



Mr Micah Jenkins
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19 December 2016

Dear Mr Jenkins

APPLICATION NO: APP-0001864682
APPLICATION FOR: Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Saturday 08:30AM – 08:30PM
Sunday 10:00AM – 08:30PM
APPLICANT: Anna Bay IGA Pty Ltd
LICENCED PREMISES NAME: ANNA BAY IGA PLUS LIQUOR
PREMISES LOCATION: Shop 3B, 118 Gan Gan Road, Anna Bay
NSW 2316 (Premises)
ISSUE: Whether to grant or refuse an application
for a packaged liquor licence.
LEGISLATION Sections 3, 29, 30, 40, 45, 48 *Liquor Act*
2007

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION
FOR PACKAGED LIQUOR LICENCE – ANNA BAY IGA PLUS LIQUOR**

The Independent Liquor and Gaming Authority considered the application number APP-0001864682 for a new package liquor licence at its meeting on 30 November 2016 and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **refuse** the Application.

If you have any enquiries about this letter, please contact the case manager via email to santina.causa@justice.nsw.gov.au

Yours faithfully

Philip Crawford
Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

STATEMENT OF REASONS

Material before the Authority

1. The following is a summary only of the material and submissions before the Independent Liquor and Gaming Authority (Authority) for the purposes of publication of a statement of reasons, as soon as practicable, in a high-volume jurisdiction.
2. In making this decision, the Authority has considered the Application for a packaged liquor licence filed on 8 June 2016 (Application), the accompanying community impact statement (CIS) and all submissions received in relation to the Application. As foreshadowed in Authority *Guideline 6*, the Authority has also had regard to relevant liquor licensing records and licence density data maintained by Liquor and Gaming NSW (LGNSW), Bureau of Crime Statistics and Research (BOCSAR) crime data and Australian Bureau of Statistics (ABS) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. That material is listed and in some cases briefly summarised in the Schedule.

Summary of Further Submissions

3. Letter from Ms Erin Daniel, Development Planner, Port Stephens Council (Council), received by the Authority on 23 June 2016, advising that the Anna Bay IGA store located at Shop 3B 118 Gan Gan Road Anna Bay has approval for planning purposes, to conduct a retail premises (liquor store) pursuant to DA 16-2015-741-1 approved on 24 April 2016. This submission was accompanied by a copy of the Application Form indicating that development consent is required and is in force with DA 16-2015-741-1.
4. Submission from a resident of Gan Gan Road, Anna Bay, dated 30 June 2016. The writer, who is a resident of the neighbourhood of the Premises, has requested that their details be confidential. In a six- page submission made on the official licensing submission form, the writer opposes the Application, contending that local media have reported that the proposal is opposed by local Police who have indicated that the vicinity is a hot spot for alcohol-fuelled crime. The writer contends that despite recommendations from Police and objections from local councillors, local residents and the Hon Kate Washington MP, State Member for Port Stephens, Council have approved the development application. The writer describes as “absurd” a finding made by Council, in the course of granting development approval, that “the proposed development will activate a premises that is currently closed during the day, adding to the character of the village centre”. The writer questions this in the context of a local community with families and children who access the village shops for groceries and food supplies. The writer contends that adding another bottle shop in this location would only encourage young people to think that alcohol is more important than food.
5. The writer refers to the contended positive benefits specified by the Applicant in the CIS. The writer submits that customers are not presently inconvenienced by a lack of retail takeaway liquor outlets as it is only a very short walk to other established bottle shops. The writer contends that rather than strengthening other businesses granting this Application will involve the removal of one of the few businesses (a

pizza restaurant) that provide a positive family experience in Anna Bay. On the Applicant's submission that the licence will eliminate the need for "special trips" to purchase liquor, the writer contends that special trips are not presently required by local residents as there are already two bottle shops located within a short walk away from the Premises that provide choice and more than adequately supply the needs of local and broader community.

6. The writer refers to an observation made by the Applicant's consultant *Key Insights Pty Ltd* (Applicant Consultant) dated August 2015 and February 2016 that granting the Application will result in a change from one type of liquor licence to another, meaning no change in liquor licence density for the relevant communities. The writer submits that there is a significant difference when comparing the patrons of the formerly licensed pizza shop having the "occasional glass of wine with their meal" to a new packaged liquor store designed solely for the sale of takeaway liquor. The writer contends that while the licensed pizza shop improved local amenity, offering a family friendly restaurant which adds to the cultural environment and employs young people, increasing the provision of takeaway liquor in the local community through a new packaged liquor business will place more strain upon a community that is already dealing with the negative effects of alcohol-fuelled violence and under-age liquor consumption. The writer contends that a third liquor outlet within Anna Bay is not in the public interest and does not take into account the long-term effects of liquor supply on a local community. The writer submits that there are "no" positive economic, aesthetic, social, cultural or community gains to be made from granting this Application.
7. Submission from a resident of Spinnaker Way, Corlette, dated 30 June 2016. The writer, who is a property owner in and former resident of Anna Bay has requested that their details be confidential. In this five-page submission made on the official licensing submission form, the writer opposes the Application contending that this "small coastal village" does not need a third bottle shop particularly when all three of the resulting liquor outlets would be within 800 metres of an "easy level footpath walking distance" of each other. The writer contends that there are two other "competitive supermarket owned" bottle shops located in the nearby Salamander Shopping Centre, located 15 minutes' drive away from Anna Bay. The writer submits that the gourmet pizza shop on the Premises contributes to local amenity and offers a family friendly environment.
8. The writer contends that closing this licensed restaurant in favour of a third bottle shop is not an acceptable nor positive contribution to a community that is already struggling under the pressure of alcohol fuelled abuse and violence. The writer submits that the Application involves an ill-considered proposal that is not in the public interest, offers no positive gain to the community economically, aesthetically, socially or culturally.
9. Submission from Miss Emily Johnston of Boat Harbour, dated 30 June 2016. In this five-page submission made on the official submission form, the writer states that she lives in the area, that Anna Bay is her local shopping centre and that her children ride there. The writer opposes the Application contending that it may be more convenient for IGA shoppers to buy liquor from the site but there are two other locations close by to the site from which liquor may be purchased. The writer submits that there is no advantage offered to anybody in the area from granting the Application other than the owners of the IGA business.

10. Submission from Mr Alan Genders, Anna Bay, dated 1 July 2016. In this five-page submission made on the official licensing submission form, the writer opposes the Application contending that another liquor outlet will negatively impact the current Anna Bay bottle shop and eventually lead to its closure. The writer contends that local media have reported that the proposal is opposed by local police on the basis that the vicinity is a hot spot for alcohol-fuelled crime. The writer states that he has been a local resident of 10 years and can confirm that alcohol is a problem in Anna Bay.
11. Submission from a resident of Anna Bay, dated 5 July 2016. The writer, who is a resident of the neighbourhood has requested that their details be confidential. The writer, in a five-page submission made on the official submission form, opposes the Application on the basis that the licensed Pizza shop on the Premises will have to close and that with two bottle shops are already located within 50 metres of the new liquor store. The writer contends that this new licence will negatively impact the existing businesses. The writer notes local media reports of Police opposition to the proposal. The writer states that as a local resident of Anna Bay for more than 15 years he can confirm that alcohol is a problem in Anna Bay.
12. Submission from Mr Chris Kingston of the law firm Kingston Swift, dated 18 July 2016 on behalf of their client Ostaford Pty Ltd. In this submission of some eighteen-pages, Ostaford contends that while the Application and CIS states that the Premises is *not* located within any hotspot for crime, BOCSAR data indicates that the Premises *is* located within a *medium level hotspot* for the occurrence of *alcohol related assault* and is also located within a *medium level hotspot* for the occurrence of *general assault*. Ostaford refers to the Applicant's submission that licence density will not change if the Applicant is granted, and submits that a new packaged liquor licence replacing an on-premises licence that was only utilised during the evening is not comparing "like with like" licence types. Ostaford submits that the result of granting this Application will be to decrease the density of *on-premises licenses* while increasing the density of *packaged liquor licences* in the community.
13. Email from Senior Constable Nick Kaluski, Port Stephens Local Area Command (Police) to LGNSW dated 22 July 2016, with a submission attached (directed to Port Stephens Council) dated 10 June 2015. In the submission addressed to Council, Police do not support the Development Application (change of use from licensed pizza restaurant to a packaged liquor outlet) made in respect of the Premises, contending that it is not in the public interest for a new liquor licence to operate at this location as this will have a "major impact" on policing resources in the area.
14. Police submit that the needs of the public living in the neighbourhood of the Premises are met by the existing facilities that are currently authorised to supply packaged liquor within and outside that neighbourhood.
15. Police contend that the Premises is situated within 10 metres of an existing packaged liquor licensed premises and within 200 metres of another packaged liquor outlet, which forms part of a hotel. Police contend that in addition to these two licensed premises, within a 5-kilometre radius of the Premises is another hotel with a bottle shop and 3 more packaged liquor licenced premises.

16. Police “believe” that granting this new licence will have a “major impact” on Police resources due to the limited staff attached to the Nelson Bay Station. Police contend that Anna Bay is often policed by officers from other sectors in the Port Stephens Local Area Command (LAC), of which relevant Police stations are located up to 40 km away from this town and take a considerable amount of time to attend when incidents occur.
17. Police contend that the immediate vicinity of the Premises in Anna Bay has been a known “hot spot” for the occurrence of alcohol related crime within Port Stephens LAC for a “long time”. Police submit that the area in which the Premises will operate is a “recognised” place of concern to the community and this has resulted in the declaration of an alcohol-free zone (AFZ). The Premises is situated in the middle of this AFZ, which covers the entire Anna Bay CBD.
18. Police then refer to NSW Police alcohol linking data maintained by Police in respect of the area covered by the Port Stephens LAC for the 12 months preceding the date of this submission (10 June 2015). Police submit that this data indicates that 72% of all persons involved in *alcohol related incidents* recorded by Police had been drinking in the home/private residence or in a public place. This indicates to Police that the majority of liquor involved in those incidents had been purchased or obtained from takeaway liquor outlets.
19. Police refer to data collected from the Computerised Operational Policing System (COPS) database, the NSW Police Enterprise Data Warehouse (EDW) and the Alcohol Related Crime Information Exchange (ARCIE) which indicate that the Nelson Bay area, which includes Anna Bay, gives rise to concern as to alcohol related anti-social behaviour involving a large number of juveniles who have obtained liquor through secondary supply.
20. Police submit that within the Port Stephens LAC, the Nelson Bay area has triple the (Police assigned) risk rating of alcohol related violent incidents and double the risk rating for the occurrence of alcohol linked events. Figures recorded by the EDW indicate that for the 12 months ending February 2015 there were **1856** “alcohol related” incidents recorded by Police within the LAC. Of those events, 19% were recorded as occurring on licensed premises, leaving 81% occurring in either public places or private homes.
21. These alcohol related offences recorded by Police ranged from serious sexual assaults to ordinary assaults to offensive behaviour and offensive language events. Of particular concern to Police is that **116** of these alcohol related incidents involved minors, including **39** incidents that involved persons aged 15 years or younger. Graphs illustrating Police alcohol event linking data are provided with the Police submission.
22. Police further submit that their opposition to this Application is based on an “adequate” amount of liquor licenses that are already available to service the area. Police contend that should the Application be granted the operation of this new business would “almost certainly” have an adverse effect upon neighbourhood amenity and available local police resources, levels of alcohol related crime and neighbouring businesses.

23. Submission from Tim Calvert of the law firm JDK Legal, dated 26 July 2016, on behalf of their client Salinto Pty Ltd (business owner of the Anna Bay Tavern). Attached to and forming part of this submission is a 9-page document from a planning consultant, Design Collaborative Pty Limited dated 26 July 2016. Design Collaborative advise they have been retained by JDK Legal on behalf of the Anna Bay Tavern to review the new packaged liquor licence at Shop 3b, No 118 Gan Gan Road, Anna Bay. Design Collaborative note the Applicant's contended positive benefits for local and broader community, noting that the Applicant is willing to surrender the existing on-premises liquor licence for the pizza shop will involve no net increase of licensed premises. Design Collaborative submit that what the Applicant is actually proposing is the replacement of an on premises restaurant licence with a new packaged liquor licence from which "hard liquor" may be purchased and consumed at "unknown locations" in "unknown quantities".
24. Design Collaborative submit that the social impact posed by the operation of a new packaged liquor licence is not comparable with the consumption of liquor on a licensed restaurant premises under the supervision of persons qualified in the responsible service of alcohol for a limited time and only as an accompaniment to the service of food. They note that Police have indicated that that 80% of all alcohol related assaults recorded in the LAC occur either in the public domain or in private residences, rather than on licensed premises.
25. In response to the Applicant's contention that the new licence will increase convenience for IGA customers, Design Collaborative submit that liquor is just as readily accessible at the Anna Bay Tavern for IGA customers as the proposed Premises. On the contended community benefit of strengthening local businesses and avoiding the need for local customers to undertake special trips to purchase liquor, Design Collaborative respond that it is difficult to see how the addition of a third bottle shop at a location within 100 metres from a current bottle shop (Cellarbrations) could strengthen local business or reduce trips for liquor.
26. Design Collaborative further contend that patrons already drive to this location to obtain packaged liquor and pick up or dine in for pizza. Removal of the on premises liquor licence for the pizza shop would result in a *reduction* in patronage as *pizza shop* patrons would no longer attend this development although *bottle shop* patrons would continue to attend this development.
27. In response to the Applicant's contention that granting the Application will provide greater choice, Design Collaborative submit that while there would be an option of attending the new liquor store, that is not necessarily an increase in *choice*. On the information available it is unlikely that any product offered by this new liquor business would of a kind that is not similar to products that are currently available to the relevant communities.
28. Design Collaborative submits that under certain circumstances lower prices and competition between licensed premises may be considered a benefit to a local community. However, having regard to the disadvantaged community that surrounds the proposed Premises (Design Collaborative refer to ABS SEIFA Mapping data from the 2011 Census) lower prices are in this case more likely to result in harm to the well-being of this local community.

29. Design Collaborative contend that the new liquor store will result in a reduction in employment opportunities, or at best have a neutral impact. They conclude with the opinion that the Application fails to meet the relevant statutory test to avoid overall social impact on the well-being of the *local* community, and that there is no tangible benefit to the local community arising from granting the Application, which will increase the potential for harm arising from increased liquor consumption, with a loss in employment opportunities.
30. Submission from the LGNSW Compliance Branch, dated 29 September 2016, advising that BOCSAR data indicates that Anna Bay appears to have a “high level of alcohol related anti-social behaviour” with respect to assault incidents. LGNSW compliance records indicate there are 4 licensed premises in Anna Bay, 2 of which are authorised to sell I takeaway liquor. LGNSW advise that should the Application be approved it would comprise the third takeaway liquor outlet within a 150 metre stretch of Gan Gan Road and this indicates that liquor is already accessible within very close vicinity to the proposed site. LGNSW advise that its compliance records do not disclose any adverse findings in relation to the Applicant or the Applicant’s contact person, Mr John Mannering.
31. Submission from the Applicant’s solicitor, Mr Micah Jenkins of the law firm Jenkins Legal Services, dated 9 November 2016. The Applicant accepts the licence conditions proposed by licensing staff in an email dated 21 September 2016, if the Authority is minded to grant the Application, including a 6-hour daily closure period between 02:30AM and 08:30AM daily, a requirement that the business not to operate with a greater overall social impact than could reasonably be expected from the information submitted, a requirement that the licensee or representative to participate in the local liquor accord, a requirement that the Premises to be operated in accordance with the *Plan of Management*, a requirement that the licence not be operated until the Authority has been provided with evidence the premises are ready to trade, and that that licence cannot be exercised until the Authority has been notified of the appointment of an approved manager to the licence. The Applicant confirmed that is seeks licensed trading hours of 08:30am to 08:30pm from Monday to Saturday and from 10:00am to 08:30pm Sunday.
32. In this submission, the Applicant notes that no objection was received from Council and that development consent is in force, for planning purposes, for the proposed use of the Premises. With regard to the Police submission dated 10 June 2015, Mr Jenkins refers to his letter to Council dated 15 February 2016, attached to the CIS, regarding a report prepared by the Applicant Consultant, Key Insights Pty Ltd, dated February 2016 in which the Applicant’s consultant identified weaknesses in the Police submission regarding the issue of local liquor density. The Applicant Consultant identifies business strategies in relation to the social impact of the proposed use of the Premises.
33. This submission includes a twelve-page response to public submissions and to the LGNSW submission, made in a further report from the Applicant Consultant entitled “Additional Information for ILGA in response to Submissions” dated November 2016. The Applicant also provides a Plan of Management dated 3 November 2016 which specifies measures for the operation of the proposed business on the Premises and compliance with condition 4 of the Notice of Determination DA 16-2015-741-1.

- 34.** The Applicant also attaches an Australian Securities and Investment Commission (ASIC) Record of Registration of Business Name, dated 5 November 2016, in respect of the proposed licence name of “ANNA BAY IGA PLUS LIQUOR” and a Certificate of Advertising for the Application signed by John Mannering and dated 5 November 2016.
- 35.** Submission from the Applicant Consultant, Key Insights Pty Ltd entitled “Additional Information for ILGA in response to Submissions”, dated November 2016. The consultant responds to submissions from E M Johnson, Alan Genders, Salinto Pty Ltd (JDK Legal and Design Collaborative Pty Limited), Kingston Swift Solicitors and Conveyancers (for Ostaford Pty Ltd), three anonymous local resident submissions, the Police submission and the LGNSW submission.
- 36.** In response to E M Johnston, the Applicant Consultant contends that that the change in use of the site from pizza shop to retail liquor store will not increase liquor licence density, that the fact a locality may already be well served by liquor businesses, is not, of itself a basis for refusing a new licence application, and that advantages to the community will include convenience for IGA customers, strengthening development of the shopping plaza and activating a shop front that is currently closed during the day. In response to the submission from Mr Alan Genders, the Applicant Consultant contends that preferences for a pizza shop in the location and anti-competitive arguments are not submissions going to social harm, that the crime data shows that Anna Bay is not identified as a “crime hotspot”, and that the Anna Bay IGA supermarket does not intend to sell “heavily discounted” alcohol below market value or beyond the normal promotional programs identified in the LGNSW *Liquor Promotion Guidelines* dated July 2013.
- 37.** In response to the submission from Salinto Pty Ltd, the Applicant Consultant contends there are “anti-competitive motives” behind this submission as Salinto is the owner/occupant of the Anna Bay Tavern, located within 100 metres from the Premises. The Applicant Consultant responds that the Applicant did not rely upon “cheaper pricing” or “lower prices” as a purported community benefit, contending that IGA bottle shops are not the first choice for customers looking for discount liquor. The Applicant Consultant advises that the Plan of Management has been updated to reflect reduced trading hours (reduced closing time from 10pm to 8:30 pm Friday and Saturday as agreed with Council), a requirement to conduct litter patrols of the entire block around IGA both prior to opening and at closure of business, internal business procedures for the identification of minors, banning of persons observed consuming alcohol in the Alcohol Free Zone, and measures to prevent secondary supply to minors or intoxicated persons.
- 38.** The Applicant Consultant submits that that the net density of liquor outlets identified in the CIS is based upon a methodology used by the Authority to determine outlet density. The Applicant Consultant refers to the Applicant’s employment projections, noting the shop will employ one full-time manager and “several” casual and part-time staff and in keeping with IGA practices, employees will “most likely” be local people. The Consultant notes that that alcohol related assault rates are indicated to be of “low density” on BOCSAR hotspot maps and that according to the ABS SEIFA index, the State suburb of Anna Bay was “slightly more disadvantaged” than regional NSW and the remainder of Port Stephens in 2011.

39. In response to the submission from Ostaforde Pty Ltd, the Applicant Consultant contends that local socio-economic disadvantage has been analysed in the Social Impact Assessment (SIA) performed for the DA and the CIS supporting the liquor Application. The Applicant Consultant submits that due weight was given to these factors in the conclusions reached in those documents. Concerns raised by Police have been addressed in the Social Impact Assessment provided to Council (and provided in support of this Application). The Applicant Consultant submits that there will be no increase in liquor outlet density should the Application be granted. The Applicant Consultant submits that published BOCSAR hot spot maps indicate that alcohol related assaults in the Anna Bay area between June 2015 and July 2016 were of “low density”.
40. In response to the local submissions, the Applicant Consultant submits that certain concerns raised, while important to the objectors, are “not relevant” considerations when granting a liquor licence. Such concerns include the loss of a family owned Pizza shop business from the location, insufficient food outlets, the unsuitability of a third licence in a small coastal town and unnecessary competition for existing alcohol outlets.
41. The Applicant Consultant notes that “anecdotal” evidence about anti-social behaviour in the local community was discussed with local residents and Police in preparation of the SIA for Council and that mitigation strategies were developed and agreed to by the Applicant. In response to the LGNSW submission, the Applicant Consultant notes the LGNSW assessment of the “premises risk” is “low” and this accords with the SIA and CIS. However, the Applicant submits that the observation made by LGNSW that Anna Bay appears to have a “high level” of alcohol related anti-social behaviour with respect to assault is not supported by the data. The Applicant submits that nowhere on the BOCSAR Crime Tool (the crime data and mapping available on the BOCSAR website) is the rate of alcohol-related assaults identified as of “high density”.

Legislative Framework

42. The legal requirements for the making of a valid application for a packaged liquor licence are provided by section 40 of the *Liquor Act 2007* and the *Liquor Regulation 2008* (Liquor Regulations). The power to grant an application for a packaged liquor licence is provided by section 45 of the Act.
43. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
- (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.*

44. Section 48(5) of the Act requires the Authority, in certain circumstances, to consider a CIS (as well as any other matter the Authority is made aware of during the application process) in order to ensure that the overall impact of the licence, authorisation or approval being considered will not be detrimental to the local or broader community.
45. An application for a packaged liquor licence is a “relevant application” within the meaning of section 48(2) of the Act for which a Category B CIS is required.
46. Section 48(5) of the Act requires that the Authority must not grant an Application unless satisfied 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”.
47. For the purposes of this decision and consistent with its longstanding practice and its position in Guideline 6, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Anna Bay, while the “broader community” comprises the responsible local government area, the Port Stephens Local Government Area (LGA).

Analysis of Relevant Facts

48. The Authority is satisfied, based on the Application and CIS material before it, that for the purposes of Section 40 of the Act, the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
49. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a licenced venue of the kind proposed in the Application. The Authority notes that no probity issues were raised regarding the Applicant following consultation with law enforcement agencies, including Police and LGNSW.
50. The Authority is satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service of alcohol practices are in place and will remain in place and that the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the Premises. This finding is made on the basis of the *Plan of Management* dated 3 November 2016 provided by the Applicant.
51. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent (DA 16-2015-741-1) is already in force and was approved by Council on 26 April 2016.

Social Impact – Positive Benefits

52. The Authority is satisfied, based on the CIS and additional submissions from the Applicant, that the Applicant has demonstrated that granting the packaged liquor

licence will provide some additional benefit, by way of a modest increase in 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 IGA Supermarket.

- 53.** When considering whether granting the Application is consistent with the “expectations, needs and aspirations of the community” being an object of section 3(1)(a) the evidence and material does not include any evidence or material indicating community support.
- 54.** There is evidence of opposition from several Anna Bay residents who have made submissions in opposition to the proposal. There are also two business organisations, Ostafor Pty Ltd and Salinto Pty Ltd who have objected to the Proposal. Police have made a strong, evidence based submission in opposition to the Proposal and LGNSW have indicated concerns with local alcohol related crime. Council does not oppose the Application and has granted development consent for the use of the Premises.
- 55.** The Authority is satisfied, based on the Application material and CIS, that the Applicant distributed notices to the 100 metres radius required with regard to a category B CIS and that stakeholders required to be consulted on this type of application were consulted.
- 56.** The Authority is satisfied, based on LGNSW liquor licencing records and google maps for the suburb that there are two licensed premises authorised to sell packaged liquor in Anna Bay. One is a hotel (Anna Bay Tavern, LIQH400118201) located around 10 metres from the Premises and one is a packaged liquor licenced premises (Anna Bay Bottle Shop, LIQP700385316) located around 100 metres from the Premises.
- 57.** The benefit of increased convenience is in a practical sense substantially reduced with respect to the local community by reason of the very close proximity of two other incumbent licensed premises authorised to sell packaged liquor within this small local community, one only 10 metres away.
- 58.** As for the proposed benefit of increased choice, the Applicant has not demonstrated on the evidence or material before the Authority how the products it will sell shall differ from those available within the local or broader community from the incumbent liquor retailers.
- 59.** As conceded by Design Collaborative (an opponent’s consultant), the Authority accepts that there is potential for a new retail liquor entrant to provide additional competition and consumer benefits to the local community. However, the Authority is unable to give significant weight to this potential community benefit when only limited information, evidence or analysis has been provided to demonstrate how such benefits will manifest in this case.
- 60.** The Applicant has not substantiated the claimed positive benefits of strengthening the other businesses in the development or the avoidance of special trips by IGA customers to purchase liquor elsewhere and for this reason the Authority gives little weight to those contented benefits to the community. While it is accepted that some staff will be required to sell liquor at the Premises the Applicant has not specified

how and to what extent *additional* staff will be required should the supermarket be licensed. In those circumstances it is difficult to give great weight to any community benefit from additional employment associated with grant of the licence.

Social Impact – Negative Impacts

- 61.** Seven objecting submissions were received for this Application. These objections related to the potential that further alcohol purchase provisioning will put more strain on a community already dealing with the negative effects of alcohol-fuelled violence and under-age consumption, that adding another bottle shop would not necessarily add to the character of the village and that [IGA] customers would not be inconvenienced as it is a very short walk to two other bottle shops.
- 62.** The Authority takes considerable care when assessing the opinions of local commercial competitors, particularly if they based upon arguments that there is a lack of “need” for a new licensed business by reason of the incumbent licensed premises. The Authority accepts the Applicant’s submission that persons involved with licensed businesses in the local or broader communities are likely driven by anti-competitive motives and this diminishes the weight that the Authority should give to matters of their opinion.
- 63.** Nevertheless, local competitors, like local residents, may draw the Authority’s attention to any objective and independent evidence of prevailing social impact issues in a relevant community.
- 64.** The Authority finds it generally credible for local residents to assert that they are exposed from time to time to incidents of anti-social behaviour. The Authority accepts that such conduct, when it occurs, adversely impacts local amenity. There are limitations in the evidence or submissions provided by the residents as to the specific nature, frequency and extent of any recent problems reported by the local residents. Those factors may potentially diminish the weight that anecdotal submissions may be given, were the considered in isolation.
- 65.** However, in this case the resident concerns about alcohol related anti-social conduct are given objective support in the submission from the Police Local Area Command, who raise concerns regarding prevailing alcohol related social impacts within the local community.
- 66.** The Authority gives weight to the local knowledge of Police and accepts that in a practical sense, given their knowledge of the geography of the Local Area Command and the location of the new business, that alcohol related impacts involving the abuse of packaged liquor are problematic in the local community and that a new business will likely play a role in impacting Policing resources in the area given the difficulties in attending to alcohol related incidents when they arise.
- 67.** Of particular concern to the Authority is the local Police linking data held by the Local Area Command records that 72% of all reports of Police becoming engaged in events that were recorded as alcohol related involved persons who had been drinking in the home/private residence or in a public place – indicating that abuse of packaged liquor, rather than liquor on licenced premises, were involved in these matters requiring Police engagement.

68. The Authority accepts the submission made by Police that they have concerns with management of Nelson Bay/Anna Bay area with respect to alcohol related anti-social behaviour and this involves "a large amount of juveniles" who have obtained liquor through secondary supply.
69. The Authority accepts the Police analysis based on local evidence maintained at the level of the Local Area Command that the Nelson Bay area records a relatively high rating for "alcohol related violence incidents" and "alcohol linking events" within the Port Stephens LAC. That is, within the LAC, the Nelson Bay/Anna Bay Sector is known to Police as problematic for alcohol related anti-social conduct and this adversely impacts Police resources.
70. The Authority accepts the information provided by Police that the Premises is situated within notes an existing AFZ. The declaration of this area objectively reinforces the concerns of Police and residents as to the suitability of this location and the existing sensitivity of the area to alcohol related anti-social conduct.
71. The Authority considers it likely that Council would not have declared an AFZ if public drinking in that area was not of concern to the community. A new packaged liquor licensed business operating within an AFZ is more likely than not to frustrate the objects of that zone than a business located elsewhere in the local or broader community. The Authority further takes note of the beachside location of the Premises, which further reinforces the likelihood that the location may attract younger persons or persons seeking to drink in public areas.
72. The Authority has considered the Applicant Consultant submission dated February 2016 where the consultant submits that local crime data was addressed in the SIA and it does not support the Police submission that Anna Bay is a "hotspot" of alcohol related crime.
73. The Applicant Consultant submits that the anecdotal concerns of Police and local residents are not backed up by BOCSAR data or computerised operational policing system (COPS) data.
74. The Applicant Consultant submits that BOCSAR data for Anna Bay for the period January to December 2014 recorded a rate for *alcohol related non-domestic assault* of **51.3** per 100,000 population compared to NSW wide rate of **158.2** per 100,000 and a rate for *alcohol related domestic assault* of **153.9** per 100,000 compared to NSW at **132.9** per 100,000. The Applicant Consultant submits that BOCSAR data to April 2015 indicated a continued "very low rate" of alcohol related assault.
75. With regard to the local community of Anna Bay, the Authority notes BOCSAR crime statistics provided by LGNSW which show that for incidents of *alcohol related assault*, the State suburb of Anna Bay recorded a rate of **124.6** per 100,000 while NSW recorded a rate of **123.3** for the year to June 2015 and for the year to June 2016, Anna Bay recorded a rate of **174.4** while NSW recorded a rate of **119**. For incidents of *alcohol related non-domestic assault* Anna Bay recorded at rate of **149.5** per 100,000 while NSW recorded a rate of **145.1** for the year to June 2015 and for the year to June 2016, Anna Bay recorded a rate of **224.3** while NSW recorded a rate of **138.5**.

76. The Authority notes with some concern the notable increase in rates of both alcohol related *domestic and non-domestic assault* for the suburb of Anna Bay during the period June 2015 to June 2016. The Authority prefers the LGNSW submission to the Applicant's analysis. LGNSW is an agency with no interest in the outcome of the Application and with expertise in alcohol regulation. The BOCSAR data cited by LGNSW is more current than the data relied upon by the Applicant Consultant.
77. Furthermore, the Authority notes that BOCSAR Crime Maps, based upon data from July 2015 to June 2016, indicate that the Premises is located within a *medium-density hotspot* for incidents of *domestic assault* but is located outside any hotspots for incidents of non-domestic assault or malicious damage to property.
78. As for the broader community, the BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015 (which provides data on alcohol related crime by LGA) records that for the financial year ending June 2015 the Port Stephens Local Government Area recorded rates of alcohol related assault (non-domestic and domestic) that were either *above* or *well above* those rates for New South Wales as a whole. This provides context to and reinforces the Police submissions with regard to the demands on Police resources posed by alcohol related crime in the broader community, of which Anna Bay is a part.
79. The Authority has insufficient evidence or analysis before it to discern whether the grant of one more packaged liquor licence will lead to an increase, decrease or no change in the volume of alcohol consumed in the local or broader community. New South Wales does not mandate the collection of wholesale liquor sales data that have enabled researchers in other states to track the association between volume of liquor sold and assault rates in a given local government area (see for example, as noted Authority Guideline 6 Liang W and Chikritzhs T: "Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability" (2011) Drug and Alcohol Review (September 2011)). Nevertheless, the Authority considers it likely that sales of liquor from the new business will contribute, along with sales from the incumbent businesses, to alcohol related impacts to which the local and broader community are currently exposed.
80. The Authority has had regard to the more recent BOCSAR data and to Police submissions alluding to the geography of the area covered by the Local Area Command and the practical difficulties in monitoring this suburb given the availability of local police stations and the driving time for police from other stations. The Authority accepts that the location of the Premises is an adverse factor that reduces the capacity of police to patrol the local community for conduct such as public drinking or underage drinking when it occurs.
81. The Authority notes the Applicant submission in the CIS that if the Application is granted the new licence will "extinguish" the existing licence for the Pizza Shop currently operating at the proposed licensed premises. The Applicant further states in the *Social Impact Assessment* dated August 2015, that "the proposal is to change the use of the site from Pizza Shop (opened in the evenings only) to Retail Liquor Store. This change of use, from one type of liquor licence to another, means that there will be no change to the liquor outlet density for the area."
82. The Authority notes however that LGNSW liquor records indicate that the status of the on-premises licence LIQ0660011532 for Bay Pizza Bar, 118 Gan Gan Road,

Anna Bay is already cancelled. Licence records disclose that the suburb of Anna Bay has 1 packaged liquor licence and 1 full hotel licence. Granting this Application will, contrary to submissions by the Applicant, have the practical impact of increasing liquor licence density within the local or broader community. Moreover, even were the Pizza Bar licence still in force, granting this Application would not represent a “like-for-like” substitution of the licence. The on premises licence enables the service of liquor ancillary to a meal. The primary purpose of a packaged liquor licence, by contrast, is the sale of liquor by retail for consumption off the premises.

83. The Plan or diagram of the licensed area of the Premises provided by the Applicant indicates that the Premises is 87.4 square metres, similar in scale to many stand-alone packaged liquor stores in New South Wales. The licensed trading hours sought are reasonably extensive across the course of the week, increasing the scope for the business to have an adverse impact over time.
84. The Authority has had regard to the reasonably detailed harm minimisation measures set out in the Plan of *Management* dated 3 November 2016 and the proposed licence conditions to which the Applicant had consented. The Plan includes, notably, requirements for verify ID of persons under 25, refuse service to customers suspected of secondary supply, report to police persons consuming alcohol in AFZ, maintain CCTV coverage in shop, initiate litter patrols. Those measures will provide a means by which staff will be trained to minimise those risks and the Applicant has consented to the Plan becoming enforceable by way of a licence condition.
85. The Authority notes, on the basis of ABS Census data from 2011, that the local population of Anna Bay was only 3725 persons. The Authority further notes, on the ABS Socio Economic Index for Areas (SEIFA) data, that the State suburb of Anna Bay suburb ranked in the 4th decile on the Index of Relative Socio-Economic Advantage and Disadvantage while the City of Port Stephens ranked in the 6th decile (with a decile ranking of 10 being the most advantaged). That is, there is some modest level of disadvantage in the local community but the socio-economic profile of the communities has not been a decisive factor one way or the other.
86. In light of the generally credible resident concerns about prevailing crime rates of incidents of alcohol related domestic violence, supported by localised data from NSW Police and the BOCSAR data for the local and broader communities, and noting the number and location of incumbent licensed premises in the immediate vicinity of the proposed Premises (which diminish the positive convenience benefits from granting this Application for this location) and notwithstanding the additional measures proposed by the Applicant through licence conditions and its amended Plan of Management, the Authority is *not* satisfied, on the material before it, that the overall social impact of granting this Application will not be detrimental to the *local* community of Anna Bay.

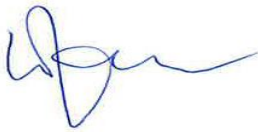
Conclusion

87. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were

considered and helped inform this decision. The interested parties include NSW Police, the Applicant, Council, RMS, neighbouring occupiers, NSW Health and Department of Community Services and all other parties required to be consulted under the legislation.

88. Having considered together the positive benefits and negative impacts that the Authority has found to be likely to flow from granting this Application, the Authority is *not* satisfied for the purposes of section 48(5) of the Act that the overall social impact of granting the Application would not be detrimental to the well-being of this *local* community.
89. The Application is *refused* pursuant to section 45 of the Act.
90. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2). The Authority 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 (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.

Decision Date: 30 November 2016



Philip Crawford
Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>

SCHEDULE

Material before the Authority

1. Notice from Port Stephens Council (Council), dated 27 April 2016, advising determination dated 26 April 2016 on development approval 16-2015-741-1 (DA) for use of the Premises as a retail premises (liquor store). Conditions of consent include that the hours of operation are restricted to Monday to Saturday 8:30am to 8:30pm and Sunday 10:00am to 8:30pm and at all times consumption of liquor is not to occur within the premises or within the Alcohol-Free Zone that is located directly adjacent to the premises.
2. Application Form lodged on 8 June 2016. The Application material also includes an Australian Securities and Investment Commission (ASIC) *Current Organisation Extract* for Anna Bay IGA Pty Ltd, dated 27 May 2016 and a Plan or diagram of the licensed Premises.
3. CIS dated 23 May 2016, lodged 8 June 2016. The Applicant provides additional material in support of the Application, including an Annexure to Community Impact Statement” (undated) which notes that approval of the DA 16-2015-741-1 on 26 April 2016; that on 2 March 2016 Jenkins Legal had forwarded to Council a submission letter dated 15 February 2016, a report from Key Insights Pty Ltd dated August 2015 entitled Social Impact Assessment (SIA) attached to the DA statement of environmental effects, a further report dated February 2016 from Key Insights “Additional Information for Council in response to the NSW Police Submission (Further Report).
4. The Key Insights Further Report dated February 2016 contends that there are weaknesses in the Police submission with regard to liquor licence density and BOCSAR data. Key Insights identify the Applicant’s business strategies to reduce overall social impact.
5. In the CIS, the Applicant advises that the proposed licensed trading hours were amended to close at 8:30 pm in response to feedback from Port Stephens Councillors. The Applicant contends that granting the Application will provide public interest benefits to the community by way of convenience for IGA Anna Bay customers, strengthening other businesses in the development where the Premises is situated, avoiding special trips for persons seeking liquor and greater choice for the local and broader community.
6. The Applicant advises its consent to a condition requiring membership of the local liquor accord and contends that the company director of the Applicant is an experienced liquor outlet operator. Strategies to mitigate risk in relation to the sale and supply of liquor are discussed.
7. The CIS material also includes the following:
 - Port Stephens Council document titled *Anna Bay Strategy and Town Plan*, depicting “Existing Recreational Areas and Community Facilities”, printed on 05.09.07.

- One page letter from Port Stephens Police to Port Stephens Council dated 11 October 2014, advising that police will be objecting to the packaged liquor licence application.
 - Document from Port Stephens Council entitled “Proposed Re-Establishment of the Alcohol-Free Zone at (Anna Bay), dated 14 April 2015”
 - Forty-page submission from Key Insights Pty Ltd, prepared for John Mannering titled “Social Impact Assessment” dated August 2015. This report discusses proposed use and management of the site, SEIFA data and crime data, local government planning and policy issues, public comment and discussions with council and police, concluding that the change of use, from one type of liquor licence to another, means that there will be no change to the liquor outlet density for the area, BOCSAR does not highlight Anna Bay as a risk in terms of being a crime hotspot, as Anna Bay continues to grow and develop this proposal will add to the mix of local businesses that thrive in the village, and with proper management there will be a positive social impact associated with the approval of the Anna Bay IGA Bottle Shop.
 - Another two-page letter from the Applicant via Jenkins Legal is addressed to Council and dated 15 February 2016. This refers to the Development Application, the Police submission, the report prepared by Key Insights Pty Ltd dated August 2015, and encloses a further report dated February 2016 entitled “Additional Information for Council in response to the NSW Police Submission”.
 - Fourteen-page submission from Key Insights Pty Ltd, prepared for John Mannering titled “Additional Information for Council in response to the NSW Police Submission” dated February 2016.
 - Two-page submission letter from the Applicant via Jenkins Legal to Council dated 2 March 2016, regarding DA No 16-2015-741-1 and providing comment on the police submission, requesting variation to closing times to align with the supermarket trading hours and listing four benefits to the community that granting development consent will provide.
 - Plan of Management dated 3 November 2016 for the liquor business to operate on the Premises is annexed to the SIA and the Applicant confirms that there will sufficient CCTV cameras to cover the internal and external parts of the supermarket.
 - Submission from Family & Community Services (undated) advising they have no legitimate grounds for concern.
 - Two page table listing objections (undated).
 - List of special interest groups and other parties consulted on the Application (undated).
- 8.** Submission to the Authority from Ms Erin Daniel, Development Planner, Port Stephens Council (Council), undated but stamped received by the Authority on 23

June 2016, advising that the Premises has approval for use as a retail premises (liquor store) pursuant to DA 16-2015-741-1, approved on 24 April 2016.

9. Submission of six pages from (name not disclosed), an Anna Bay resident, dated 30 June 2016.
10. Submission of 5 pages from (name not disclosed), an Anna Bay property owner, dated 30 June 2016.
11. Submission of 5 pages from Miss Emily Johnston of Boat Harbour, dated 30 June 2016.
12. Submission of 5 pages from Mr Alan Genders, Anna Bay, dated 1 July 2016.
13. Submission of 5 pages from (name not disclosed), a resident of Anna Bay, dated 5 July 2016.
14. Submission of 18 pages from Chris Kingston of the law firm Kingston Swift, dated 18 July 2016, for their client Ostaford Pty Ltd.
15. Email to LGNSW from Senior Constable Nick Kaluski, Port Stephens Local Area Command (Police) dated 22 July 2016, with a submission attached (directed to Port Stephens Council) dated 10 June 2015.
16. Submission from Mr Tim Calvert of the law firm JDK Legal, dated 26 July 2016, on behalf of for their client, Salinto Pty Ltd, business owner of the Anna Bay Tavern. Attached to and forming part of this submission is a nine-pages document from Design Collaborative Pty Limited, Planning and Development Consultants, dated 26 July 2016.
17. LGNSW email, two pages, to Jenkins Legal, dated 21 September 2016.
18. Briefing to Parliamentary Secretary, approved by Director, Policy & Legislation 25 September 2016. This documentation notes that representations were made by The Hon Kate Washington MP, Member for Port Stephens, on behalf of Ms Joanna Finn of Anna Bay, objecting to a packaged liquor licence application from Anna Bay IGA Pty Ltd. The draft response informs the Member for Port Stephens that determination of new packaged liquor licence applications is a matter for the Independent Liquor & Gaming Authority and that Ms Finn's concerns have been referred to the Authority for consideration.
19. Report on the Application by LGNSW Compliance Branch, dated 29 September 2016.
20. Submission from the Applicant via Jenkins Legal Services dated 9 November 2016. The following documentation was included with the Jenkins Legal Services' submission:
 - (a) A response to the public submissions, in the report prepared by Key Insights Pty Ltd entitled "Additional Information for ILGA in response to Submissions" dated November 2016.

- (b) A response to the Secretary Submission, in the report prepared by Key Insights Pty Ltd entitled “Additional Information for ILGA in response to Submissions” dated November 2016.
 - (c) Copy of the Applicant’s Plan of Management, dated 3 November 2016, which addresses items identified in the public submissions in relation to the intended operations of the business and condition 4 of the Notice of Determination DA 16-2015-741-1.
 - (d) Australian Securities and Investment Commission (ASIC) Record of Registration of Business Name, dated 5 November 2016, in respect of the proposed licence name of “Anna Bay IGA Plus Liquor”.
 - (e) Signed and dated Certificate of Advertising Application, dated 5 November 2016.
21. Submission by Key Insights Pty Ltd for John Mannering, titled “Additional Information for ILGA in response to Submissions”, dated November 2016.
 22. BOCSAR Crime Maps based upon data from July 2015 to June 2016 detailing hotspots for the concentration of certain offences in the local and broader community and indicating that the Premises:
 - (a) is located within a *medium-density hotspot* for incidents of *domestic assault*
 - (b) is located outside any *hotspots* for incidents of non-domestic assault
 - (c) Is located outside any *hotspots* for incidents of *malicious damage to property*.
 23. Liquor licensing records from LGNSW indicating that the State suburb of Anna Bay has 1 full hotel licenced premises and 1 packaged liquor licenced premises.
 24. Report on *NSW Recorded Crime Statistics July 2010 – June 2015* obtained from published BOCSAR sources, for July 2014 – June 2015. This data indicates that:
 - (a) the rate of alcohol related *assault Police* incidents recorded by NSW Police recorded across the Port Stephens LGA was **17.2** per 100,000 persons, close to the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of alcohol related *non-domestic violence related assault* incidents recorded across the Port Stephens LGA was **150.6** per 100,000 persons, above the State-wide rate of **144** per 100,000 persons;
 - (c) the rate of alcohol related *domestic violence related assault* incidents recorded across the Port Stephens LGA was **183.6** per 100,000 persons, substantially above the New South Wales rate of **122.6** per 100,000 persons;
 - (d) the rate of alcohol related *offensive behaviour* offences recorded across the Port Stephens LGA was **61.7** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.
 25. ABS SEIFA data based on the 2011 Census indicating that the State suburb of Anna Bay ranked in the 4th decile and the Port Stephens LGA ranked in the 6th decile compared to other local government areas and state suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).