



Mr Tony Hatzis
Hatzis Cusack Lawyers
GPO Box 3743
SYDNEY NSW 2001

th@hatziscusack.com.au

Dear Mr Hatzis

**Application for a Packaged Liquor Licence
Ulladulla Supa IGA**

I refer to an Application made by Thomleck Pty Limited to the Independent Liquor and Gaming Authority (Authority) on 13 March 2014.

As described in the Authority's Regulatory Delegations Manual, the Authority has delegated to a Packaged Liquor Licence Committee comprising the Authority's Chief Executive and Manager of Licensing (Delegate) the power to determine certain packaged liquor licence applications that fall within a designated risk threshold. This Application falls within the relevant threshold enabling the matter to be determined under delegation.

The Delegate considered the Application on the 24 June 2015 and has decided, pursuant to section 45 of the *Liquor Act 2007* to refuse the Application.

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

This letter attaches the Delegate's statement of reasons. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

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

Yours faithfully

Micheil Brodie
Chief Executive

14 SEP 2015

STATEMENT OF REASONS

INTRODUCTION

1. On 13 March 2014 the Independent Liquor and Gaming Authority (Authority) received an Application from Thomleck Pty Limited (Applicant) for the grant of a new packaged liquor licence (Application) within the meaning of section 29 of the *Liquor Act 2007* (Act) in respect of premises at 116 Princess Highway, Ulladulla, NSW, 2539 (Premises). The proposed new liquor licence would operate within an existing supermarket, the Ulladulla Supa IGA (Supermarket), situated within the Shoalhaven City Council Local Government Area (LGA).
2. The proposed licenced area of the new liquor business would be 80 square meters within a total supermarket area of 1,300 square meters. The liquor sales area would not trade at any time when the Supermarket is not open.
3. The Application seeks the grant of licenced trading hours between 10:00am and 9:00pm Monday to Sunday.
4. The Application also seeks that the 6-hour closure daily period required by section 11A of the Act be fixed at between 4:00am and 10:00am.
5. As described in the Authority's Regulatory Delegations Manual, the Authority has delegated to a Committee comprising the Authority's Chief Executive and Manager of Licensing (Delegate) the power to determine certain packaged liquor licence applications that fall within a designated risk threshold. This Application falls within the relevant threshold enabling the matter to be determined under delegation.
6. The Delegate considered the Application on 26 June 2015 and decided, pursuant to section 45 of the Act, to refuse the Application.

MATERIAL BEFORE THE AUTHORITY

7. Application Form and Community Impact Statement (CIS) filed with the Authority on 13 March 2014. In the Application Form, the Applicant discloses that development consent was approved for use of the Premises as a Supermarket by Shoalhaven City Council.
8. The Application notes that the proposed licenced area will comprise 80 square meters of floor space within the 1,300 square meters of floor space that comprises the Supermarket. The proposed licenced hours of the new liquor business will be between 10:00am and 9:00pm seven days a week. The Application also proposes that the daily 6-hour closure period be fixed at between 4:00am and 10:00am.
9. The CIS document includes a map of an Alcohol Free Zone (AFZ). From the map it can be seen that Premises is located within the existing AFZ in that the map identifies the streets that form the boundaries of the AFZ. The map notes that the AFZ includes "streets and sections of streets and car parks within the area" and the AFZ is bounded by:
 - (a) Burrill Street, from Breakwater to Deering Street
 - (b) Deering Street, from Burrill Street to St. Vincent Street
 - (c) St. Vincent Street, from Deering Street to Millards Creek

- (d) Millards Creek, from St Vincent Street and including the Ulladulla foreshore.
10. The contentions made by the Applicant in the CIS document as to the overall social impact of granting the Application are discussed in further detail below.
 11. Plan of the Premises. This document indicates the licenced area of the proposed new liquor business within the Supermarket.
 12. Ulladulla Supa IGA House Policy. This document details the harm minimisation and Responsible Service of Alcohol (RSA) practices proposed for the Premises. It details, *inter alia*, the requirement that staff will refuse to allow sale of alcohol to intoxicated persons and minors, and not allow consumption of alcohol on the Premises. It also requires the display of the *Liquor Act* sign, and education of staff and customers regarding RSA policy.
 13. Australian Securities and Investments Commission (ASIC) Current Organisation Extract, containing information derived from the ASIC database under section 1274A of the *Corporations Act 2001* relating to the Applicant, Franklins Pty Limited, and Ulladulla Syndicate Pty Limited.
 14. Shoalhaven City Council (Council) Building Permit (No. 90/2966) dated, 21 August 1990.
 15. Submission from the Office of Liquor, Gaming and Racing (OLGR) dated 30 May 2014. This submission objects to the Application on the grounds that granting it "...may further contribute to alcohol related harm and issues in an area that is already exhibiting a prevalence of such issues". The OLGR submission contends that "although the proposed business model and location risk are rated as low, the area is already over saturated with packaged liquor providers and licensed premises". The OLGR submission states that the NSW Bureau of Crime Statistics and Research (BOCSAR) data indicates that rates of alcohol related assault and disorderly conduct offences in the town of Ulladulla are above the state average.
 16. Submission from the Senior Pastor of Ulladulla Baptist Church received via email on 24 April 2014. The writer objects to the Application, contending that there is already an overabundance of outlets in the area, and that there are excessive drinking problems amongst the community's youth. This writer argues that "...while it could be argued that one more outlet is not going to bring change to those stats, we must stop somewhere before we have a liquor store on every corner".
 17. Submission from Kapetanos Hotel Holdings Pty Limited (Kapetanos) submitted via Back Schwartz Vaughan Solicitors dated 15 April 2014. This submission objects to the Application. It notes that Kapetanos has an interest in the Marlin Hotel which is located approximately 25 meters from the existing IGA Supermarket. The writer argues that although Kapetanos is a commercial competitor, the concerns of Kapetanos are not primarily based on economic considerations. The submission contends that the addition of another packaged liquor licence will have an adverse impact on the community of Ulladulla, based upon the following contentions:
 - (a) The directors of Kapetanos have first-hand experience of the effects of alcohol abuse in the area. The writer provides a copy of an article from *Milton Ulladulla Times* entitled 'Drinking Culture Needs to Change', dated 28 January 2014 (<http://www.ulladullatimes.com.au/story/2050812/drinking-culture-needs-to-change/>). The article relates Mr Kapetanos' experiences, as the owner and licensee of the Marlin Hotel in Ulladulla, with drug and alcohol abuse amongst his clientele and the difficulties he has had in controlling this issue.

- (b) The CIS fails to properly address the potential for adverse social impact if the Application is approved.
- (c) The Applicant has not provided a development consent addressing the specific use of the Premises as a packaged liquor store and as such the Shoalhaven Council does not appear to have considered the potential for adverse social impact by approving a licensed business that is the subject of this Application.
- (d) Prevailing liquor outlet density is a factor that does not lend support to the Application. The writer contends that there are 1,214 persons for each hotel and packaged liquor licence in the state suburb of Ulladulla compared to 1,525 persons for those two liquor licence categories across NSW as a whole.
- (e) According to Kapetanios, the demographic and socio-economic profile for Ulladulla illustrates a community of significant disadvantage. Referring to Socio-Economic Indexes for Areas (SEIFA) produced by the Australian Bureau of Statistics (ABS) for Ulladulla, from 2011, there are higher representations of Indigenous persons (3.3% compared to the NSW as a whole, which has 2.5%), older Australians (26.5% compared to NSW as a whole, which has 14.7%), unemployed persons (8.3% compared to NSW as a whole, which has 5.9%), labourers (14.5% compared to NSW as a whole, which has 8.7%), and one parent families (19.4% compared to NSW as a whole which has 16.3% than the State average. The writer submits that the SIEFA data also indicates that the median household income for the area (\$703) is low compared to the income for NSW as a whole (\$1,237) and there are high levels of public housing (5.74%) in Ulladulla compared to NSW as a whole, which has 4.40%.
- (f) The writer contends that Ulladulla currently experiences "...high levels of alcohol-related crime".
- (g) The writer argues that it is a significant omission on part of the Applicant that it has not provided in the CIS any details of the identity of the person(s) who will actually operate the Premises and their retail liquor experience.
- (h) While the Applicant has notified the Ulladulla Aboriginal Land Council the writer submits that the Applicant has not notified any of the other organisations that represent Aboriginal people in the area.
- (i) The Applicant notified the Department of Health at its North Sydney address but the writer submits that the Applicant should have notified the South Eastern Sydney/Illawarra Area Health Service of the Application as required by the CIS form.
- (j) The writer submits that much of the information relied upon by the Applicant in support of the Application is "...misleading, incorrect or interpreted incorrectly".
- (k) The Applicant places significant weight on the tourist population of Ulladulla to support the assertion that there is need for additional packaged liquor licences in Ulladulla. The writer submits that the Application fails to acknowledge that parts of the population (that is residents, visitors, and tourists) have an inability to consume alcohol responsibly and that tourism data is only one of many indicators that need to be considered in this Application.
- (l) The writer submits that the Applicant does not acknowledge that the SEIFA data indicates that Ulladulla is an area of significant disadvantage.
- (m) The writer contends that the Applicant has included incorrect data regarding the number of indigenous residents in the state suburb of Ulladulla. Ulladulla has an indigenous population of 3.3% compared to the average of NSW as whole which is 2.5%. The writer submits that the indigenous population of Ulladulla is overrepresented.
- (n) The writer notes that the Applicant observes, with regard to the high unemployment rate in Ulladulla that "...these people would be in the main retirees and older folk...that in part explains why these figures are higher than the state average". The

- Applicant submits that this is highly misleading because persons who are retired are not looking for work and accordingly are not classified as unemployed.
- (o) With regard to the letter from Genevieve Slattery Urban Planning Pty Limited (submitted by the Applicant in support of the CIS document) the writer contends that the analysis provided by Ms Slattery does not include any comparison to NSW as a whole. The writer observes that Ms Slattery provides rate maps rather than hot-spot maps for crime.
 - (p) The writer contends that the BOCSAR data and maps have been interpreted incorrectly. The writer submits that while Ms Slattery claims that there are no crime hotspots in Ulladulla or the Shoalhaven LGA, that observation is "...factually incorrect".
 - (q) The writer observes that no comment has been made by the Applicant on the AFZ map that is provided in the CIS document other than it shows the extent of the zones that are in place at Ulladulla.
 - (r) The writer submits that the Applicant has referred to ABS Census Quickstats socio demographic data that are relevant to the state suburbs of Milton, Burrill Lake, Mollymook Beach, Ulladulla Region, Narrawallee and Bendalong. The writer submits that the "Ulladulla Region" excludes the state suburb of Ulladulla itself and as such the Applicant is ignoring the most significant area for the Application.
18. Submission from the Principal of Ulladulla Public School sent via email on 3 December 2013. This submission objects to the Application. The writer states that "...Ulladulla is a small town and in my opinion we have enough liquor outlets to service the town".
19. Submission from the Roads and Maritime Service (RMS) sent via email on 10 December 2013. RMS advise that it does not approve or object to the Application. RMS recommend that should the Application be approved the Applicant join the Shoalhaven City Council Liquor Accord.
20. Submission from Shoalhaven Local Area Command (LAC) of NSW Police sent via email on 6 November 2014. Police state that they do not approve of, or object to the Application but note that within a one kilometre radius of the Premises there are currently three packaged liquor licences and one hotel licence, which Police contend provide enough opportunity for competition. Police contend that the proposed Premises are located within the vicinity of an alcohol related crime hot spot.
21. Police submit that should the Application be granted, the following conditions be imposed upon the licence:
- (a) CCTV surveillance cameras are to be installed strategically, properly maintained, and operated 24 hours per day.
 - (b) CCTV recording discs are to be retained for 30 days.
 - (c) An incident book be maintained, recording incidents of physical contact, ejection or refusal of entry of a member of the public, and details of those involved where possible.
 - (d) Management must be responsible for control of noise and litter generated from the business.
 - (e) In the event of a serious crime incident a Crime Scene is to be established, Police are to be informed, and a lockdown is to be put into place.
22. Submission in support of the Application from the owner of a local business on the Princes Highway Ulladulla NSW 2539, dated 6 November 2014. This writer would appreciate the convenience of shopping at the Premises for her groceries and alcohol needs. The writer submits she does not like shopping at the Marlin Hotel due to difficulty

in using the drive through and because the "...clientele is not the best in the area" and this makes her "...uncomfortable". The writer states that she prefers to shop at a smaller local business rather than at large supermarket chains.

23. Submission in support of the Application from a resident of James Crescent, Kings Point, 2539, received by the Authority on 23 January 2015. The writer states that he would appreciate the convenience of shopping at the Premises for both groceries and alcohol. He states that he does not wish to shop at the Marlin Hotel due to public nature of the drive through and the language that can be overheard at the public bar which can be "disgusting".
24. Submission in support of the Application from a resident of Slaughterhouse Road, Ulladulla, 2539, dated 19 October 2014. This writer states that she would appreciate the convenience of shopping at the Premises for both groceries and alcohol. She states that she does not like to shop at the Marlin Bottle Shop as she often has children with her and the "driveway type parking is difficult to manage with children". Further, she states that she is not happy with the bar overlooking the bottle shop as it makes her "uneasy with overhear hotel patrons".
25. Submission in support of the Application from a resident of Colden Place, Ulladulla, 2539, dated 20 October 2014. The writer states that she would appreciate the convenience of shopping at the Premises for both groceries and alcohol. She notes that she likes to support the independent grocery store as they provide "...a friendly, efficient service and...employ local people and give back to the community". She states that she does not wish to shop at the Marlin Hotel as she and her husband "...do not frequent hotels" and would not be comfortable shopping from the Marlin hotel. The writer states that she does not wish to shop at the Marlin Hotel because quite often there are customers drinking on the veranda, and she does not believe that the Marlin Hotel could provide the service offered by the Premises. Further, the writer submits that the residents of the neighbouring town Milton are able to purchase alcohol from the Supa IGA at Milton.
26. Submission in support of the Application from a resident of Golden Wattle Drive, Ulladulla, 2539, dated 25 October 2014. The writer states that he would appreciate the convenience of shopping for both groceries and liquor at the Premises because of the limited time available having a family and working full time. The writer would appreciate being able to spend time perusing the liquor selection rather than feeling the need to rush in the drive through at Marlin Hotel.
27. Submission in support of the Application from a resident of Royal Mantle Drive, Ulladulla, NSW 2539, dated 31 October 2014. The writer states that he would appreciate the convenience of shopping for both groceries and liquor at the Premises because of the limited time available working full time. The writer states that he likes to support independent business but does not like to shop at the Marlin Hotel drive through due to the feeling of being hurried by other cars in the drive through.
28. Publicly available SEIFA data from the calendar year of 2011 published by the ABS indicating that the suburb of Ulladulla is ranked in the second decile of all suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (IRSAD) across NSW. The postcode 2539 (which incorporates the suburbs of Bawley Point, Bendalong, Berringer Lake, Burrill Lake, Conjola, Conjola Park, Cunjurong Point, Dolphin Point, Fisherman's Paradise, Kings Point, Kioloa, Lake Tabourie, Manyana, Mollymook, Narrawallee, Termeil, Ulladulla, and Yatte Yattah) falls within the third decile for all postcodes in the State on the IRSAD, while the Shoalhaven LGA falls within the fifth

decile for all local government areas in Australia on the IRSAD (with a ranking of 10 being the most advantaged).

29. Publicly available BOCSAR crime mapping data for January 2014 to December 2014. These crime maps indicate that the Premises is located near a low density hot-spot for the concentration of *domestic assault*, within a low density hot-spot for the concentration of *non-domestic assault*, and near a high density hot-spot for the concentration of *malicious property damage*. The Delegate notes that these hot spots are created by reference to all crime incidents recorded in those categories across the Shoalhaven LGA.
30. BOCSAR crime data for calendar year 2013 detailing rates of offences for the Shoalhaven LGA compared to NSW as a whole. This data indicates that for the year 2013 the rate of *alcohol-related assault police* was 39 incidents per 100,000 persons for the LGA, higher than the rate for NSW as a whole which had 24 incidents per 100,000 persons. The rate *alcohol-related domestic violence assault* was 182 incidents per 100,000 persons, higher than rate for NSW as a whole which had 145 incidents per 100,000 persons. The rate of *alcohol-related non-domestic assault* was 179 incidents per 100,000 persons, lower than NSW as a whole which had 191 incidents per 100,000 persons. The rate of *alcohol-related malicious damage to property* was 169 incidents per 100,000 persons, higher than the rate for NSW as a whole which had 122 incidents per 100,000 persons.
31. Authority Licencing Records indicating the number and location of liquor licenced premises in Ulladulla. These records indicate that there are currently four packaged liquor licences located within the state suburb of Ulladulla and one full-hotel licence within that suburb. There are 28 liquor licenced premises in total in the state suburb of Ulladulla.
32. Authority Licencing Data indicating the liquor license density within postcode 2539 and the LGA. The Delegate notes that Postcode 2539 includes the suburbs of Bawley Point, Bendalong, Berringer Lake, Burrill Lake, Conjola, Conjola Park, Cunjurong Point, Dolphin Point, Fisherman's Paradise, Kings Point, Kioloa, Lake Tabourie, Manyana, Mollymook, Narrawallee, Termeil, Ulladulla, and Yatte Yattah. This data indicates that there were 24.2 packaged liquor licences per 100,000 persons within postcode 2539, and 14.01 per 100,000 persons across the LGA. Both of these licence density rates were lower than the State average of 32.85 licences per 100,000 persons for NSW as a whole.
33. Noting that hotels may also sell takeaway liquor, this licensing data also indicates that there are 48.4 full hotel licences per 100,000 persons within the postcode of 2539, higher than the rate of 30.36 for NSW as a whole. The rate of full hotel licences was 10.78 per 100,000 persons, lower than the rate of NSW as a whole. There are 51 liquor licenced premises in total within postcode 2539 and 224 liquor licences across the LGA.
34. Letter from Genevieve Slattery Urban Planning Pty Limited (Letter from Genevieve Slattery), dated 25 February 2014. This submission was prepared by Ms Slattery, a consultant engaged by the Applicant. It provides analysis of BOCSAR statistics for the suburb of Ulladulla and addresses concerns raised by the Principal of Ulladulla Public School regarding the number of liquor outlets in Ulladulla.
35. Email submission from the Applicant's solicitor Mr Tony Hatzis, dated 27 April 2015. This document submits that the licensed area will only compose a small area of the Premises and that the sale of liquor will be merely "ancillary" to the dominant use of the Premises as a supermarket. Mr Hatzis cites the principles set out in *Foodbarn Pty Limited & Ors v*

Solicitor General (1975) 21 LGRA 157, in which it was stated by Appeal Justice Glass that:

It may be deduced that where a part of the premises is used for a purpose which is subordinate to the purpose which inspires the use of another part, it is legitimate to disregard the former and to treat the dominant purpose as that for which the whole is being used.

36. Mr Hatzis submits that "...an approval for use as a supermarket carries with it approval to use the same premises for ancillary purposes". Furthermore, Council was notified of the Application and no response was received, the implication being that "...a small liquor department is consistent with and ancillary to the expressly permitted supermarket use".

STATUTORY OBJECTS AND CONSIDERATIONS

37. The power to grant a packaged liquor licence is provided by section 45 of the Act, which states (relevantly):

- 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) ...
- (3) ...
- (4) *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.*

38. 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.

39. 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.*

40. An application for a packaged liquor licence is a type of licence prescribed by section 48(2) requiring a CIS and satisfaction of the overall social impact test.

41. In determining the Application, the Delegate also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states:

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.*

APPLICANT CASE ON OVERALL SOCIAL IMPACT

42. In the CIS document dated 12 March 2014, the Applicant submits that the town of Ulladulla is split into two by the Princes Highway, with the other supermarkets in town located on the west side of the highway and the Premises on the eastern side of the highway.
43. The Applicant contends that the establishment of supermarkets on the western side of the highway has drawn trade away from the businesses on the other side of the highway and that a packaged liquor licence at the Premises could allow for better competition to take place between the supermarkets.
44. Furthermore, the Applicant contends that the grant of this licence would assist in the re-vitalisation of other businesses in the vicinity of the Premises.
45. The Applicant contends that a number of positive benefits would flow from the grant of this Application. These benefits are identified as follows:
- (a) Diversity of products at the Premises.
 - (b) Supporting the commercial viability of the immediate precinct by widening its attraction to shoppers.
 - (c) Reduced need for residents to travel.
 - (d) The addition of five fulltime and part-time jobs.
46. The Applicant contends that harm minimisation measures and strict enforcement responsible service of alcohol practices will be in place at the business. This will be assisted by crime prevention through use of design principles on the Premises and upgrades to the existing CCTV system. Furthermore, the Applicant contends that the licensee will join the Local Liquor Accord and contribute actively.
47. The Applicant contends that the grant of the Application will not result in an overall increase in liquor sales to the local community but will assist the Applicant in meeting the reasonable expectations of its customers, particularly tourists to the area who "...come from larger centres, where the availability of liquor products is an accepted offering within supermarkets".

48. The Applicants contends that because all liquor sold on the Premises will be take-away "...it is not expected that our customers will contribute to alcohol related anti-social behaviour".
49. With regard to the SEIFA data for the communities the Applicant submits that Ulladulla is located within the City of Shoalhaven LGA which has a SEIFA score of 954.6 on the IRSAD.
50. However, the surrounding areas of Milton, Mollymook and Narrawallee have a SEIFA score of 981, with the areas of Burrill Lakes and Lake Tabourie at 948 and Ulladulla itself at 918 on the IRSAD.
51. The Applicant contends that "...what tends to skew the numbers is that Nowra, the principal township within the Shoalhaven LGA has a much lower score of 815" on the IRSAD.
52. Furthermore, the Applicant contends that the number of indigenous residents within the Ulladulla district is substantially lower than the LGA as whole and whilst unemployment is high across the Ulladulla region, "...when one factors in the fact that a number of residents are older folk that in part explains why these figures are higher than the state average".
53. The Applicant submits that the significant tourist influx during holiday seasons must be taken to account in assessing the Application. The Applicant states that the permanent population of Shoalhaven City is 97,000 but it swells to 320,000 during peak holiday times.
54. The Applicant contends that Ulladulla is the principal shopping destination for surrounding communities and the "...major township providing support to the tourism industry".
55. The Delegate notes that the Applicant does not note the population of Ulladulla in the CIS, however according to ABS data the population of the state suburb of Ulladulla was 6,081 as of the 2011 Census.
56. The Applicant provides a letter from its planning consultant, Ms Genevieve Slattery which discusses BOCSAR crime statistics and the density of liquor licences in the LGA and Ulladulla. Ms Slattery makes the following contentions:
 - (a) The overall trend for crime in the LGA between January 2008 and December 2012 is stable across the range of offences.
 - (b) Crime hot spot maps indicate that there are no hot spots in the vicinity of the Premises.
 - (c) While the density of licences Premises is greater in Ulladulla than the LGA or NSW as a whole it is clear that there are minimal social impact in Ulladulla arising as a result of the density of licenced premises.
 - (d) Ulladulla is a popular tourist destination and it is important to consider that the area is a hub drawing people in from nearby areas.
57. The consultant then makes the following contentions about crime rates in Ulladulla, based on BOCSAR crime data relating to the Shoalhaven LGA between January 2008 and December 2012:
 - (a) The following offence categories have shown a stable trend: Sexual assault, indecent assault, robbery without a weapon, break and enter dwelling, motor

- vehicle theft, steal from dwelling, steal from person, fraud, liquor offences, breach apprehended violence order, drug offences, arson, prohibited and regulated weapons offences, and trespass.
- (b) The following offence categories have shown a decrease incidence: Domestic violence assault (5.4% decrease), non-domestic violence assault (8.3% decrease), break and enter non-dwelling (14.4% decrease), malicious property damage (8.4% decrease), assault police (13.6% decrease), resist or hinder officer (21.8% decrease, other theft (5.7% decrease), offensive conduct (12% decrease), offensive language (10.6% decrease).
- (c) The following offence categories have shown an increase incidence: Steal from motor vehicle (6.4% increase), steal from retail store (12.4% increase), harassment and threatening behaviour and private nuisance (9.4% increase), other offences (9.9% increase).
58. The consultant provides a number of Crime Hot Spot Maps which the consultant contends indicates that the Premises is located well outside the hot spot area classifications for murder, abduction and kidnapping, and arson. The consultant submits that there are "...no hotspots for any crime within close proximity of the site or within Ulladulla suburb more generally" including for liquor-related offences.
59. The consultant further submits that of the 28 liquor licenced premises in Ulladulla only four of them are licensed with packaged liquor licences and this comprises 14.3% of the total liquor licences in Ulladulla, which is only marginally higher than the NSW average which is 12.88%.
60. Further, the consultant submits that while the ratio of packaged liquor licences to population within the suburb of Ulladulla (65.6 per 100,000 persons) is significantly higher than that for the Shoalhaven LGA (36.27 per 100,000 persons), that "...it is likely that the number of licences is reflective of the demand generated by the influx of visitors, during public holiday periods, at which time the static population of Ulladulla would significantly increase". This, it is submitted, is indicated by the large number of unoccupied, and "potentially available for holiday letting", dwellings in Ulladulla (51.4%).

REASONS

61. The Delegate is satisfied, for the purposes of section 40 of the Act, that the Application and CIS material establishes that the Application has been validly made and relevant consultation and advertising requirements of the legislation were observed.
62. The Delegate is satisfied, for the purposes of section 45(3)(a), that the Applicant company has previously established that it is a fit and proper corporate person from a probity perspective and that no probity concerns have been raised in submissions from the other stakeholders, particularly from NSW Police or OLGR in this regard.

[While it is not yet clear who will actually operate or manage the Premises, nothing turns on this by reason of the refusal of the Application by reference to the test in section 48(5) of the Act, as discussed below].

63. The Delegate is satisfied the Applicant's *House Policy* discloses that a risk mitigation regime has been devised by the Applicant and will be in place at the Premises. There is no adverse information before the Delegate as to the Applicant Company's fitness in response to consultation on this Application with relevant law enforcement agencies including Police and OLGR.

64. The Delegate is satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent is in place for conduct of a retail packaged liquor business on the Premises, on the basis of the Shoalhaven City Council Planning Permit (No. 90/2966) issued 21 August 1990 the Applicant's legal submissions that the existing consent for the retail supermarket premises covers the proposed ancillary use and in the absence of any adverse submission from the Council on the matter.

Overall Social Impact

65. With regard to the overall social impact test prescribed by section 48(5) of the Act, the Authority is satisfied that the local community comprises the suburb of Ulladulla and the broader community comprises the Shoalhaven LGA.
66. Applying the overall social impact test requires a degree of speculation, albeit speculation informed by the particular proposal and the prevailing circumstances in the relevant local and broader community.

Positive Benefits

67. The Delegate accepts the Applicant's contention that granting the Application will provide some modest 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, and other items from this shopping centre.
68. A small measure of community support for the Application has been demonstrated by the Applicant through the provision of several letters from local resident and business owners in support of the Application, primarily citing the convenience of purchasing liquor with groceries, and in some cases a preference not to purchase packaged liquor from a local hotel.
69. The Delegate is satisfied that granting the Application will also provide a measure of further competition and increased consumer choice to the local and broader community in the packaged liquor market in the area. Customers will gain the benefits of a greater range of competitively priced liquor products.
70. The Delegate accepts as generally credible the Applicant's submission that granting the Application will, to some extent, provide employment opportunities within the Premises, in terms of extra staff needed to service the licensed area of the Premises. However, no certain or binding commitment has been made as to the communities from which staff of this business will actually be recruited, which diminishes the weight that can be given to this particular community benefit.
71. In the absence of expert analysis or substantiation of this contention is difficult for the Delegate to attribute much weight to the submission that there will be flow on benefits to neighbouring business from the licensing of this supermarket, by comparison to the existing benefits from having an unlicensed supermarket trading in this location.
72. The Delegate accepts that there may be some benefits by way of increased competition for the local supply of retail liquor should the Premises be licensed. However, the extent of positive benefit is diminished by the four packaged liquor businesses that may already supply takeaway liquor within the local community of Ulladulla let alone the liquor businesses licensed to sell takeaway liquor in neighbouring suburbs of the broader community.

73. The Applicant has not identified with any certainty how the goods or services to be provided by this new business will actually differ from other mainstream retail liquor suppliers in the local or broader community and thus enhance consumer choice. These factors, considered in light of the fact that there are already four packaged liquor licensed premises within Ulludulla objectively reduce the scope of consumer benefits, by way of competition, convenience and choice that may otherwise flow to the local and broader community from granting this Application for this Premises.

Negative Impacts

74. The Delegate accepts that over time there will likely be some contribution from the liquor sold at the Premises to the abuse of packaged liquor in the local and broader community to alcohol related crime, disturbance or impact on amenity from a minority of customers who abuse packaged liquor purchased from the Premises.
75. The Delegate has considered the factors outlined in Authority Guideline 6 that the Authority will usually apply when assessing the relative impact of a proposed new liquor business.
76. The size of the proposed liquor department, at 80 square meters is not a small outlet. While the liquor department will comprise only a small part of the Supermarket in which it operates the liquor business would exceed, for example, most ALDI supermarket liquor departments and approach many standalone liquor stores.
77. The trading hours sought by the Applicant are extensive. This is a factor that expands the scope for liquor sold by this business to contribute to prevailing adverse alcohol related social impact in the local and broader community. The Application seeks to sell or supply liquor for consumption off the premises from 10:00am and 9:00pm every day of the week, noting that the latest any packaged liquor business may trade in NSW is 10:00pm.
78. The location of the Premises also provides some cause for concern as to the capacity for liquor sold from this business to contribute to local social problems linked to the abuse of packaged liquor, which the Authority accepts will likely occur off the premises with a packaged liquor licence.
79. The Premises is located within an AFZ. The AFZ indicates that the locality has already been identified as an area in which the management of public drinking is a matter of concern to the local community.
80. The Premises is also located near BOCSAR reported hotspots for domestic assault, non-domestic assault, and malicious property damage. While alcohol related domestic violence may potentially involve liquor consumed on or off licensed premises, the location of domestic assault hotspots is a matter of some concern, given that the Authority accepts that packaged liquor is likely to play a role in domestic violence events that are also alcohol related - most of which occurs in private residences where packaged liquor may be expected to be consumed.
81. The Delegate is satisfied, on the basis of the SEIFA data that there is considerable prevailing relative socio-economic disadvantage within the local community in the state suburb of Ulladulla. The local community falls within only the second decile on the IRSAD by comparison to other suburbs in NSW.

82. The Delegate is further satisfied, on the basis of the ABS SEIFA data noted in the Kapetanos submission that in the total population of Ulladulla (6070 persons) there is a higher than state average indigenous population (3.3%) than for NSW as a whole (2.5%) and a higher rate of unemployment (8.3%) than for NSW as a whole (5.9%). This finding is made on the basis of ABS SEIFA data from the 2011 Census extracted in the Kapetanos/Back Schwartz Vaughan submission.
83. The Kapetanos submission also satisfies the delegate that should the Application be granted, the licence density in the combined categories of packaged liquor and hotel licences, licence density will be considerably higher than for NSW as a whole for those combined categories.
84. The Delegate is further satisfied, on the basis of the BOCSAR data extracted for Ulladulla in the Kapetanos submission, that in the year to September 2013, the rate of *alcohol related domestic assault* occurring in that state suburb was 253.7 per 100,000 persons of population, compared to 138.5 for NSW as a whole during the same period. That is a statistic of some considerable concern when assessing the relative prevailing exposure of this local community to alcohol related domestic violence (most of which occurs in the home) and likelihood that should the Application be granted, this new business will contribute, along with the incumbent licensees, to that relatively challenging environment.
85. While the Delegate has approached Mr Kapetanos submissions with some caution, given the commercial interest he has in the outcome, Mr Kapetanos is able, like any other local stakeholder, to provide data from independent sources that may assist the Authority on the question of assessing overall social impact.
86. The Authority is satisfied, on the basis of the research identified in Authority Guideline 6 that higher rates of the Aboriginal and Torres Strait Islander (ATSI) population and higher rates of unemployment in a given community are factors that are associated with vulnerability to adverse alcohol related impacts. While not decisive, these socio demographic factors provide a further albeit general cause for concern about increasing the density of packaged liquor licences in *this* local community.
87. OLGR have identified concerns regarding the prevailing high density of packaged liquor outlets in the local community and the high levels of alcohol related crime in the suburb of Ulladulla. OLGR have identified these concerns in the context of submitting that the proposed new business will contribute to the cumulative effect of liquor outlets upon the local and broader community.
88. The Applicant's consultant has acknowledged the high density of packaged liquor licences in the state suburb of Ulladulla but contends that this reflects the fact that Ulladulla is a shopping area for other suburbs in the LGA and that the LGA experiences an influx of tourism. Accepting these factors, the suburb nevertheless appears to have a high prevailing density of packaged liquor outlets. Further increasing the prevailing licensing density is another factor of concern to the Delegate, albeit a factor that is not decisive in isolation.
89. The Delegate has considered the submission from the Applicant's planning consultant, Ms Slattery that "...the site is not located within the vicinity of any hotspots, and is not subject to high levels of alcohol related assaults".
90. However, the submissions from OLGR and Police are to the contrary. NSW Police have expressed concern that there are already four retail liquor sales outlets situated within a

one kilometre radius of the Premises, which Police consider to be sufficient for the area. Police further submit, with regard to local crime rates, that the proposed licensed business will be situated within the vicinity of "...one of our alcohol related crime hotspots", and there have been a number of "...related serious crime incidents in Shoalhaven of late in relation to small licensed premises".

91. The Delegate notes that there is no "needs" test to be satisfied when an application for a new liquor licence is considered. Nevertheless, the Delegate gives weight to the local knowledge of Police as to their concerns with regard to alcohol related crime. Those local insights are given greater weight in light of the BOCSAR crime data in the broader community of the Shoalhaven LGA, of which Ulladulla is identified as a key commercial or shopping centre and an area that experiences considerable influx of tourists. The status of Ulladulla as a popular coastal tourist destination no doubt increases the scope for alcohol related residential amenity impacts during peak tourist season.
92. While the Applicant has provided material indicating a degree of local support for licensing the supermarket, the Delegate has also noted the objections received from the Milton Ulladulla Baptist Church and the Principal of the Ulladulla Public School expressing concern as to the concentration of liquor licences in the suburb of Ulladulla and the prevailing impacts of alcohol, including excessive drinking amongst youth groups, and the breakdown of families as a result of excessive drinking. These submissions articulate community concerns (that is, the Pastor represents a local church and the Principal represents a local school) from representatives of local community institutions. In this sense they do not simply articulate the interests of an individual resident or business owner.
93. Those submissions, while anecdotal in nature, are given objective support by the BOCSAR crime data pertaining to the local and broader community, which demonstrates relatively higher than state average rates of alcohol related crime in the categories of *alcohol-related domestic violence assault, alcohol related assault police, and alcohol-related malicious damage to property* and some concentration of that crime in the local community.
94. The Delegate is satisfied that once this new business is in operation, it will more likely than not contribute, along with the incumbent liquor licenced businesses, to what remains a relatively challenging environment for the management of alcohol related crime at the local and broader level. This is a negative incident of granting this Application.
95. The Applicant has submitted that granting this new licence will not lead to an increase in the consumption of alcohol in the relevant community. There is insufficient analysis or data before the Delegate to find whether overall liquor consumption across the entire local or broader community will increase, decrease or stay stable should a new outlet commence operation.
96. Nevertheless, the Delegate is satisfied that the business will more likely than not *contribute*, along with the incumbent licensed retailers of packaged liquor, to prevailing problems associated with the abuse of packaged liquor - including alcohol-related domestic violence, which according to BOCSAR data mostly occurs within the home. It will do so operating from a location that is in or near an AFZ, being an area so designated by Council with a view to combat the problem of public drinking.
97. In conclusion, the Delegate is satisfied that there remains real cause for concern arising from the prevailing crime rates within the Shoalhaven LGA when compared with NSW

State averages and further concern arising from the location of crime hotspots within Ulladulla itself. The crime mapping and crime data indicates some localised concentration of crime in those offence categories noted in the BOCSAR data above.

98. The combination of factors such as the proposed trading hours, BOCSAR crime data for local and broader community, combined density of packaged liquor and hotel licenced premises, localised concerns expressed by Police, ABS socio-economic data for Ulladulla indicating relative social disadvantage, declaration of the AFZ for that part of the Ulladulla in which the Premises is situated and some degree of concern as to alcohol related social impact expressed by persons in positions of local responsibility who also manage sensitive sites in the local community enhances the extent of concern arising from the material before the Delegate as to the scope for liquor sold from this packaged liquor business in this location to contribute to prevailing adverse impacts in this local community.

CONCLUSION

99. Having considered the likely positive benefits and factors indicating relative negative impact arising from the available socio demographic data and crime data for the local and broader communities the Authority is not satisfied for the purposes of section 48(5) of the Act, that the overall social impact of granting *this* Application would not be detrimental to the well-being of *this* local community.
100. In making this decision the Authority has had regard to all of the statutory objects of section 3(1) and has taken into account all of the considerations prescribed by section 3(2).



Micheil Brodie
Chief Executive
for and on behalf of the **Independent Liquor and Gaming Authority**

DATED: 14 / 9 / 2015