 July 2015 and after careful consideration of the Application material and the submissions made in relation to the Application, the Authority decided to *refuse* the Application pursuant to section 45 of the Act.

An Authority staff member provided informal advice of the outcome of the Application in an email dated 4 August 2015. This letter provides the formal decision and reasons.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to produce and publish statements of reasons with respect to those decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*. The attached statement of reasons has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

Yours faithfully

Micheil Brodie  
Chief Executive

14 SEP 2015

## STATEMENT OF REASONS

### INTRODUCTION

1. On 22 January 2015, the Independent Liquor and Gaming Authority (Authority) received an (Application) regarding premises located at Shop 5, Morisset Square Shopping Centre, 35 Yambo Street, Morisset that are proposed to trade as a "Liquorland" store (Premises). The Premises is situated within close proximity to an existing Coles Supermarket that is also located within the Shopping Centre.
2. The Application is made by Ms Melanie Lucas on behalf of the Applicant, Liquorland (Australia) Pty Limited (Applicant) and seeks the grant of a packaged liquor licence within the meaning of section 29 of the *Liquor Act 2007* (Act).
3. The Application seeks licensed trading hours for the proposed new business to be conducted on the Premises from 8:00am to 10:00pm Monday through Saturday and 10:00am to 10:00pm on Sunday.
4. The Application also seeks that the 6-hour daily closure period required by section 11A of the Act be fixed at between 2:00am and 8:00am.
5. The Authority considered the Application at its meeting on 27 July 2015 and decided to *refuse* the Application, pursuant to section 45 of the Act.
6. Staff assisting the Authority informally notified the Authority's decision via email on 4 August 2015. This letter serves to provide a formal record of the decision to refuse the Application.
7. Liquor applications comprise a high volume aspect of the Authority's jurisdiction, and this letter provides a concise summary only of the key points arising from the material before the Authority and the rationale for refusing the Application.

### MATERIAL BEFORE THE AUTHORITY

8. Before the Authority was the Application, the accompanying community impact statement (CIS), further submissions and other relevant material as follows:
9. Liquor Licence Application Form dated 15 January 2015 and received by the Authority on 22 January 2015. This discloses that Ms Melanie Lucas (who completed the form) has approval to execute documents on behalf of Liquorland (Australia) Pty Limited. The property owner of the Premises is identified as Perpetual Limited (the Premises Owner) and the owner of the business conducted on the Premises is identified as Liquorland (Australia) Pty Limited (Business Owner).
10. Category B CIS Form dated 15 January 2015 and received by the Authority on 23 January 2015. The CIS was accompanied by a "Social Impact Assessment" Report, prepared by a town planning consultant, Urban Advisors, and dated December 2014. The 35-page report addresses, *inter alia*, the approach of the report; the proposed premises; social context; social and demographic profile; community consultation; potential social impacts; mitigating measures; and conclusions.
11. Floor Plan for the Premises accompanying the Application, which provides a diagram outlining the proposed licensed area.

12. ASIC Company Extract for Liquorland (Australia) Pty Limited created on 20 November 2014. This document discloses that the directors of Liquorland (Australia) Pty Limited are Mr John Patrick Durkan and Mr Robert Geoffrey Scott, and its ultimate holding company is Wesfarmers Limited.
13. Notice of intention to apply for a liquor licence authorisation dated 15 January 2015.
14. Liquorland Management Strategies. This three page document outlines "...operational strategies to limit the risks associated with the proposed premises" including, *inter alia* -
  - (a) the installation of a CCTV surveillance system
  - (b) formal training for staff; prohibition on the sale of alcohol to minors or intoxicated persons
  - (c) ensuring that staff "stay informed about alcohol related problems in the local community"
  - (d) keeping records of any incidents of violent, threatening or offensive behaviour
  - (e) displaying drink driving educational material
  - (f) establishing a close working relationship with Police and links with the local community, including through active participation in the Local Liquor Accord.
15. Liquorland House Policy for the Responsible Service of Alcohol. This two page document states that the Premises will "...support the object of harm minimisation associated with the misuse and abuse of liquor". The House Policy addresses, *inter alia* -
  - (a) prevention of sale of alcohol to persons under 18 years of age or persons without an approved form of identification who appear to be under 25 years of age
  - (b) prevention of sale of alcohol to persons exhibiting signs of intoxication or to persons who are reasonably expected to supply alcohol purchased at the Premises to an intoxicated person
  - (c) prevention of consumption of alcohol on the Premises except for tastings which will comply with the provisions of the Act
  - (d) provision of a range of low alcohol and non-alcoholic beverages at all times at prices which "reflect the lower wholesale cost of those beverages"
  - (e) the prominent display of mandatory signage.
16. Complying Development Certificate No. J140207 issued by Vic Lilli & Partners for the Premises dated 25 August 2014.
17. Social Impact Assessment (SIA) Report provided by the Applicant with the CIS dated December 2014. The SIA was prepared by town planning consultants, Urban Advisors (UA). The UA Report makes the following contentions and submissions in response to the community submissions made in opposition to the Application:

*The petition submits that the community does not need another packaged liquor outlet as there are already three located in Morisset town centre. The Independent Liquor and Gaming Authority (ILGA) Guidelines for consideration of social impact under section 48(5) of the Liquor Act 2007 state that: '31. The fact that a locality may already be well served by liquor business is not, of itself, a basis for refusing a new liquor licence application'. Thus the petition, in submitting that there is no need for an additional licensed premises, does not in itself provide groups [sic] for refusing the application. However, it is Urban Advisors' opinion that the petition is indicative of significant community concern for the proposed premises, regardless of the particular wording chosen.*

*Submissions received indicated that there is already community concern at the public consumption of alcohol and intoxication of some in the community. Of particular concern are the claims made by Dr du Plessis, Director of Waratah Medical Services Pty Limited that the proposed premises, if established will be to*

*the detriment of community health. The risk that the proposed premises could have a negative impact on the health of the community will need to be weighed and balanced against other aspects of the application.*

...

*Urban Advisors contacted the Aboriginal Worker at Lake Macquarie Council who declined to comment on the proposal but provided contact details for a local Aboriginal Elder known as Daniella. Urban Advisors spoke with Daniella on 7 November 2014. Daniella expressed concern at the proposed premises on the grounds that there are already more than enough bottle shops in Morisset. Daniella indicated that within the local Aboriginal community there are some that regularly consume alcohol to intoxication, some who drink responsibly and some who do not consume alcohol at all. Daniella expressed the view that issues with alcohol in the Aboriginal community are similar to the non-Aboriginal community. Her key concerns are with the growing crime rates, increasing under-age drinking and vandalism in the area generally and these concerns relate to the community in general, including Aboriginal and non-Aboriginal population.*

...

### **Potential Impacts on Crime**

*A submission received expressed concern that the proposed premises could result in an increase in graffiti in the town centres. Current levels of graffiti do not appear to be different to most locations throughout NSW. The literature does not suggest a link between graffiti and alcohol.*

*Alcohol related crime in Lake Macquarie LGA is below average. Rates of assault and alcohol related assaults are low. Rates of domestic violence assaults are above average in the current year but below average in the preceding years. Domestic violence related assaults are not concentrated near Morisset or the local area. There are no hot spots for alcohol related crime in the local community.*

*The proposed development is located within a shopping complex with high levels of natural surveillance. It is unlikely that the proposed development will attract crime at the point of sale. CCTV will be installed at the proposed premises. CCTV footage will assist the Police to resolve any incidents should they occur.*

*The available data suggests that alcohol related crime is not a significant risk to the local community, by state standards.*

### **Proximity to Morisset High School and Morisset Public School**

*Submissions received object to the proposed premises being located in close proximity to Morisset High School. A submission has been received from the President of Morisset Public School P&C expressing concern at the risk the proposed premises present to school children.*

*The proposed premises will be around 100 metres to the south of Morisset High School and around 500 metres to the south of Morisset Public School.*

*The proposed premises, if approved will be located in a shopping complex directly opposite Morisset High School. While the proposed premises will not be in sight or hearing distance of the school, community consultation indicates that school children frequent the shopping complex after school.*

*The risk of school children purchasing liquor at the proposed premises is considered to be small. School children will be easily identifiable in school uniform and the Liquorland House Policy (Appendix 3) sets in place clear procedures to deal with such occurrences. However, the potential for increased secondary supply must be considered. In relation to this matter it is noted that:*

- *the area currently does not appear to have significant issues with under-age drinking*
- *the Liquorland House Policy includes practices to minimise the risks of secondary supply of minors*

- *the Liquorland House Policy requires staff to request proof of identity where customers are considered to appear 25 years or less, to allow a considerable margin for error*
- *there are already packaged liquor outlets in close proximity to the schools and near areas frequented by school children without there being widespread reported problems of under-age drinking.*

18. Submission from Ms L Bowden, local resident of the Morisset community, dated 6 June 2014. Ms Bowden provided the following submissions:

*I have been a loyal customer at our local bottle shop on the corner of Yambo and Bridge St Morisset for a number of years now and could not believe that Coles is trying to open one in the shopping complex across the road from the high school. We already have three within a couple of streets from one another. The people who own and run this bottle shop are all locals and give generously back to the community as they are a part of it. They contribute time money and help to different factions in our town. My own personal concern is that they sponsor our local over 18s rugby league team the Morisset Bulls which my son plays for, again they [sic] amount of money raffles and time they donate to this team is extremely important to our town and I cannot see them being able to continue there [sic] support if there [sic] business loses their value customers. I cannot see Liquorland being so committed to our community so I thoroughly reject this application to Liquorland and want to lend my support to our local bottle shop.*

19. Submission from Mr A Gibson, resident of Marina Road (located approximately 6 kilometres from the Premises) dated 10 June 2014. Mr Gibson notes that he has been a resident of the Morisset area for over 25 years and objects to the granting of the Application for a number of reasons, some of which are identical to those expressed above by Mr B Gibson, licensee of the Lake Macquarie Hotel-Motel.
20. First, Mr Gibson refers to the six existing packaged retail outlets in Morisset and submits that "...due to the high density (given the population) of retail liquor outlets already within the local area, another outlet will further increase alcohol related anti-social behaviour".
21. Second, Mr Gibson contends that "...alcohol related anti-social behaviour is a problem". Mr Gibson refers to the situation in the Lions Park where alcohol is publically consumed and there is an issue with littering and where "...passing motor vehicles have been damaged from beer bottles being thrown in the direction of the main road".
22. Third, Mr Gibson contends that the Morisset Square shopping complex "...serves as a short cut for many students" and as a result this is an "...inappropriate location for a packaged liquor outlet as the presence of the proposed liquor store and its advertising within the shopping centre will potentially raise the desire for some of the high school students to try to acquire and potentially abuse alcohol, resulting in the potential for increased alcohol related anti-social behaviour within the town".
23. Fourth, Mr Gibson reiterates the concern expressed above by Mr B Gibson regarding the alleged inconsistency between NSW Government restrictions on the sale of packaged liquor and the granting of the Application.
24. Submission from Mr M Hendrie, resident of Nentoura Road (located approximately 1.7 kilometres from the Premises) dated 10 June 2014. Mr Hendrie states that he has been a resident of the Morisset area for 71 years and is "...very concerned about another bottle shop in Morisset". Mr Hendrie expresses concern regarding a current problem that

he identifies with littered beer bottles in "...the streets, car parks and on footpaths, also in the cemetery".

25. Mr Hendrie submits that there is a youth centre next door to us and that there has been ... "trouble with youths wheeling shopping trolleys full of beer in the centre". Mr Hendrie adds that a "...workers club van picks up people and drops them back to this youth centre" and a "...Carlton beer truck went into this centre much to our dismay". Mr Hendrie notes that the Premises would be located in close proximity to the local high school and that he is very worried if it goes ahead.
26. Submission from Ms R Curties, director of ARC Enterprises Pty Limited dated 11 June 2014. Ms Curties provided the following submissions:

*I am a business that is located at ... Dora Street, Morisset NSW 2264, which is a block away from the proposed site. Currently in my location on a daily basis, there are derelicts that frequent the park across the road from my business from sun up to sun down drinking. This deters families from using the park, has put off customers for the sight of it and potential new residents from moving to our area. Further, it has been brought to our attention by these local liquor distributors that these "people" have been limited with their purchases due to RSA laws and unacceptable behaviour.*

*My concern is that we do not need yet another business in our township that sells alcohol to these people, as we already have 3 bottle shops, a pub and country club all within walking distance from the proposed business location. There are also at least another 4 within a short driving distance to this location.*

*With the closure of the Salvation Army run Drug and Alcohol Rehabilitation Pig Farm in recent years, we do not need more drunk and disorderly members of our public roaming our streets. I have even witnessed people walking up to my customers after they have withdrawn money from the ATM in the window of my business premises and ask them for money. This is unacceptable and we do not need another liquor store in our area to further encourage this behaviour.*

*Further, this proposed site is directly across the road from our local high school. Surely this location, so close to children of influential ages, including some that may be of legal age (as I was when I did my HSC at that same Morisset High School) would not be ideal and the fact is no matter what the laws are, somehow they still manage to get their hands on this legal substance that is illegal for those under 18.*

*I hope that these objections are taken seriously in this matter because I do not think our area needs yet another place that sells alcohol and I am sure that this proposal is a basic competition because someone else is [sic]. The fact is that several are and another is not needed because so many already exist in a close proximity.*

27. Submission from Ms K Whalan, resident of Boronia Road (located approximately 18 kilometres from the Premises) received by the Authority on 25 June 2014. Ms Whalan notes that she has been a resident in the local community for over 33 years and objects to the granting of the Application. Ms Whalan submits that in Morisset there are currently three liquor outlets within 500 metres of each other and a pub and country club within walking distance. Ms Whalan submits that "...this is ample for the supply of liquor to the public" and that "...we need more variety in the town, not more of the same".
28. Ms Whalan expresses concern with persons drinking in public, particularly at the Lions Parks, and that "...another liquor outlet, especially in Morisset Square Mall, will magnify the problem". Ms Whalan notes that the shopping mall within which the Applicant proposes to trade is located directly across the road from the local high school and between two primary schools. Ms Whalan submits that teenage children do not need

temptation put in their face by having a liquor outlet put in the middle of a mall, where they frequently walk through before and after school.

29. Submission from Mr B Gibson, licensee of the Lake Macquarie Hotel-Motel (located approximately 210 metres from the Premises) dated 25 June 2014. Mr Gibson notes that he has resided in Morisset for approximately 38 years and has been the licensee at the Lake Macquarie Hotel-Motel for that entire period. Mr Gibson objects to the granting of the Application for a number of reasons.
30. First, Mr Gibson submits that "...the proposed location of this licence is in an inappropriate location". Mr Gibson notes that the Morisset Square Shopping Centre is located directly across the road from the local high school. Mr Gibson submits that if the Application were granted, a liquor store and its advertising will place undue temptation on the high school students who frequent the shopping centre, many of whom are under age. Mr Gibson also expresses concern regarding the sale of alcohol for minors and that while he cannot speculate on the policies of chain liquor stores, he runs a "...stringent house policy regarding the sale of alcohol including not allowing any one in a school uniform to enter my premises - hotel or bottle shop unless they are in the immediate presence of a responsible parent".
31. Second, Mr Gibson submits that "...within the community I have seen first-hand how alcohol in the wrong hands can lead to trouble". Mr Gibson notes an alleged incident that occurred two weeks prior where a private function at the local showground had turned out to be a 16th birthday celebration that had gotten out of hand with six Police cars in attendance and a crowd in excess of 250 people, most of whom were minors without supervision. Mr Gibson submits that "...once the Police left, a fight broke out and a number of innocent people ended up being assaulted".
32. Third, Mr Gibson submits that "...alcohol related anti-social behaviour is quite a problem in Morisset". Mr Gibson submits that there is currently a situation in the Lions Park, located on Dora St whereby a small group of people who abuse alcohol are continuously supplied alcohol from a store located within the Morisset Market Shopping Centre. Mr Gibson adds that this had led to the park being littered with empty alcohol containers and the consideration by Council to declare the park an alcohol free zone. Mr Gibson expresses concern that if the Application were to be granted, public drinking would occur in another local park at the corner of Station and Newcastle Streets.
33. Fourth, Mr Gibson submits that "...the risk of harm to the community if an additional liquor outlet is opened is amplified when the number of rehabilitation centres in the area is taken into account". Mr Gibson notes his experience as a licensee for nearly 40 years and that he does not "...believe a new Liquorland would take the same level of effort that I have in order to ensure these particular members of the community are dealt with in a manner that has their own and the community's wellbeing foremost".
34. Fifth, Mr Gibson notes "...recent initiatives put into place by the NSW Government to try and mitigate the problems that stem from alcohol including anti-social behaviour" and submits that "...it makes absolutely no sense to on one hand restrict the trade of packaged liquor, and then grant the application of a new licence on the other".
35. Mr Gibson concludes by submitting that unlike the "...current independently owned liquor outlets like my own within Morisset" who "...genuinely hold the best interests of the local community foremost" and "...donate thousands of dollars every year to numerous community groups, Liquorland just like BWS has demonstrated, will not have the communities [sic] best interests foremost".

36. Submission from B and R Pike, residents of Yambo Street (located approximately 240 metres from the Premises) dated 23 June 2014. The Pikes note that they have been residents of the Morisset area for approximately 70 years and "...have seen the area grow to the point where 6 packaged retail outlets currently exist within the local area".
37. The Pikes provided the following submission (which was included in a number of the public submissions noted):

*Our concerns relating to this proposed licence are that firstly it will create an oversupply of liquor within the local area – should the licence be granted, it will make 7 packaged retail liquor outlets within the local area. We feel that an additional packaged liquor outlet will potentially generate higher levels of alcohol related anti-social behaviour within the community. Secondly we feel concerned about the location of the proposed licence, Morisset Square Shopping Centre is located across the road from Morisset High School, we believe that the presence of this proposed liquor store may place an unwarranted desire for liquor on the many students who frequent the shopping centre on their way to and from school, students who are of a venerable [sic] age. This situation has the potential to wreak havoc on the local community, should minors find a way to acquire liquor through this store, which wouldn't be hard given its location. We believe that the potential for increased levels of anti-social behaviour within the community is too high to ignore.*

*We hope the concerns expressed by ourselves and other concerned citizens are taken seriously in the pending decision regarding this new packaged retail liquor licence. We honestly believe that it will bring no benefit to the local community.*

38. Submission from Mr I Fitzpatrick, business owner of Piccolo Espresso (located approximately 290 metres from the Premises) dated 23 June 2014. Mr Fitzpatrick notes that he has been a resident in the Morisset area for 13 years and makes identical submissions to those expressed by the Pikes.
39. Submission from Ms L Manning, resident of Macquarie Street (located approximately 1.3 kilometres from the Premises) dated 24 June 2014. Ms Manning notes that she has been a resident of the Morisset area for approximately 34 years and makes identical submissions to those expressed by the Pikes.
40. Submission from Messrs D and D Keywood, business owners of Moore's Meats (located approximately 160 metres from the Premises) dated 24 June 2014. The Keywoods note that they have been business owners in the Morisset area for 17 years and make identical submissions to those expressed by the Pikes.
41. Submission from Ms M Jones-Antcliffe, resident of Barbers Road (located in the neighbouring suburb of Cooranbong) dated 24 June 2014. Ms Jones-Antcliffe notes that she has been a resident of the Morisset area for 42 years and makes identical submissions to those expressed by the Pikes.
42. Submission from PJ and R Masters, residents of Yambo Street (located approximately 240 metres from the Premises) dated 25 June 2014. The Masters note that they have been residents of the Morisset area for approximately 67 years and make identical submissions to those expressed by the Pikes.
43. Submission from Ms J Sanderson, resident of Wamberal Street (located approximately 1.3 kilometres from the Premises) dated 25 June 2014. Ms Sanderson notes that she has been a resident of the Morisset area for approximately 50 years and makes identical submissions to those expressed by the Pikes.

44. Submission from Mr F Clark, resident of Dandaraga Road (located approximately 7 kilometres from the Premises) dated 25 June 2014. Mr Clark notes that he has been a resident and business owner in the Morisset area for 32 years and makes identical submissions to those expressed by the Pikes.
45. Submission from Ms R Clark, business owner of Chelmon Pty Limited (located approximately 7 kilometres from the Premises) dated 25 June 2014. Ms Clark notes that she has been a resident and business owner in the Morisset area for 32 years and makes identical submissions to those expressed by the Pikes.
46. Submission from Ms M Walbank, resident of Hue Hue Road (located approximately 11 kilometres from the Premises) dated 25 June 2014. Ms Walbank notes that she has been a resident of the Morisset area for approximately 54 years and makes identical submissions to those expressed by the Pikes.
47. Submission from Mr V Durrant, resident of Avondale Road (located approximately 8.2 kilometres from the Premises) dated 25 June 2014. Mr Durrant notes that he has been a resident and business owner in the Morisset area for approximately 25 years and makes identical submissions to those expressed by the Pikes.
48. Submission from Ms B Stirling, resident of Gimberts Road (located approximately 1.9 kilometres from the Premises) dated 26 June 2014. Ms Stirling notes that she has been a resident of the Morisset area for approximately 54 years and makes identical submissions to those expressed by the Pikes.
49. Submission from Mr B Gibson, licensee of the Lake Macquarie Hotel-Motel, and Ms K Whalan, licensee of Morisset Cellars dated 24 June 2014. This submission contains a petition signed by approximately 1,400 residents and business owners within the local and broader community. While the petition was signed by a great proportion of Morisset residents, signatures were also obtained from neighbouring suburbs including Bonnells Bay, Dora Creek, Mandalong and Windermere Park. In support of the petition, the following submissions are made:

*Whilst gathering signatures we were able to discuss the topic of an additional licence with many the [sic] community members who signed the petition. The elements of the topic discussed include how close the proposed new licence is to the local high school and the likely hood [sic] of an increased level of anti-social behaviour should this licence be granted.*

*It was agreed by all who spoke to [sic] that the major problem regarding this proposed new licence is just how close it is to the local high school and the fact that many of the high school students use Morisset Square as part of their route to and from school, with most of them being of an impressionable age, we fear the temptation to try to acquire and potentially abuse alcohol will be high due to the presence of this proposed store and its advertising within the shopping centre.*

*We trust that given the number of signatures contained in this petition that it will carry some weight in the community impact statement for the above mentioned licence application. We put this petition to you as members of a concerned community worried what the ramifications of the approval of this licence could bring.*
50. Submission from Dr Johannes G du Plessis, local doctor and owner of Waratah Medical Services (located approximately 240 metres from the Premises) dated 25 June 2014. Dr du Plessis provided the following submission:

*It is with great concern that I write to you today to object to the proposal of a new packaged liquor licence in Morisset. I am a local Doctor and owner of Waratah Medical*

*Services at Morisset and the Morisset GP Super Clinic which opened in 2009. I have been a General Practitioner in the Morisset area since 2006.*

*The Waratah Medical Practice and Super Clinic at Morisset include 11 Doctors and six Nursing staff working fulltime. Other Allied Health providers are also attached with the Morisset Super Clinic such as podiatry, psychologists, dieticians [sic], hearing specialists, radiology, pharmacy, physiotherapy and pathology.*

*Over the past eight years the Waratah Medical Practice has observed and treated many patients for the effects of alcohol abuse. It is an alarming concern in the local community and the Doctors and Nurses at Waratah Medical Practice are of the option [sic] that the already over availability of alcohol is detrimental to the entire community's health.*

*On the opposite side of the road to the Waratah Medical Practice in Dora Street, Morisset is a Lions Park which currently has many people drinking everyday [sic] in this park. Our patients, passing motorists, pedestrians and local school students are innocent bystanders and are victims to drunken anti-social behaviour from the people drinking daily in the park.*

*On a daily basis Waratah Medical Practice has patients that enter the premises for a Doctor's appointment that are not only intoxicated but carry liquor into our surgery with them. Outside Waratah Medical Practice at Morisset is a bench seat on the main road which regularly seats many people consuming alcohol all day long.*

*With three bottle shops already established in a very small radius to the Waratah Medical Practice in Morisset and with my grave community concerns to the effects of underage drinking and the overall impact to the health of the entire local community I request you to please consider to not go ahead with granting another Liquor Licence in Morisset.*

51. Submission from G and C Smith, shop owners of Yalcoty Pty Limited (located directly next to the Premises) dated 26 June 2014. The Smiths object to the granting of the Application for several reasons, including the number of other bottle shops that are currently located within close proximity to the Premises; the close proximity of the local high school and primary school to the Premises; the current problem they identify with "constant graffiti" which they contend would be exacerbated by increased alcohol consumption; their concern as to underage alcohol consumption during the early hours of the evening and what they contend is the potential to lose valuable tenants in close proximity to Yalcoty Pty Limited due to the occurrence of alcohol related anti-social behaviour.
52. Submission from Ms R Harridge, President of Morisset Public School P&C dated 30 June 2014. Ms Harridge made the following submissions:

*It has been brought to my attention that there is to be a proposal for another liquor store in Morisset. As the President of the P&C of Morisset Public School and part of the Local Management Group P&C for our local area, I would like to put in a disapproval for the new store on behalf of P&C. If this store goes ahead that will mean there will be 4 liquor stores in Morisset, which I feel is too many, it is not necessary for our small town to have that many liquor stores. It will be across the road from the High School, which I also feel is a bad position for any Liquor store to be. We will be having the next Local Management Group P&C meeting on 29<sup>th</sup> July, I will be bring [sic] this matter up for discussion.*
53. Submission from Ms M Searles, manager of Morisset Cellars and member of the community dated 1 July 2014. Ms Searles provided the following submissions:

*I disapprove that you are even considering that our small community needs another liquor outlet. There are 3 liquor outlets in Morisset alone, with another 3 within a couple of km of each other. With already so much alcohol related problems in our town I feel another outlet is adding more fuel to the fire. Where you are proposing the outlet to go is across from the high school while many students will pass this store to and from school. With what they already see from the 'drunks' of this town that wander around intoxicated daily, do 'you' need to add any more fuel to the fire?*

54. Further submission from Ms M Searles dated 20 February 2015. Ms Searles provided the following submissions:

*As Manager: as stated in the SIA, Morisset Cellars trading hours are wrong. Our trading hours are Mon-Tues 9am-7pm, Wed-Thurs-Fri-Sat 9am-8pm, Sun 10am-7pm. With the drunks (\*meaning they choose to sit in parks and drink than there own [sic] homes) of the town (there are quite a few) we know what they drink and when they come in for something different we question who it is for and if its [sic] not what they normally drink I refuse service. For a couple of bucks they would buy for school kids. Would Liquorland know this, I think not.*

*As a member of the community: does a small area really need another liquor outlet. There is enough anti-social behaviour in this town. 4 liquor outlets is enough then take into consideration Dora Creek, Cooranbong and Bonnells Bay another 3 outlets within 5kms, 5 mins away. With the proposed Liquorland opening at 8am a lot of primary and high school children would be exposed to this. With the park on Dora St, Morisset now an alcohol free zone those drunks have moved there [sic] drinking to the park behind the high school. Which is close to the proposed Liquorland. My 11yr daughter started high school this year and the last thing I want is for her to be exposed to this kind of behaviour. Unfortunately she has already been exposed to some man peeing on a tree and thus exposing his penis to year 7 girls. With all the hype on alcohol fuelled violence and anti-social behaviour why open another liquor outlet.*

55. Undated submission from Mr S Nurrish, licensee of the "Bottle-O", Cooranbong (located 6.4 kilometres from the Premises). Mr Nurrish objects to the granting of the Application for a number of reasons, including what he describes as the current high liquor licence density in Morisset, including a "...Bottlemart, a Hotel, a Drive-Thru and a BWS Woolworths" located within 500 metres of the Premises and a Country Club located within 800 metres of the Premises. Mr Nurrish adds that the Premises is located within close proximity to a high school and primary school.

56. Undated submission from Mr G John Smith, occupant of neighbouring premises (within 100 metres of the Premises). Mr Smith makes the following submissions:

*I am the owner of a row of shops directly adjoining the complex that Liquorland will be occupying. Adjoining us to the other side is a public park. I note that there is another public park in Morisset opposite the BWS outlet which due to ongoing antisocial behaviour, the Council has made an alcohol free zone.*

*I am concerned that as a result of the above, that same anti-social behaviour will be transferred to the park adjoining me if Liquorland is available to supply alcohol to these people. This will potentially make it unsafe (or at least unpleasant) for my tenants and customers to carry out there [sic] everyday business. If I can be assured that this park will also be made alcohol free, then I would withdraw my objection.*

57. Submission from NSW Family and Community Services (FACS) dated 23 January 2015. In this short submission, FACS submit that "...we are unable to determine that this particular proposal would adversely affect the local community above and beyond the

usual social impacts of increased alcohol consumption in a community and therefore have no legitimate grounds for concern".

58. Submission from Lake Macquarie Local Area Command (LAC) of NSW Police (Police) dated 17 February 2015. This submission is provided by Senior Constable Peter Mignanelli and submits that Police are "generally opposed" to the granting of the Application.
59. Police note that the Lake Macquarie local government area (LGA) currently consists of "...45 existing packaged liquor outlets, 28 hotel premises providing a measure of public take away liquor sales and 40 club premises".
60. Police add that there are a number of existing packaged liquor outlets located within close proximity to the Premises, including BWS Beer Wine Spirits (Doyalson and Yambo Streets; Morisset Cellars (Bridge Street); Bottlemart (35 Dora Street); Lake Macquarie Hotel (83 Dora Street); and Morisset County Club (118 Dora Street). Police provide a map illustrating the location of these liquor outlets in relation to the Premises.
61. Police submit that there are "...sufficient takeaway liquor outlets in the Morisset area to service the community". Police express "...concerns that if this licence is granted there will be six packaged liquor outlets within 500 metres of each other".
62. Police further state that there is a high school and primary school situated "...within 500 metres from the boundary of the stated shopping complex where the Liquorland is to be situated". Police note that there is an existing Liquorland outlet situated in the suburb of Dora Creek that is "...only three kilometres away from the proposed Liquorland in the suburb of Morisset".
63. Police submit that the "...mentioned liquor outlets situated within 500 metre radius of the proposed outlet is more than enough for the public demographic that are most likely to purchase liquor from the proposed premises, being the suburb of Morisset".
64. Police submit that whilst the current rates of alcohol related crime occurring across the area comprising *Lake Macquarie LAC* are "relatively low" when compared to the NSW state average, Police believe it is important to consider the rates of alcohol related assaults and more importantly alcohol related domestic violence incidents (where alcohol was consumed away from the premises) within the *suburb of Morisset* and surrounding suburbs.
65. Police provide statistical data for the State suburb of Morisset and surrounding suburbs for 2013 and 2014. Police submit that whilst the number of recorded incidents "...are not overwhelming, the Command has experienced an increase of approximately 11% of alcohol related incidents in the area".
66. Police refer to 2011 Australian Bureau of Statistics (ABS) Census Quick Statistics, which they contend show that the suburb of Morisset has a population of 2,857 persons – 1,420 of which are male, 1,437 of which are female and 84 people who identify as being of Aboriginal and Torres Strait Islander descent. Police submit that at present, "...this equates to one licensed premises with a takeaway provision per 572 persons in the suburb of Morisset". Police submit that if the Application is granted, "...this will equate to a provision of 477 persons per liquor outlet in the suburb of Morisset".
67. Police also express concerns regarding the proposed location of the packaged liquor licence in that the local high school and primary school is in close proximity. Police contend that "...students frequent the shopping complex after school concludes" and that

the "...possible negative social impact [of] the proposed packaged liquor licence" may need to be "carefully considered".

68. Police express further concerns with regards to the potential for an increase in 'secondary supply' (supplying of liquor to persons under the legal age limit) arising from the "...relatively close proximity of the proposed location to the local high and primary school".
69. Police note that current Police data "...indicate no significant direct alcohol related crime link to the schools however it is reasonable for Police to have concerns for the potential increase in secondary supply and public drinking incidents in and around the proposed site".
70. Police submit that in November 2014, Lake Macquarie Council (Council) declared the Lions Park area an Alcohol Free Zone (AFZ) and that appropriate signage was posted. Police note that the Lions Park is situated adjacent to Dora Street and Doyalson Street and is located approximately 100 metres from Morisset Railway Station.
71. Police submit that the Lions Park was declared an AFZ "...due to the amount of alcohol related anti-social behaviour and the concerns from the local community". Police note that they liaised with Council for the declaration of this AFZ by reason of this community concern.
72. Police refer to research ("One on every corner: the relationship between off-licence density and alcohol harm in young people", *Alcohol Concern Youth Policy Report*, July 2011) that suggests that "...the greater the availability of alcohol, the greater the risk young people have from suffering alcohol related harm" and that "...off-licence sales are under predominant direct and indirect sources of access to alcohol for young persons under 18 years old".
73. Submission from NSW Aboriginal Land Council dated 6 May 2015. In this short submission, NSW Aboriginal Land Council directed the Applicant to contact the Briaban Local Aboriginal Land Council directly.
74. Submission from a delegate of the Secretary of (then) NSW Trade and Investment, now the Department of Justice, by an officer within the Compliance & Enforcement Division of the Office of Liquor Gaming and Racing (OLGR Report) dated 17 April 2015. OLGR note that the primary purpose of the licensed business operating on the Premises is the sale of packaged liquor. OLGR note that the Premises will adjoin an established Coles supermarket located within a mixed residential and commercial area of Morisset. In the context of this proposed business model, OLGR assess the venue to be "of low risk".
75. OLGR note that the radial density of liquor licensed premises in Morisset is below the State average.
76. OLGR submit that NSW Bureau of Crime Statistics and Research (BOCSAR) data indicates that from October 2013 to September 2014, the rate of *alcohol related assaults* (domestic and non-domestic) that occurred within the State suburb of Morisset was 368 (per 100,000 persons of population) compared to 321 (per 100,000 persons of population) for the whole of NSW.
77. OLGR submit that the rate of *alcohol related disorderly offences* that occurred in the suburb of Morisset was 67 (per 100,000 persons of population) compared to 105 (per 100,000 persons of population) for the whole of NSW.

78. OLGR submit that these figures indicate that the suburb of Morisset "...does not appear to have a significant concentration of alcohol-related anti-social behaviour".
79. OLGR note that the proposed trading hours at the Premises are Monday to Saturday from 8:00am to 10:00pm and Sunday from 10:00am to 10:00pm. OLGR submit that it "...does not find any compelling evidence to support the sale of liquor prior to 10:00am" and believes that the sale of liquor prior to this time "...may have an adverse impact upon the local and broader community".
80. OLGR note that local Police object to the Application and that there was no submission made on behalf of Lake Macquarie City Council and so the Police position in relation to the liquor licence Application "is not known".
81. OLGR note that FACS provided a submission stating that they were unable to determine whether the Application would adversely affect the local community above and beyond the usual social impacts of increased alcohol consumption in a community.
82. OLGR note that a total of 24 public submissions were received by the Applicant objecting to the Application on the grounds that there are sufficient existing liquor outlets in Morisset and that the grant of the Application would negatively impact upon the quiet and good order of the neighbourhood and would result in an increase in alcohol related harm and issues in the area.
83. OLGR note the public concern regarding the location of the Premises in relation to the nearby local high school. OLGR further note that one individual lodged two submissions in response to the Application.
84. OLGR note that a public petition was received which includes 1,398 signatures and details of residents of the local and broader community who are opposed to the Application.
85. OLGR note that a review of Compliance and Enforcement Division records did not disclose any adverse information in respect of the Applicant, Ms Melanie Lucas.
86. OLGR conclude with the observation that "...whilst the Director Compliance and Enforcement does not object to the granting of the application based upon the proposed business model and location factors, it would appear that the local and broader community strongly oppose this application". OLGR submit that the concerns raised by the local community "...were of a reasonable nature and it would not be prudent to disregard them".
87. Email from staff assisting the Authority to the Applicant's legal representative, Mr Jon Martin of JDK Legal, dated 20 April 2015. In this communication, Mr Martin was requested to provide a completed Certificate of Advertising and was provided with the submissions received from Police and the public. Mr Martin was also informed that 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 that the licence not operate with a greater overall social impact on the wellbeing of the community; active local liquor accord participation; a requirement that the licence cannot be operated until the Authority has been provided with evidence that the Premises is complete and ready to trade; and until the Authority has granted a transfer of the licence to a suitably qualified person.
88. Email from staff assisting the Authority to Mr Jon Martin dated 21 April 2015. In this communication, Mr Martin was provided with the OLGR Report.

89. Email from Mr Martin to staff assisting the Authority dated 15 June 2015. Mr Martin provided a completed Certificate of Advertising and confirmed the Applicant's consent to the standard conditions noted by Authority staff should the Application be granted. In addition, Mr Martin provided a submission prepared by the Applicant's town planning consultants, UA, dated June 2015.
90. Briefly, UA make a number of contentions in response to the submission received from NSW Police. First, UA clarifies that there are currently only four licences (packaged liquor/hotel/club licences) operating in Morisset, not five.
91. UA submit that the Police reference to the "Bottlemart" store operating at 35 Dora Street is "part of the Lake Macquarie Hotel" and that "...of the existing operational licences in Morisset, only two are packaged liquor licences".
92. Second, UA note the Police submission that "...there are already sufficient takeaway liquor outlets in the Morisset area to service the community in the area". UA notes *Authority Guideline 6* for consideration of social impact under section 48(5) of the Act. UA submit that on this basis, the suggestion from Police that there is no "need" for another packaged liquor licence is "not a relevant matter".
93. UA contend that the Premises is "...likely to service an area much larger than the suburb of Morisset" and that "...Morisset is a regional service centre for the surrounding rural area and urban areas" and for these reasons, it is submitted that "...some concentration of premises in the Morisset town centre is to be expected".
94. Third, in response to the close proximity of the Premises to the local high school and primary school, UA make a number of submissions. UA note that this concern was addressed in section 7.9.2 of the SIA provided with the Application and reiterates that the risks to school children are limited because:
  - the Premises will not be in sight or hearing distance of the schools
  - school children will be easily identifiable considering they will "almost always" be in school uniform
  - existing Liquorland House Policy and practices are in place to minimise the risks of secondary supply to minors and underage drinking
  - there "...are already packaged liquor outlets in close proximity to the schools without there being widespread reported problems of under-age drinking".
95. Fourth, in response to the Police submission concerning the level of alcohol related crime in Morisset, UA submit once more that "...the proposed Premises are likely to draw customers from a much larger area than the suburb of Morisset".
96. UA rely upon BOCSAR crime mapping data which UA submit indicates that Morisset and the surrounding suburbs are classified as having a low level of alcohol related assaults and domestic violence related assault rates.
97. UA refer to a BOCSAR report (Donnelly, N., Menendez, P., "The effect of liquor licence concentrations in local areas on rates of assaults", NSW *Crime Justice Bulletin* No.181 Bureau of Crime Statistics and Research December 2014, p.9) which states that *the incidence of domestic violence related assaults increases significantly when the concentration of packaged liquor licences exceeds 0.75 licences per 1,000 of population*. UA submits that because the Lake Macquarie LGA has 50 packaged liquor licences (*Index of Licensed Premises* (digital copy) provided by OLGR to Urban Advisors on 2 June 2015) and a density of 0.27 packaged liquor licences per 1,000 persons of population, "...the current packaged liquor licence density is well below the risk threshold established by BOCSAR".

98. Fifth, UA disagree with the Police submission that there has been a substantial increase in alcohol related crime in Morisset. UA provide a table showing the statistical trend in alcohol related crime rates over the past two years as calculated by BOCSAR.
99. UA submit that these figures show that "...crime rates in Morisset have been statistically 'stable' for the past two years and declining in Lake Macquarie LGA for the past five years".
100. Sixth, UA disagree with the Police submission that the granting of the Application will result in one licence per 477 persons in the suburb of Morisset due to the above mentioned UA submission that Police have considered the Bottlemart store at 35 Dora Street as a separate licence.
101. UA add that on the basis of licence density figures provided by OLGR, the density of all licences in the Lake Macquarie LGA is "low by NSW standards", at a rate of 137 (per 100,000 persons) compared to a rate of 273.8 (per 100,000 persons) in NSW.
102. Seventh, in response to the Police concern regarding the proximity of the Premises to local schools, UA submits that there are "...numerous locations in NSW where schools are located in close proximity to shopping centres which contain packaged liquor outlets". UA notes that Morisset Cellars is located within 100 metres of Morisset High School and 200 metres of Morisset Primary School. UA further notes the mitigating measures agreed to by Liquorland including a requirement for management to liaise with school principals.
103. Eighth, in response to the Police concern regarding the potential for increased secondary supply to minors, UA contend that "...the area currently does not appear to have significant issues with under-age drinking". UA add that Liquorland's House Policy includes policies and practices to minimise this risk.
104. UA then provided a number of contentions and submissions in response to the submission from Ms Searles. First, in response to Ms Searles' submission that the trading hours for Morisset Cellars were presented incorrectly, UA provided the trading hours as currently advertised on the internet and submit that "...the hours provided by Miss Searles are significantly longer than those reported in the SIA".
105. Second, in response to Ms Searles' submission that locals who regularly engage in the public consumption of alcohol to intoxication are known to staff at Morisset Cellars and may be refused sales of alcohol if they are purchasing something different from their regular order, UA submit that this "...implies that Morisset Cellars regularly supply alcohol to those individuals known to consume alcohol in a public place and to intoxication". UA question whether Morisset Cellars "are acting within their Duty of Care".
106. Third, in response to Ms Searles' concern regarding the purchase of alcohol for minors, UA note that Liquorland operates 874 outlets across Australia and "...has a good track record in managing its premises" and so "...will be experienced in how to deal with occurrences of this nature".
107. Fourth, in response to Ms Searles' questioning the "need" for another liquor outlet, UA reiterates the above mentioned submission that the "need" for a licensed premises is not a relevant matter for consideration.
108. Fifth, in response to Ms Searles' submission that there are four existing liquor outlets in Morisset and a further three outlets within a five minute drive, UA reiterates the above

submission that the density of licensed premises across the Lake Macquarie LGA is well below the NSW average.

109. Sixth, in response to Ms Searles' concern regarding the close proximity of the Premises to local schools, UA notes that this has been dealt with in the above submissions and that there is "...no reason to assume that the proposed Premises will cause significant impact to school children".
110. Seventh, in response to Ms Searles' submission that since the establishment of an alcohol free zone in Lions Park there has been public drinking in a park to the rear of Morisset High School, UA agrees that "...this group presents a significant concern as indicated in Section 7.8 of the SIA" and that the Authority "...will need to weigh and balance this factor with other aspects of the application". UA add that Liquorland has agreed to "...take steps to reduce the risks to this group by participating in the Local Liquor Accord and working with Local Police".
111. UA also make a number of contentions in response to the submissions made by OLGR. First, UA note that OLGR indicate that the Premises and its location have been assessed as "lower risk". UA add that the "...Director of Compliance and Enforcement has indicated that he does not object to the granting of the application based on business model and locational factors".
112. Second, UA take exception to the submission from OLGR that "...it would appear that the local and broader community strongly oppose this application" [emphasis added by UA]. UA submit that the received submissions have "almost all" come from *local* residents and businesses and that with the exception of the Police submission, "...the views of the broader community are largely not known".
113. Third, in response to the OLGR submission that the rationale for the proposed 8:00am opening time has not been substantiated by the Applicant, UA submit that as with all Liquorland stores, "...actual opening hours will be dependent on demand and may be less than [sic] those proposed in the application" and "...longer hours have been requested to allow for flexibility during the holiday season".
114. Fourth, in response to the OLGR observation that "...there are already enough liquor outlets in Morisset providing takeaway liquor", UA again reiterate their submission that this is not grounds for refusal of the Application.
115. Fifth, in response to the petition signed by those in the community opposed to the Application, UA submits that "...a review of the petition indicates that almost all signatures are residents of Morisset" and thus only reflect the views of the *local* community.
116. UA conclude that "...the licence, if granted, will provide a new opportunity for the local community to conveniently combine grocery and liquor shopping, while benefiting from increased competition between retailers".
117. UA add that the SIA prepared by UA in December 2014 found that "...social indicators suggest that the local area does not present an unreasonable level of risk" and thus section 48(5) of the Act (the overall social impact test, noted below) is satisfied.
118. Email from Mr Martin to staff assisting the Authority dated 30 June 2015. Mr Martin provided the following submissions:

*To supplement the conclusions in the Applicant's Community Impact Statement and with a view to enhancing the potential benefits arising from the approval of this application, I am instructed that, if this application is approved, my client would agree to a condition that the licence cannot be exercised unless and until Hotel Licence LIQH424015413 known as "Industrie" is surrendered. I attach a Key Licence Document for Industrie.*

*The Industrie licence currently attaches to 107 Pitt Street, Sydney.*

*My client purchased the rights to the Industrie licence in February 2012 with a view to utilising it for a Liquorland outlet restricted to packaged liquor sales. However, the licence has not been activated since it was acquired.*

*The Industrie licence is situated within the Sydney CBD Entertainment Precinct, an area designated by State Parliament as being amongst the highest risk areas in NSW for alcohol related harm and in which there is considered to be a saturation of licensed premises.*

*The surrender of the Industrie licence would therefore benefit the local community of the City of Sydney, and the broader community by:*

- 1. Reducing the number of licences in the high risk Sydney CBD entertainment precinct.*
- 2. Removing the potential for the highest risk category of licence (i.e. a hotel licence) to operate within the Sydney CBD entertainment precinct; and*
- 3. Avoiding the potential for an anomaly in a system whereby a hotel licence is utilised for packaged liquor sales only.*

*My client accepts that the surrender of the Industrie licence would not necessarily confer a direct benefit upon the Morisset local community. However, my client asks that the Authority take into account the potential additional benefit to the broader community in assessing the overall social impact of the approval of this application".*

119. Liquor licensing information sourced from Authority licensing records noting the licence type and address for all packaged liquor, hotel and registered club licensed premises within the state suburb of Morisset and the nearby suburbs of Bonnells Bay, Cranebrook, Dora Creek, Eraring and Sunshine.
120. NSW BOCSAR crime and crime mapping data for the Lake Macquarie LGA regarding incidents of liquor offences, malicious damage to property, assault (domestic assault) and assault (non-domestic assault) offences for the calendar years 2013 and 2014.

## **STATUTORY OBJECTS AND CONSIDERATIONS**

121. In determining the Application, the Authority has considered the relevant provisions of the Act, including the statutory objects and considerations that are prescribed by section 3, which states as follows:

### **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.*

122. Section 45 of the Act provides the power pursuant to which the Authority may grant or refuse to grant, an application for a new liquor licence. Relevantly, this section states:

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.

123. Division 5 of the Act makes provision for packaged liquor licences. Sections 29 to 31 of the Act state as follows:

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).*

## COMMUNITY IMPACT TEST

124. 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.

125. 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.*

126. 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

127. The CIS was accompanied by a Social Impact Assessment Report, which was prepared by Urban Advisors, town planning consultants engaged by the Applicant and dated December 2014. Without purporting to reiterate this entire report, this lengthy document included the following submissions on the social impact of granting the Application:

*The proposed premises involves the use of an existing retail space within a modern, conveniently located shopping complex for the sale of packaged liquor. The site of the proposed development is imminently suitable for this purpose being within the commercial area of a town centre.*

*This SIA presents a range of social indicators to assist the Independent Liquor and Gaming Authority to assess the overall social impact of a packaged liquor licence being granted in favour of the proposed premises.*

*The proposed premises will increase the range of goods available in the Morisset Square shopping centre, permitting customers to combine liquor purchases with general grocery and food shopping. The proposed premises will provide for pleasant and convent [sic] shopping experiences.*

*The local community has a mix of social characteristics. Morisset has an above average proportion of labourers and single parent families however, the area also has below average unemployment, households renting and households renting from a state housing authority. The local Aboriginal population has an above average representation. The Aboriginal community generally exhibits characteristics similar to the non-Aboriginal population, with the exception of age structure.*

*The area has a below average socio economic status but not so low that it raises clear concerns. The proportion of households on very low or nil incomes, is below average. The area has a significant older population, many of whom are on fixed incomes and unlikely to engage in risk drinking behaviour.*

*The LGA has below average rates of crime associated with alcohol. Crime mapping reveals that the local area does not have a significant record of alcohol related assaults in proximity to the proposed development.*

*The density of licensed premises is well below average.*

*Overall, the statistics suggest that the local area does not represent an unreasonable level of risk.*

*Numerous submissions received have expressed concern at the potential for the proposed premises to impact on anti-social behaviour in Morisset. A visible group of Aboriginal people frequently consume alcohol in Lions Park. Lake Macquarie Council is addressing this issue by making Lions Park an alcohol free zone. Regardless, there is strong community concern that granting of an additional licence is not in the best interests of the community. There is also particular concern from the local medical practice that an additional licence may have a negative impact on community health. The ILGA will need to weigh and balance the community's concerns with other aspects of the application.*

*Coles Liquor has a good track record in managing licensed premises and enjoys a reputation of being a responsible supplier of alcohol in the communities in which they trade. Well-established procedures, which would be immediately implemented if a licence is granted, have been proposed to reduce the risks associated with the proposed premises.*

## **REASONS FOR REFUSAL**

128. The Authority has critically examined the Application and all of the material before it and has decided to *refuse* the Application pursuant to section 45 of the Act, by reason that the Authority is not satisfied that the Applicant meets the requirements of section 48(5) of the Act in respect of the local community of Morisset.

## **Overall Social Impact**

129. The Authority is satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting the Application will be detrimental to the wellbeing of the local or broader community.
130. 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.

131. 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 State suburb of Morisset and the broader community comprises the City of Lake Macquarie LGA.

### **Positive Benefits**

132. 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 the nearby Coles Supermarket, as they will be able to do so during the licensed trading hours of the Premises (from 8:00am to 10:00pm Monday through Saturday and 10:00am to 10:00pm on Sunday).
133. The Authority is satisfied that some additional convenience is established by the Applicant in respect of those shoppers who wish to engage in "one stop" liquor shopping within the same Shopping Centre in which the Coles Supermarket and other stores are located. This may be said to promote the object of section 3(1)(a) of the Act (catering for the expectations, needs and aspirations of the community) and may also contribute the responsible development of the industry which is an object of section 3(1)(b) of the Act.
134. However, the extent of those cumulative benefits to the community are reduced by the extent of community opposition voiced against the Application by the local community and the range and availability of licensed premises within the local and broader community that are authorised to sell takeaway liquor.
135. The Authority is satisfied that there is strident local opposition to the Application. This is demonstrated by the 26 submissions received from members of the public and further demonstrated by the petition received objecting to the Application which garnered over 1,300 signatures from local residents and business owners.
136. The Authority notes that the petition was introduced at the initiative of two incumbent liquor licence business operators. The Authority is wary of the potential for incumbent licensees to engage in "astro-turfing" or the artificial generation of "grass roots" opposition by persons with a commercial interest in the outcome of an application for a new liquor licence.
137. Nevertheless, having had regard to the great many persons living in the suburb of Morisset who have lent their support to opposing the Application and provided their details, the Authority is satisfied that there is a substantial degree of community opposition to another liquor licence in this location.
138. Assessing the overall social impact of granting a licence does not involve a popularity contest, but the substantial local community opposition before the Authority diminishes the extent of positive benefit that may otherwise be accorded to the Application (in that it is an object of section 3(1)(a) of the Act 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*).
139. The Authority notes that the population of the local community of Morisset is 2,857 persons. While acknowledging that not all of the signatures are from residents within Morisset, most of them are.

140. The Authority's licensing records disclose that, at the level of the local community and within 300 metres of the proposed Premises, there are three licensed premises authorised to sell takeaway liquor. These include:
  - (a) BWS Morisset (located approximately 98 metres from the Premises)
  - (b) Morisset Cellars (located approximately 110 metres from the Premises)
  - (c) Lake Macquarie Hotel-Motel (located approximately 260 metres from the Premises).
141. The local community also have access to Liquorland in neighbouring Dora Creek, around 4kms from the site of the Premises.
142. While the Applicant contends that granting the Application will support employment opportunities within the Premises by employing five staff on a regular basis with additional staff during peak periods, the Applicant has not provided clear or unequivocal undertakings that employees of the new business will actually be sourced from within the local or broader communities. Little weight is given to that purported community benefit.
143. The Authority notes the Applicant's submission that the granting of the Application "...may lead to increased support for local community groups and sports by Coles and Liquorland brands" and that the "...expenditure in the community by employees of the proposed premises will make a positive contribution to the local economy". However, the Authority notes that the nature and extent of community support has not been substantiated nor specified with any great deal of certainty and so little weight can be given to these purported community benefits.
144. The Authority does not accept that the Applicant's proposal to surrender a hotel licence pertaining to licensed premises in Sydney constitutes a relevant benefit for the local or broader communities currently under consideration.

### Negative Impacts

145. The Authority accepts that, over time, there will more likely than not be some contribution from the liquor sold at the Premises to local alcohol related crime, disturbance or adverse impacts on amenity caused by a minority of customers who abuse the packaged liquor purchased from this new business.
146. A minority of patrons of the new business may also contribute to other adverse impacts upon local amenity, including (relevantly to the issues raised in this Application) drinking in public places, secondary supply, "pre-fuelling" before attending licensed premises and alcohol related litter.
147. The Authority notes that as a whole, the broader community of the Lake Macquarie LGA performs relatively well in terms of rates of crime when compared to NSW State averages.
148. The BOCSAR *Report on Crime by LGA and Alcohol Related Status* for 2013 focuses upon the proportion of crime reports in certain offence categories that have also been flagged by individual reporting Police officers as "alcohol related".
149. This report discloses that the rate of *alcohol-related domestic violence related assault* occurring across the Lake Macquarie LGA was **145** per 100,000 persons of population. This rate is the same as the NSW rate of **145** per 100,000 persons of population.
150. This report further discloses that the rate of *exceed prescribed concentration of alcohol* incidents occurring across the Lake Macquarie LGA was **296** per 100,000 persons of

population. This rate is slightly higher than the NSW rate of **290** per 100,000 persons of population.

151. The Authority notes that this report discloses that the rates for other offences such as *alcohol related assault Police, alcohol related malicious damage to property, alcohol related non domestic violence assault and alcohol related offensive conduct* occurring across the Lake Macquarie LGA are lower than the corresponding NSW rates.
152. Turning to the local community in the State suburb of Morisset, BOCSAR crime mapping data for the period from January 2014 to December 2014 reveals that the Premises is situated on the border of a low concentration "hotspot" for the occurrence of reported domestic assault and non-domestic assault.
153. However, the Premises is located within a high concentration hotspot for *malicious damage to property* offences (noting that such matters may or may not be recorded as alcohol related). This lends some objective support to the concerns expressed by local residents and business owners about public drinking and anti-social conduct in the area where the Premises is to be located.
154. The Authority notes that while Police accept that the "...current rates of alcohol related crime within the Lake Macquarie Local Area Command are relatively low compared to the New South Wales State average", Police caution that they have "...experienced an increase of approximately 11 per cent of alcohol related incidents in the area".
155. The Authority notes that the Applicant disagrees with this Police submission and relies upon BOCSAR data which the Applicant submits "...shows that the crime rates in the suburb of Morisset have been statistically 'stable' for the past two years and declining in Lake Macquarie LGA for the past five years".
156. The Authority is satisfied that while the prevailing crime data presents some cause for concern, it has not been a decisive factor. Of greater concern with respect to negative impacts are the contribution that this proposed new business may be expected to make to the prevailing adverse alcohol related impacts upon local amenity to which the local community are currently exposed.
157. Aside from the petition noted above, the public objections provided by residents of the local community who live in reasonably close proximity to the location of the Premises have identified the following prevailing adverse impacts on residential amenity that these residents contend are of current concern to them.
158. The concerns raised by local submitters include adverse impacts such as:
  - (a) the underage secondary purchase of packaged liquor
  - (b) the local community already being exposed to anti-social behaviour
  - (c) public drinking in the local community
  - (d) the risk posed to schoolchildren from the neighbouring schools due to the proposed early opening time of 8:00am
  - (e) the risk posed to schoolchildren as they visit the Shopping Centre where the Premises would be located on their way to and from school.
159. While the crime data for the local and broader community may not be particularly problematic, the submissions from the local community satisfy the Authority that there are prevailing adverse impacts upon local amenity that are alcohol related and relevant to an assessment of the impact of licensing this proposed business in this location.

160. On the material before it, the Authority accepts these alleged local adverse liquor related impacts claimed by local residents are generally credible. Council's declaration of the Alcohol Free Zone (AFZ) in respect of the nearby Lions Park provides objective support to the proposition that public consumption of packaged liquor is a prevailing problem for the local community in respect of this location. The Authority is satisfied that Council would not have taken the step of declaring that AFZ if public drinking were not an issue, and the Authority is satisfied that granting a new licence in proximity to an AFZ will more likely than not frustrate the objects of managing public drinking in that AFZ by increasing the accessibility of liquor in that area which may be abused by a problematic minority of patrons.
161. The CIS requires applicants to identify sensitive areas nearby the Premises and the Authority is satisfied that the Lions Park location near the Premises is particularly problematic, from the perspective of public drinking.
162. The Authority is satisfied that the area within the local community where the Premises is to be situated is already sensitive for the occurrence of public drinking. The area of Lions Park has been identified by numerous local members of the community as currently problematic for public drinking.
163. In addition, numerous members of the community have expressed concern regarding the close proximity of another public area - the Bernie Goodwin Memorial Park located across the street from the proposed Premises.
164. The Authority accepts as generally credible the local community concerns that there are "...derelicts that frequent the park...from sun up to sun down drinking" and that this "...deters families from using the park". The Authority further notes and accepts the community concern regarding the problem of alcohol related littering in this Park.
165. The Authority has given particular weight to the submission from Dr du Plessis, in that it provides a specific and detailed account of prevailing alcohol related impacts on local amenity that are being experienced and observed by staff at a sensitive facility - the large medical centre in which he works. Dr du Plessis' observations and contentions also have a greater degree of independence than the submissions made by local licensees or the stated patrons of those licensees.
166. The Authority accepts his account of persistent public drinking in the area of the medical facility as credible. While the persons engaging in public drinking at the locations identified by Dr du Plessis will likely continue to obtain liquor from other local outlets irrespective of whether or not this Application is granted, the Authority is satisfied that in a practical sense, this new business will provide a new source of liquor for those engaging in public drinking in the locations identified. It will contribute to this prevailing problem.
167. New South Wales does not mandate the collection of liquor sales data of the kind that researchers in other jurisdictions have used to identify an association between the volume of liquor sold in a local government area and assault rates (as disclosed in *Authority Guideline 6: Liang W and Chikritzhs: "Revealing the Link between Licensed Outlets and Violence", Drug and Alcohol Review, September 2001*).
168. There is insufficient data before the Authority in this matter to determine whether granting this additional licence will lead to an increase, decrease or no change in the volume of liquor consumed at the level of the local or broader community as a whole.

169. Nevertheless, even if the new outlet does no more than cannibalise the existing demand for liquor by taking market share from other incumbent retailers, the contribution that this licensed businesses will make over time to the amenity impact of public drinking, along with the incumbent licensees, is a negative incident of this Application. The Authority considers this to be a substantial negative social impact, having regard to the scale, trading hours and location of the proposed new licensed business in relation to this local community.
170. The Authority notes that, in response to community concerns regarding secondary supply of alcohol to minors and public drinking, the Applicant has referred to its House Policy and the practices it will have in place to address this potential hazard.
171. The Authority does not consider it likely that Liquorland staff will knowingly break the law with regard to supply to intoxicated persons or those who engage in secondary supply, but those staff will have limited ability to address the likelihood of liquor sold in this location to contribute to the established alcohol related amenity impacts that are occurring in the AFZ outside, but within close proximity to, the Shopping Centre.
172. The Authority has considered community concerns regarding licence density statistics in the local and broader community and the Applicant's submissions on this issue.
173. The Authority notes that within the Lake Macquarie LGA, the licence density of packaged liquor licences is significantly lower than NSW with a rate of 6.88 (per 100,000 persons of population).
174. The Authority notes that, while numerous members of the community have questioned whether there is a need for the new licence, the 'needs test' that was provided in the former *Liquor Act 1982* has been removed from the current Act and the absence of demonstrated 'need' is not a barrier to granting a liquor licence.
175. Nevertheless, the extent of local opposition, the prevailing availability and range of liquor outlets available to the local and broader community and information regarding current localised amenity impacts are matters that go to the consideration of overall social impact upon *this* local and broader community.
176. The impact of liquor sold from this business upon local amenity is a matter to which the Authority must turn its mind when considering the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life, which is a statutory consideration under section 3(2)(c) of the Act.
177. The scale of the proposed licensed business is 173 square metres. This is a substantial licensed premises exceeding many other stand-alone packaged liquor licensed premises associated with supermarkets. This is a factor that objectively increases the capacity for this business to contribute, along with the incumbent licensees, to the prevailing social problems associated with the abuse of packaged liquor in the local community.
178. Furthermore, the Authority notes that the proposed licensed trading hours are extensive – trading to the limit of night time trading hours permissible in NSW on seven nights per week – from 8:00am to 10:00pm Monday through Saturday, and from 10:00am to 10:00pm on Sunday.
179. The Authority has considered the Applicant's submissions as to measures (such as business policies) that the Applicant will implement to reduce harm. The Authority accepts that Coles has a good regulatory record and accepts that those business policies will be in place. The Authority has also taken into account that the location of the

Premises within a shopping centre provides certain benefits in terms of surveillance and security that street front retailers may not.

180. Nevertheless, the Authority considers that the Applicant's staff will only have the meaningful capacity to monitor those who may engage in packaged liquor abuse at the point of sale, and the measures disclosed in the material before the Authority does not overcome the sensitivity of the location and surrounding area to alcohol related impacts on public amenity that have been established in the submissions from the local community.

## CONCLUSION

181. Considering the benefits and negative impacts together, the Authority is *not* satisfied, on the material before it, that the overall social impact of granting *this* type of licence to a business located at *this* particular site will not be detrimental to *this* local community.
182. In making this decision, the Authority has had regard to all the objects and considerations prescribed by section 3 of the Act, but has given weight to section 3(2)(a) – the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and section 3(2)(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.



Micheil Brodie

**Chief Executive**

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

DATED 13 / 9 / 2015