



Mr Joseph William
joseph@chbis.com.au

19 September 2017

Dear Mr William

Application No.	APP-0003059732
Application for	Packaged Liquor Licence
Proposed trading hours	Monday to Sunday 10:00 am – 8:00 pm
Applicant	Joseph Willman
Proposed licence name	Packaged Liquor Licence for Open Air Picnics and Takeaway
Proposed premises	61 First Ave SAWTELL NSW 2452
Issue	Whether to grant a packaged liquor licence
Legislation	Sections 3, 31 and 45 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for a packaged liquor licence – Open Air Picnics and Takeaway**

The Independent Liquor and Gaming Authority has considered your application for a packaged liquor licence and, pursuant to section 45 of the *Liquor Act 2007*, has decided to **refuse to grant** the licence.

Exemption for gift services in certain circumstances

Please note that pursuant to subsection 6(1A) of the Act, the sale or supply of liquor as part of a sale of flowers or food designed to be delivered as a gift does not require a liquor licence and is not otherwise regulated by the Act, provided that:

- the gift is a gift to a person other than the purchaser and specified by the purchaser,
- the vendor's business is promoted or marketed as a genuine gift service,
- the gift is packaged and presented in a manner that anyone receiving it would assume it to be a gift,
- the gift is delivered between 7 am and 7 pm to an adult at a place other than the vendor's business premises, and
- the liquor supplied as part of the gift does not exceed 2 litres, and has been purchased by the vendor on a retail basis.

While your proposed business model does not currently satisfy the requirements under subsection 6(1A), it is open to you to consider adjusting the business model to become eligible for this legislative exemption.

If you have any questions, please contact the case manager at santina.causa@liquorandgaming.nsw.gov.au.

Yours faithfully

A handwritten signature in black ink, appearing to be 'DA', with a long horizontal stroke extending to the right.

David Armati

Deputy Chairperson

For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

2. On 8 June 2017 the Independent Liquor and Gaming Authority (“the Authority”) received from Joseph Willman (“the Applicant”), through Liquor and Gaming NSW (“L&GNSW”), an application for a packaged liquor licence (“the Application”). The Applicant is seeking the licence for the premises at 61 First Ave, Sawtell (“the Proposed Premises”).
3. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority has decided to refuse to grant the licence, on the basis that the Proposed Premises comprises a take-away food shop and pursuant to section 31 of the Act cannot be granted a packaged liquor licence.
4. In reaching this decision, the Authority has had regard to the relevant material before it, and the legislative requirements under sections 3, 31 and 45 of the Act.
5. For the purpose of this decision, it was not necessary to, and the Authority did not, consider whether the other criteria for a packaged liquor licence have been met.

Relevant material considered by the Authority

6. The Authority has considered the Application, all submissions received in relation to the Application, and relevant L&GNSW licensing records.
7. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
8. A list of all of the material before the Authority is set out in the Schedule.

Legislative framework

9. The Authority has considered the Application in the context of the following legislative provisions.

Objects of the Act

10. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations and needs of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
11. In the pursuit of these objectives, section 3 requires the Authority to, in determining a liquor licence application, have due regard to the need to minimise alcohol-related harm, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Restrictions on granting a packaged liquor licence for a take-away food shop

12. Subsection 31(2) of the Act provides that the Authority must not grant a packaged liquor licence for premises comprising a service station or take-away food shop.
13. Subsection 31(3) of the Act defines “take-away food shop” as a store “used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises)”.

Decision making in relation to licence applications

14. Section 45 of the Act provides that the Authority may, after considering an application for a licence and any relevant submissions, grant or refuse to grant the licence.

Key findings

15. The Applicant contended, and the Authority accepts on the available information, that:
 - a) the Proposed Premises will be used to sell picnic hampers, which contain a variety of food, beverages and flowers, and which customers can order in store or online, and pick up in store, and
 - b) the Applicant is seeking to obtain a packaged liquor licence in order to offer customers the option of adding liquor to the hamper.
16. Based on the above, the Authority finds that the Proposed Premises is used primarily for the sale of food for consumption away from the Proposed Premises, and is therefore a take-away food shop for the purpose of subsection 31(3) of the Act.
17. It then follows that the Application must be refused, as subsection 31(2) of the Act prohibits the grant of a packaged liquor licence to a take-away food shop. The Authority has no discretion under the Act to consider granting the licence notwithstanding the effect of subsection 31(2), and therefore has not turned its mind to whether the Application satisfied the other criteria for grant of the licence.
18. Accordingly, the Authority refuses to grant the licence under section 45 of the Act.



David Armati
Deputy Chairperson

Important Information:

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

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

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

Schedule

Material before the Authority

1. Notice of determination issued by Coffs Harbour Shire Council on 15 August 1983 (Development Consent 246/83) in relation to the Proposed Premises.
2. ABS SEIFA data based on the 2011 Census for Sawtell and the Coffs Harbour LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
3. A map issued by Coffs Harbour City Council setting out alcohol regulated zones in Sawtell as at 20 December 2012.
4. A Community Impact Statement signed by the Applicant and dated 1 June 2017, with relevant supporting documents attached.
5. ABS 2016 Census Quickstats for Sawtell and the Coffs Harbour LGA.
6. BOCSAR crime maps for the year to March 2017, showing the Premises' location relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
7. NSW crime statistics for the two years to March 2017, published by BOCSAR, in respect of alcohol related assault (domestic and non-domestic) and malicious damage to property in Sawtell and the Coffs Harbour LGA.
8. Plan of Management dated 30 May 2017.
9. Submission from NSW Police, by email on 7 June 2017, in relation to the Application.
10. Completed online application form dated 8 June 2017, with copies of notices of the Application, the Applicant's identification and national police certificate attached.
11. Submission from Coffs Harbour City Council, by email on 10 July 2017, in relation to the Application.
12. Four submissions from the public, dated between 26 June and 4 August 2017, in relation to the Application.
13. Letters from Coffs Harbour City Council, dated 25 May and 11 August 2017, advising of Council's position in respect of the development consent in place for the Proposed Premises and in respect of the Application.
14. Certification of Advertising signed by the Applicant and dated 11 August 2017.
15. Liquor licensing records from L&GNSW as at 1 August 2017, outlining the density of and listing all packaged liquor licences in Sawtell and the Coffs Harbour LGA.
16. Floor plan indicating the Premises' proposed liquor sales area.
17. Correspondence between L&GNSW and the Applicant between 10 and 29 August 2017 in relation to the Application and the submissions received.
18. Google maps showing the location of the Premises, extracted from the Google website on 25 August 2017.
19. Selected Reports from HealthStats NSW, dated 25 August 2017, showing statistics and trends over ten years to 2013, in respect of alcohol attributable deaths and hospitalisations in the Coffs Harbour LGA.
20. An extract of the Coffs Harbour Local Environmental Plan 2013, extracted on 28 August 2017.

21. HealthStats NSW data showing alcohol attributable deaths and hospitalisations in the Coffs Harbour LGA.
22. Menu for the Proposed Premises.