Independent Liquor & Gaming Authority

NSW GOVERNMENT

Our Ref: APP-0000845300

Mr Ian Smith
Petsolo Pty Limited
95-97 Northcote Street
KURRI KURRI NSW 2327

Dear Mr Smith

Application for Packaged Liquor Licence
Northcote Road Bottle Shop

INTRODUCTION

1. On 23 June 2014, the Independent Liquor and Gaming Authority (Authority) received an application (Application) regarding a proposed new licensed premises located at 89 Northcote Street, North Kurri Kurri to be known as "Northcote Road Bottle Shop" (Premises).

2. The Application is made by Mr Ian Smith on behalf of Petsolo Pty Ltd (Applicant) and seeks the grant of a packaged liquor licence within the meaning of section 29 of the *Liquor Act 2007* (Act) in respect of the Premises.

3. The Application proposes that the packaged liquor business be licensed to sell or supply liquor for consumption off the Premises during the trading hours of 10:00am to 8:00pm Monday through Sunday (although the community impact statement submitted with the Application states that Sunday trading would be from 10:00am to 5:00pm).

DELEGATION

4. Under section 13 of the *Gaming and Liquor Administration Act 2007*, the Authority delegates the specific functions of the Authority to each position holder specified against that function, subject to two general conditions and to such additional conditions specified in respect of a particular function as is contained in the Regulatory Delegations Manual. The two general conditions are that delegates must not sub-delegate the Authority's function to another person and that a delegation may be withdrawn or varied at any time.

5. As the recipient of a delegation of power from the Authority to the position of Manager of Licensing (Delegate) the Application was considered by the Delegate who decided on 1 April 2015 to *refuse* the Application, pursuant to section 45 of the Act.

6. Pursuant to section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to provide and publish reasons for decisions as soon as practicable in respect of those relevant applications within the meaning of section 48(2) of the Act that require a

Category B Community Impact Statement (CIS). This letter serves to provide the Delegate's reasons for the decision, in the context of a liquor jurisdiction that comprises a high volume aspect of the Authority's operations.

MATERIAL BEFORE THE DELEGATE

7. Licence Application Form dated 23 June 2014 and supporting documents submitted in respect of the Application, including National Police Certificate for Mr Ian Smith dated 4 April 2014 indicating no Court outcomes; statement from DMP Training dated 18 March 2014 certifying Mr Smith's completion of the Responsible Service of Alcohol (RSA) course, and a diagram of the proposed licensed areas of the Premises.

8. Category B CIS Form and accompanying document dated March 2014. This document, prepared by Insite Town Planning Pty Ltd, accompanied the Application Form.

9. Letter to Applicant from proprietor of Caltex Kurri Kurri dated 2 May 2013. This letter advises no objection to the Application and the writer states that "...I think that the proposal will benefit my business and am happy with the safety implementations that will be enforced by Mr Smith to prevent any related crime to (sic) the bottle shop operation". The writer states that the bottle shop will complement the service station and the community and that the property is growing to be a "one stop shop" for customers.

10. Letter to Applicant from the proprietor of Subway, Kurri Kurri dated 2 May 2013. In this two paragraph submission to the Applicant during the CIS process, the proprietor notes that her business is located within the same shopping complex as the proposed new bottle shop. The proprietor also submits that she does not object to the Application and that the proposal will benefit her business. The proprietor contends (without elaborating) that she is "...happy with the safety implementation that will be enforced by Mr Smith to prevent any related crime to the bottle shop operation". The proprietor further submits that "...in my opinion, the proposed bottle shop will complement the existing service station and the community of Kurri Kurri. The property is growing to be a "one stop shop" for all needs and with the introduction of a bottle shop on the premises, this will further be the case for customers".

11. Letter to Applicant from the owner/operator of Domino's Pizza, Kurri Kurri dated 5 May 2013. In this one paragraph letter to the Applicant during the CIS process, the proprietor advises that as operator of the existing pizza store located within the service station at 89 Northcote Street, he has no objection to the proposed bottle shop being located within the same premises in the currently vacant store at this site.

12. Four pro forma letters to Applicant from two residents of Wermol Street, one resident of Northcote Street and one resident of Elliot Street, Kurri Kurri dated 8 May 2013. In these one paragraph letters to the Applicant during the CIS process, these four residents of four different local addresses state that they have no objection to the operation of a proposed bottle shop operating on the Premises in close proximity to the service station.

13. Letter from Barkuma Neighbourhood Centre (Barkuma) dated 24 June 2013. In this one page letter, this local community organisation which assists the Aboriginal community objects to the Application by reason that there are already five bottle shops and a total of six liquor outlets from which takeaway liquor can be acquired within Kurri Kurri; that the location of the Premises creates a heightened safety risk for the community and staff working or shopping at nearby stores after dark; and that the location is very close to public housing residents, making it easily accessible to them and placing "...more stress upon welfare assistance". Barkuma contend that since the opening of the last bottle shop, "...we have noticed a huge increase of community seeking welfare assistance".

Barkuma request that the Applicant reconsider its proposed use of this vacant shop, arguing that there are uses that would be better suited to the area that "...would not feed into the excessive consumption and purchase of alcohol" which "...feeds into the existing strain on welfare services dealing with emergency relief assistance, family violence issues and court support".

14. Email from NSW Police, Central Hunter Local Area Command (LAC) dated 21 July 2014. In this short email, Sergeant Brett James, licensing supervisor advises that the LAC does not have any objection to the Application and that the LAC "...have been heavily involved in all aspects of the Development Application process for the premises".

15. Complying Development Certificate number CN110338 for the Premises issued by BCA Certifiers dated 12 September 2013. This document notes certain planning requirements regarding completion of work; fire hazards; construction of exits; disabled access; light and ventilation; glazed assemblies and energy efficiency.

16. Letter from Cessnock City Council (Council) dated 29 November 2013. This letter to the Applicant during the CIS process advises that the proposed use of the Premises for a bottle shop cannot be considered "complying development" within the meaning of clause 5.5(b) of the *State Environmental Planning Policy (Complying Development Codes) 2008*, but Council acknowledges that a Complying Development Certificate was issued by BCA Certifiers on 12 September 2013 and this private certifier has determined that the proposed trading hours and social impacts to adjoining residents meet specified development standards. Council raises no objection to the issue of a liquor licence subject to the Applicant's adherence to all of the conditions of Complying Development Certificate number CN110338.

17. Letter from Barkuma Neighbourhood Centre dated 10 December 2013 submitted to Insite Town Planning as part of the CIS process. This one and a half page letter refers to their previous letter and advises that Barkuma have been working with the Aboriginal and non-Aboriginal community for 19 years and contend that its welfare and family violence programs are "becoming exhausted to [their] limits" by reason of the "...amount of new people we are seeing experiencing the effects of alcohol abuse within the families".

18. Barkuma contend that the issues encountered by them "...usually arise over money being spent on alcohol instead of food and daily living expenses". Barkuma submit that they are encountering "more than three times" the amount of people seeking their programs than five years ago - specifically, that "...alcohol consumption has played a huge part in us seeing more family violence, elder abuse, disconnection warnings for electricity, eviction notices for arrears in rent and damage to rental properties".

19. Barkuma contend that adding "yet another" liquor outlet and making alcohol "even more accessible" is "...just adding more danger and money troubles to those already vulnerable".

20. On the location of the Premises, Barkuma further submit that the Premises is less than 1 kilometre from the High School, less than ten minutes' walk for students. They contend that members of the community are "...making comment on how easy it is for students to purchase alcohol and hide the contents in a Subway cup which they can get in the same vicinity". Barkuma contend that the Premises will be "...located very close to three Community Housing areas in Kurri and one larger Housing area at Weston" and that "...these areas are already known for alcohol fuelled violence and crime".

21. Barkuma further contend that parents are concerned for the safety of their teenagers who work late shifts at the Domino's Pizza or service station; that a "...growing number of

families" are concerned with their teenage children's health and that "...many have been given serious warnings by health professionals about the "near future problems they will endure if they continue to consume alcohol".

22. Barkuma contend that there are "...more liquor outlets in Kurri Kurri than there are grocery stores or service stations". Barkuma submit that "...in our work with a wide range of community members, time and time again we hear people wanting a decent coffee shop". Barkuma contend that there is "...nowhere in Kurri to have a nice coffee and light lunch that is family friendly or disability accessible". They believe that a developer will have better success with an outlet that socially includes all the community and not a liquor outlet that "...excludes and often vastly affects the health and wellbeing of families and community".

23. Letter to the Authority from Kurri Kurri Seventh Day Adventist Church dated 11 July 2014. In this two page letter, Pastor Matthew Cousins opposes the Application, contending that the grant of the licence would contravene section 48(5) of the Act in that it would be "...detrimental to the wellbeing of the local [and] broader community".

24. In this submission, the writer acknowledges that granting the Application would financially benefit the proprietors of the proposed new business "...and possibly the adjacent service station and Subway".

25. The writer contends that "the rest of the community" would "...suffer physically, socially and emotionally from increased accessibility to alcohol". More specifically, the writer contends that if liquor is sold at the same time and place as motor fuel, there is an "increased risk of motor accidents" and that there are "...already many problems deriving from the use of alcohol in the area, such as fights and boisterous misbehaviour in Mitchell Avenue and other areas".

26. The writer contends that the opening of a new licensed outlet "...would increase the alcohol problem, certainly not decrease it". The writer submits that "...there are already nine or more outlets in Kurri Kurri, more than enough, and several are not far from Northcote Street".

27. The writer then makes a number of submissions about the adverse impact of alcohol generally, including that it is "poisonous" and "commonly addictive" and that "...even small quantities kill body cells, especially those in the brain; causing sickness and burdening the taxpayer; misleading users into making mistakes; causing damage to the brain" and the consequences of alcohol use include "...participation in fights, traffic accidents, injuries and deaths".

28. The writer contends that "probably worse" impacts are occurring in the home including "partner abuse" and "child abuse", "poor nutrition" and homelessness. The writer contends that money, including "...social services money" is wasted on alcohol. The writer contends that the broader community impacts include costs through robbery, costs in relation to insurance, policing, Courts and health, and "...the huge cost of incarcerating criminals".

29. The writer submits that it is "too late" for the government to eradicate all harms from alcohol use, but that agents of the government such as the Authority "...should take action to prevent them from getting worse".

30. The writer concludes with the submission that "...we therefore urge that no further liquor licences be granted in Kurri Kurri, specifically the one proposed for 89 Northcote Street".

31. Letter to the Authority from the Hunter New England office of NSW Family and Community Services (FACS), undated but received 21 July 2014. In this two paragraph letter, this agency briefly advised that they "...are unable to determine that this particular proposal would adversely affect the local community above and beyond the usual social impacts of increased alcohol consumption in a community and therefore have no legitimate grounds for concern".

32. Report to the Authority on behalf of the Secretary of NSW Trade and Investment via the Office of Liquor, Gaming and Racing (OLGR) dated 23 June 2014. In this two page submission, OLGR identified "significant concerns" with the Application. OLGR observe that while the business type and location are assessed as having a relatively low risk, and that the radial density of liquor licences within Kurri Kurri is on par with State wide rates, the proposed new business will not be offering anything that is not already available from the existing packaged liquor providers in the area.

33. OLGR refer to data from the Bureau of Crime Statistics and Research (BOCSAR) for the period from July 2013 to June 2014 indicating that the rate of alcohol related assaults (both domestic and non-domestic) within the suburb of Kurri Kurri was 363 per 100,000 persons of population compared to 330 for NSW as a whole. OLGR submit that "of particular concern" is the rate of *alcohol related domestic violence* for the suburb of Kurri Kurri which was 231 per 100,000 persons compared to 136 for NSW as a whole. OLGR also note that the rate of *alcohol related disorderly conduct* for the suburb (33 per 100,000 persons) is well below the NSW rate of 110. OLGR conclude that Kurri Kurri appears to have a "...significant concentration of alcohol related domestic violence".

34. OLGR note the absence of any objection from Police and that a submission has been received opposing the Application from the Seventh Day Adventist Church, and a further two submissions from the Barkuma Neighbourhood Centre. OLGR also note the grounds for objecting to the Application specified by Barkuma.

35. OLGR note that the Applicant company was recorded as the premises owner associated with the licence attaching to the premises operated by the Last Wine Cellar in Cessnock, and that records indicate some discrepancies in the stated date of birth for Mr Smith. OLGR recommend that the Authority check and verify the correct details of the Applicant's identification through identity documents.

36. Submission to Authority from Insite Planning Pty Ltd dated 21 January 2015. In this four page submission, the Applicant's consultant addresses a number of submissions received in response to the Application. This submission is detailed in the summary of the Applicant's case.

37. Submission to the Authority from the Applicant dated 31 December 2014. This two page submission responds to an email from Authority staff dated 2 December 2014 requesting further information about the Application to explain how the proposal satisfies section 31 of the Act. The Applicant attaches a plan indicating that the proposed bottle shop will be located within a separate premises to the service station or takeaway food shop, for the purposes of section 31 of the Act.

38. The Applicant explains, with photographs, that the proposed licensed Premises is within the same neighbourhood shopping facility as a service station, but is separated from the service station by the Domino's Pizza store and a Subway fast food store. The Applicant notes that Petsolo Pty Ltd owns the entire shopping precinct and that the service station, Domino's Pizza and Subway outlets are leased to third parties. Shop 4 of the complex is currently vacant while the Premises will be run and operated by Petsolo Pty Limited unless leased to another party.

39. The Applicant intends to subdivide the shopping centre so that the bottle shop and service station are on separate titles. In order to address the concerns raised by NSW Roads and Maritime Services about additional access onto Northcote Street, the Applicant proposes to implement a restriction on the user of the title prohibiting access to Northcote Street from the lot that contains the proposed bottle shop. Access to Northcote and Wermol Streets would instead be facilitated via a right of way imposed upon the title of that part of the shopping centre that contains the service station. A survey is provided. The Applicant argues that similar situations exist with regard to the location of bottle shops adjacent to service stations.

40. Liquor licensing data sourced from Authority licensing records obtained by Authority staff recording licence density for all licences and specific licence types in the Cessnock City Council Local Government Area (LGA) and postcode 2327, noting the name and location of other licensed premises within Kurri Kurri near the site of the Premises. This information is publicly available for purchase from OLGR.

41. BOCSAR crime data for the Cessnock City Council LGA for calendar year 2013 and crime maps for the suburb of Kurri Kurri for the period from October 2013 to September 2014. This data is compiled by Authority staff from publicly available sources.

LEGISLATION

42. In determining the Application, the Delegate has considered the 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.

43. Division 5 of the Act addresses packaged liquor licences. Division 5 states:

29 Authorisation conferred by packaged liquor licence

(1) Retail sales

A packaged liquor licence authorises the licensee to sell liquor by retail in sealed containers on the licensed premises, for consumption away from the licensed premises only:

(a) during the standard trading period or such other period as may be authorised by an extended trading authorisation, or

(b) in the case of any Sunday that falls on 24 December – from 8am (or such earlier time as may be authorised by an extended trading authorisation) to 10pm on that day.

(2) No retail trading on restricted trading days

Despite subsection (1), a packaged liquor licence does not authorise the licensee to sell liquor by retail on a restricted trading day.

(3) Selling liquor by wholesale or to employees
A packaged liquor licence also authorises the licensee:
(a) to sell liquor by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and
(b) to sell or supply liquor, at any time on the licensed premises, to the employees of the licensee or of a related corporation of the licensee.

(3A) An extended trading authorisation must not authorise the sale after 10pm on any day of liquor for consumption away from the licensed premises.

(4) Tastings
A packaged liquor licence also authorises the licensee to sell or supply liquor, on the licensed premises and during the trading hours permitted by subsection (1), otherwise than in sealed containers to customers and intending customers for consumption while on the licensed premises, but only for the purposes of tasting.

30 Liquor sales area required if bottle shop is part of another business activity
(1) If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises ("the liquor sales area") that is adequately separated from those parts of the premises in which other activities are carried out.
(2) The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.

31 Restrictions on granting packaged liquor licences
(1) A packaged liquor licence must not be granted for premises that comprise a general store unless the Authority is satisfied that:
(a) in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and
(b) the grant of the licence would not encourage drink-driving or other liquor-related harm.
(2) A packaged liquor licence must not be granted for premises comprising a service station or take-away food shop.
(3) In this section:
"general store" means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of no more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.
"service station" means premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.
"take-away food shop" means premises that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises).

COMMUNITY IMPACT TEST

44. 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 of which the Authority is made aware 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.

45. 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.

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

OTHER CONSIDERATIONS

47. Under section 45(3)(a) of the Act, the Authority must not grant a licence unless the Authority is satisfied that the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates.

48. Under section 45(3)(b) of the Act, the Authority must not grant a licence unless the Authority is satisfied that 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.

49. Under section 45(3)(c) of the Act, if development consent is required to conduct the type of business or activity to which the licence relates on the relevant premises, the Authority must be satisfied that such consent is in force.

APPLICANT SUBMISSIONS ON OVERALL SOCIAL IMPACT

50. In the 18-page CIS document accompanying the Application, the Applicant explains the nature of the proposed licensed business and makes a number of contentions regarding the overall social impact from the operation of the proposed new licensed business in the local and broader community.

51. The Applicant advises that in June 2013, 18 local stakeholders were consulted, nine responses were received and only one of them objected to the Application. In November 2013, 39 letters were sent to stakeholders, with three responses received, two of which objected to the Application. The Applicant conducted face-to-face meetings with two objectors - the Barkuma Neighbourhood Centre and the Seventh Day Adventist Church. The Applicant summarises their concerns and submits that:

Whilst these concerns from both stakeholders are valued and have been taken into consideration, the application will not be monitored[sic, modified?] as a result as the concerns are quite general and have been addressed within the CPTED and SIA reports lodged with Cessnock City Council. The proposed location is suitable in that it is within the light industrial zone of Kurri Kurri, away from schools, churches, etc. As well as this the neighbouring business owners and residents were contacted as part of the Social Impact Assessment and this Statement and we only received positive feedback in relation to the proposal from such stakeholders.

52. The Applicant notes that the proposal is for the conduct of a liquor outlet, to be located "...in an industrial area of Kurri Kurri" that will "...support the workers of this area as well as passers-by". The Applicant submits that it is located "...within a potential migratory route between Cessnock and Newcastle, and will subsequently support customers that are driving through to and from Newcastle".

53. The Applicant submits that the key issues raised by stakeholders, included the supply of liquor to minors, which the operator would address by adhering strictly to his RSA Certification and endeavouring to prevent secondary sale. The operator supports and

promotes the "ID 25" and "Don't Buy It For Them" initiatives of the Liquor Stores Association of NSW.

54. The Applicant submits, on the issue of the health and safety of teenagers, that the business will close "...well before the other shops' closing time" and would pose "...no risk to teenagers working late". Staff of the business would ensure that people do not loiter around the Premises and would not serve anyone under the influence of alcohol.

55. The Applicant submits that it has reviewed the *OLGR Social Profile Report* for the Cessnock LGA and that "...there does not appear to be an overly high risk of high risk drinking behaviour".

    [The Delegate notes that the last OLGR Social Profile Report was produced in 2009 on the basis of information that is now out of date. It is primarily of use for historical purposes.]

56. The Applicant submits, on the issue of the number of incumbent licensed premises in Kurri Kurri, that this proposal "...offers a conveniently located shop with parking and on a highly accessible road to purchase a wide variety of liquor products" and submits that the new business "...would be of convenience to the industrial area and the North Western part of Kurri Kurri". The Applicant contends that there are 14 licensed premises within approximately 2 kilometres of the Premises, including Liquorland (1.2km away); Chelmsford Hotel and Bottlemart (1.2km away); Kurri Kurri Motor Inn (1.2km away); IGA Liquor (1.4km away); ALDI Liquor (1.4km away); BWS (1.5km away); Kurri Kurri Workers Club (1.5km away); Weston Workers Club (1.5km away); Icebox Liquor Weston (1.6km away); Criterion Hotel Weston (1.8km away); Station Hotel (1.9km away); Kurri Kurri Bowling Club (2.1km away) and the Empire Tavern (2.4km away).

57. On the socio-demographic data for the community, the Applicant compares the Cessnock LGA with NSW, apparently on the basis of the now ageing *OLGR Social Profile Report* published in 2009. The Applicant contends that "...despite the over representation of some [at risk] indicators there is no evidence any social harm could occur from any of the risk groups because of the proposal". The Applicant alternatively contends that it would be "impossible" to achieve zero risk and that "...every suburb or community in Australia has risk elements whether it be through monetary or other forms of stress, low income, youth problems or the like".

58. The Applicant submits that "...there is some suggestion in the available research that disadvantaged areas might be more prone to alcohol related harm compared with more advantaged areas. The Applicant refers to Socio-Economic Indexes For Areas (SEIFA) data for the suburb of Kurri Kurri sourced from the Australian Bureau of Statistics (ABS).

    [The Delegate notes that it is not clear which ABS data was used - whether from the 2009 *OLGR Social Profile Report*, which in turn relied on the 2006 ABS Census data, or from more recent ABS data from the 2011 Census.]

    The Applicant notes that Kurri Kurri is in the fifth decile for the Index of Relative Social Disadvantage; the fourth decile for the Index of Relative Social Advantage and Disadvantage; the fifth decile for the Index of Economic Resources and the sixth decile for the Index of Economic Opportunity and concludes that "...the residents of Kurri Kurri are advantaged when compared to other parts of Australia" and "...therefore Kurri Kurri is less prone to alcohol related harm compared to more disadvantaged areas".

59. The Applicant also refers to Department of Planning data from 2009 with population projections for the Cessnock LGA and submits that the new licence would service the

population of Kurri Kurri within this LGA and contribute to its attraction as a residential destination by providing a range of modern shopping facilities "...consistent with Cessnock City Council planning policies in general".

60. The Applicant refers to liquor licence data indicating that the number of liquor licences is at the rate of 814 per 100,000 persons in the Kurri Kurri LGA compared to a State wide rate of 220.

    [The Delegate notes that the source of this data is not specified, but it may also have been obtained from the 2009 *OLGR Social Profile Report*.]

61. The Applicant refers to BOCSAR crime data indicating that the rate of alcohol attributed assaults in the Cessnock LGA was 539 per 100,000 persons compared to 506 for NSW as a whole. The rate of risky drinking behaviour for students aged 12 to 17 was 24.2 per cent for the Cessnock LGA compared to 25.2 per cent for NSW, while high risk drinking behaviour for students aged 12 to 17 for the Cessnock LGA was at 5.5 per cent, being the same as the rate for NSW. The rate of alcohol related hospitalisations is lower than the rate for NSW as a whole, with alcohol related deaths at the same level.

    [The Delegate notes that the source of this data is not specified, but it may have been obtained from the 2009 *OLGR Social Profile Report*.]

62. The Applicant also provides "hot spot" crime maps sourced from BOCSAR for the period from October 2012 to September 2013 for several crime categories, and argues that "...the proposed local community is virtually free of these crimes with the exception of non-domestic assault".

    [The Delegate notes that this may have been intended to refer to domestic assault.]

63. On the issue of prevailing alcohol related violence and crime, the Applicant contends that "...there is no reason why alcohol fuelled violence is triggered by misuse of alcohol prevalent in this community over any other communities throughout Australia" and that in any event, the owner has consulted with Police, who have raised no objection to the proposal. The Applicant contends that the business "...will work closely with the Police to prevent harm" and that "...a voluntary exclusion policy will be implemented". The Applicant concludes that granting the Application will not have an overall social impact that is detrimental to the local or broader community.

64. In a submission from the Applicant's consultant (Insite) dated 21 January 2015, the Applicant makes a number of submissions in response to the community submissions on the Application.

65. In response to the OLGR observation that Kurri Kurri is already well serviced by a number of packaged liquor stores and that the Applicant would not be offering anything that is not already available, the consultant contends that granting the Application would "...provide more convenience and increased competition".

66. The Applicant contends that its new business will be a "destination retail facility" for those whose sole purpose is to buy goods within a liquor shop. Its location on Northcote Street, which is a "sub regional road", will provide "...convenience to a market which is otherwise limited within this town".

67. The Applicant argues that there are only three other bottle shops servicing a population of 7,516. The Applicant submits that the retail catchment of Kurri Kurri includes adjoining settlements in several specified surrounding suburbs which have a total population of

16,712. The Applicant argues that Kurri Kurri has a density of one bottle shop per 2,500 people on a catchment that has one shop per 2,700 people.

68. The Applicant contends that introducing another licence in the town will not increase alcohol sales but merely increase the level of competition, and that this is likely to provide positive impacts rather than negative impacts.

69. The Applicant refers to the OLGR submission dated 23 June 2014 and notes that on the basis of OLGR data, the rate of alcohol related assaults within Kurri Kurri is "...only marginally higher than the State average" and that the rate of disorderly conduct is "70 per cent plus lower" than the State average. The Applicant notes that licensing Police do not object to the Application.

70. The Applicant refers to the research of Michael Livingston on the association between domestic violence and the density of liquor outlets in Victoria. He argues that liquor stores are concentrated up to eight times more in poorer neighbourhoods than richer neighbourhoods. The Applicant submits that Livingston acknowledges that domestic violence is caused by a range of factors, but argues that by reducing the number of outlets, there is the potential to make a difference to domestic violence rates. The Applicant submits that this argument assumes that fewer outlets will reduce accessibility as people have to travel further and prices will rise.

71. The Applicant also notes (and prefers) an argument made by Professor Henry Clarke at LaTrobe University that reducing the number of liquor outlets would only have a small effect on domestic violence and other alcohol related issues in the affected neighbourhood, by reason that desirable products are only marginally affected by increases in price unless the increase is extremely large. Clarke argues that were the number of liquor outlets to be reduced, the most likely outcome is that the sorts of buyers who drink excessively and behave criminally would simply pay a higher price.

72. Clarke argues that all residents of poorer neighbourhoods where outlet numbers are culled would be worse off because liquor would be more expensive, penalising the vast majority of persons who drink responsibly, resulting in a reduction in disposable income with less money to buy food and clothes.

73. The Applicant acknowledges that while in some areas there is a correlation between the number of outlets and the level of crime, "...there is not a significant causal link". The Applicant argues that it is "not a solution" to refuse to grant liquor licences. The Applicant argues that "...other factors related to socioeconomic and cultural background are far more likely to explain differences in how people drink and whether or not they display anti-social and criminal behaviour, including domestic violence, than proximity to a bottle shop".

74. The Applicant submits that "...Kurri Kurri undoubtedly has a domestic violence problem" but restricting the number of licences is "...not going to solve the problem". The Applicant submits that the reduction in the road toll has not been the product of reducing the number of cars on the roads, but the result of "...improved safety standards, an effective regulatory regime, Police presence on the roads and a significant focus on improving community awareness of factors that lead to deaths on the roads through advertising campaigns".

75. The Applicant submits that he would be part of the solution by participating in the "White Ribbon" campaign, and that he would be proactive and raise the matter of domestic violence through the local liquor accord to address the local problem. The Applicant concludes that refusing the Application will not do anything to address alcohol related

domestic violence, but granting the Application will introduce a new party into the market who is willing to promote strategies in his own outlet.

REASONS FOR REFUSAL

76. The Application has been refused under section 45 of the Act. It is refused by reason that, on the material before it, the Delegate is *not* satisfied that the overall social impact of granting the Application would not be detrimental to the local and broader community for the purposes of section 48(5) of the Act.

Local and Broader Community

77. As noted in Authority *Guideline 6: Consideration of Social Impact*, the Authority will identify the relevant "local" community by reference to the locality in which the proposed licensed premises is situated, while the "broader" community will usually be the local government area in which the proposed licensed premises is situated.

78. For the purposes of this decision, the Delegate is satisfied that the relevant "local community" is the community within the State suburb of Kurri Kurri, while the relevant "broader community" comprises the community within the Cessnock LGA.

Overall Social Impact

79. Determining the overall social impact upon a local and broader community of granting the Application requires a degree of speculation about what is likely to occur should the Application be granted – the likely benefits and the likely negative impacts – albeit speculation that is informed by what is known about the Applicant's proposal, the material before the decision maker and relevant information concerning the local and broader communities in question. *Authority Guideline 6: Consideration of Social Impact* identifies the type of information that will be before the Authority when assessing social impact.

Positive Benefits

80. The Delegate accepts that the grant of the Application will provide some modest benefit by way of additional convenience to those persons in the local or broader community who may wish to purchase packaged liquor by retail in this north western part of the State suburb of Kurri Kurri while patronising this small commercial strip which comprises a service station and fast food outlets.

81. The extent of that cumulative convenience benefit to the community is objectively reduced by the fact that there are, according to the information provided in the CIS document, already six packaged liquor licensed premises located within 1.5 kilometres of the proposed Premises.

82. The extent to which convenience will be facilitated to those patrons arriving by car is diminished by the availability of packaged liquor licensed premises within a short driving distance. There is also potential convenience to workers and residents arriving at this small strip of retail outlets by foot, although there is little explanation as to the extent to which patrons are likely to patronise this industrial estate on foot as distinct from by car. The Applicant's submissions as to accessibility by road for passing trade and the nearby location of the service station suggest that the primary benefit of convenience will be for patrons visiting this site by car.

83. The Applicant has provided evidence of support for the proposal by other business proprietors on the site, on the basis that it will support their business and enable a degree of "one stop" shopping at this strip. That additional convenience benefit is accepted. However, as for the wider community the Applicant has provided little by way of submissions, evidence, analysis or even detailed explanation as to the *extent* to which licensing a new packaged liquor outlet at this location will advance the unmet "...expectations, needs and aspirations" of the local or broader community with respect to the sale or supply of alcohol, which is a statutory object in subsection 3(1)(a) of the Act.

84. This is not to say that the Applicant must demonstrate "need" for a new licence, but the *extent* of potential positive benefits for the local or broader *community*, considered through the objects and considerations of section 3 of the Act, require close attention when assessing overall social impact.

85. The Applicant has not explained how the products to be made available at this particular new liquor business will vary in range or quality from the incumbent packaged liquor retailers in a manner that could advance the balanced development of the liquor industry through increased consumer choice or other competition benefits in a manner that may be said to advance the object of subsection 3(1)(b) of the Act.

86. The Applicant briefly asserts that there will be benefits by way of added competition, but provides little explanation or analysis in support of this contention. There is no evidence or information explaining how this business, through its product offerings or pricing strategies, will increase competition in a local community that already has numerous stand-alone liquor stores and hotels licensed to sell takeaway liquor within 2 kilometres of the Premises.

87. The Delegate accepts the Applicant's argument that competition provides a *potentially* significant consumer benefit to the local and broader community, but the positive benefits offered by granting the Application have not been articulated or substantiated with any great specificity in the context of what is a well-established local retail packaged liquor market on the basis of the Authority's licensing records and the Applicant's identification of other licensed businesses.

Negative Impacts

88. The Delegate notes that the Premises has received development consent to operate as a retail liquor store. The Delegate notes that Police do not object to the Application. OLGR do not object, but raise significant concerns with the Application.

89. The Applicant has provided some evidence – albeit by way of brief, pro forma one paragraph letters – that two neighbouring residents and two business operators do not object to the proposal. The Authority notes that the business owners are tenants of the Applicant company, which goes to their independence and the weight given to these submissions. Nevertheless their support for the Proposal is accepted and is a positive aspect in favour of the Application, along with the lack of objection from two nearby residents.

90. There have been strident and more detailed objections made by a local Aboriginal welfare organisation and a local church. Those submissions do not simply represent the views of individuals, but local independent community groups and are entitled to some weight. The Applicant characterises these concerns as general in nature, but the Barkuma submission in particular identifies specific alcohol related social problems with that welfare agency's engagement with the local Aboriginal and non-Aboriginal community.

91. It is the Authority's function to independently assess the Application according to the requirements of the liquor legislation, including the overall social impact test prescribed by section 48(5) of the Act, which requires a consideration of social impact upon the local and broader communities as a whole.

92. The exact site of the Premises itself is not problematic per se. It is situated in a commercial area (which is a positive factor) and there is little information before the Authority to indicate that the site of the shopping strip is already known as a place for adverse liquor related impacts.

93. However, the nature of a packaged liquor business will be to supply liquor by retail to persons in the local and broader community who will consume liquor away from the Premises itself. This is reflected in the risk assessed by OLGR in relation to the business type as "low" – in that unlike on-premises venues, packaged liquor businesses are not usually the site of alcohol related disturbance, as the liquor purchased is often consumed away from the premises.

94. However, the Delegate is satisfied on the basis of the location of the Premises and the information provided by the Applicant, that consumers of liquor from the business will likely be sourced from within the suburb of Kurri Kurri and also neighbouring suburbs within the Cessnock LGA who are either working near this location or passing through, utilising the nearby service station or fast food premises.

95. There are several aspects of the local and broader community that suggest that these two communities are already problematic in terms of their relative exposure to crime and alcohol related crime of a kind that may be associated with the abuse of liquor *off* licensed premises.

96. The 2014 BOCSAR *Report on Crime and Alcohol Related Status for 2013* indicates that while the LGA performs relatively well for the rate of *alcohol related non-domestic assault*, the rate of *alcohol related domestic assault* during calendar year 2013 was at 247.8 per 100,000 persons of population compared to 137.3 for New South Wales as a whole. The separate BOCSAR *Report on Crime for the Cessnock LGA* indicates that the overwhelming majority of all domestic violence assaults recorded in the LGA (whether alcohol related or not) occur on residential premises – 358 of the 386 domestic assaults that occurred during 2013.

97. Moreover, crime mapping data discloses that within the Cessnock LGA, the suburb of Kurri Kurri features two extensive medium to high density hotspots for the relative concentration of domestic violence offences. One hotspot is to the West of the site of the proposed Premises, whereas another is to the East. The Premises itself is not located within either hotspot, but the Delegate is satisfied that the Premises will likely supply liquor to residents of the Kurri Kurri community, particularly those driving to the site to utilise the fast food or service stations.

98. The Delegate notes that this data reinforces the concerns expressed by the Barkuma community as to areas known for domestic violence in Kurri Kurri. The Delegate further notes the presence of three community housing areas identified by Barkuma within Kurri Kurri and the neighbouring suburb of Weston as vulnerable parts of the community. The Delegate accepts that the location of community housing indicates pockets of substantial social disadvantage.

99. The Delegate is satisfied, on the basis of the BOCSAR crime and crime mapping data, that the relevant broader community is overexposed to considerably higher rates of alcohol related domestic violence than the State as a whole, and that there are areas

within the local community in reasonable proximity to the site of the Premises that are medium to high density hotspots for domestic violence, nearly all of which occurs on residential premises.

100. There are aspects of the local community that are problematic from a socio-demographic perspective. The Delegate is satisfied, on the basis of ABS Census data from 2011, that the suburb of Kurri Kurri had a population of 5,773 in that year, while the Cessnock LGA had a population of 50,818. The suburb of Kurri Kurri received a very low score on the Index of Relative Socio Economic Advantage and Disadvantage (872) while the Cessnock LGA fared better, but still received a low score (922). The suburb is within the first (most disadvantaged) decile when assessed across New South Wales, while the Cessnock LGA falls within the second (second most disadvantaged) decile assessed across New South Wales. These areas perform little better on the other SEIFA indices by comparison to the rest of New South Wales.

101. The Delegate is satisfied, on the basis of the above data, that the local community is very disadvantaged, while the broader community is quite disadvantaged. The Applicant acknowledges that socio-economic disadvantage is correlated with adverse alcohol related social impacts. Without purporting to repeat all of that material, the Delegate notes that this research is identified in Authority *Guideline 6: Consideration of Social Impact*.

102. Against this backdrop of considerable socio-economic disadvantage, the Delegate is satisfied that the local community is already exposed to relatively high levels of liquor licence density. Relevantly, Authority licensing data (which may be purchased by applicants from OLGR) indicates that the rate of hotel licences within postcode 2327 (with a population of 7,366 – a close but not perfect analogue for the local community) has 106.61 hotel licences per 100,000 persons of population, compared to 30.36 for NSW as a whole. There are 54.30 packaged liquor licensed premises per 100,000 in this postcode compared to 32.85 for NSW as a whole. The Delegate is satisfied that the local community already has access to a relatively high density of licensed premises likely to sell packaged liquor. The Applicant's CIS discloses six packaged liquor licensed premises and four hotel licensed premises within around 2 kilometres of the site.

103. While all licensed businesses will inevitably have some adverse social impact, that impact assumes relatively greater importance in circumstances when the found positive benefits are reduced by objective factors, such as the prevailing density of available packaged liquor licensed premises and the absence of any submissions substantiating the extent of cumulative benefit offered to the communities from licensing this proposed business.

104. The negative impacts that may be expected from the abuse of packaged liquor become of relatively greater concern when the local and broader community is already exposed to higher rates of alcohol related domestic assault, most of which occurs in the home, as evident from the BOCSAR data; and when local submissions from stakeholder groups describe, in a practical sense, the adverse alcohol related social impacts being experienced in that local community.

105. The Delegate accepts as credible the contention made by the Barkuma community welfare organisation that the issues encountered by them "...usually arise over money being spent on alcohol instead of food and daily living expenses". While it would have been more useful for Barkuma to provide figures on its casework, the Delegate accepts that Barkuma is encountering "more than three times" the amount of people seeking their programs than five years ago. The Delegate accepts the specific contention made by this organisation that "...alcohol consumption has played

a huge part in us seeing more family violence, elder abuse, disconnection warnings for electricity, eviction notices for arrears in rent and damage to rental properties".

106. The scale of the Premises is a factor going to the capacity for patronage to generate adverse social impact over time. The Delegate is satisfied, on the basis of the CIS document, that the proposed licensed area of the business will be 224.25 square metres. This includes the bottle shop, sales counter, cool room and bulk store. In terms of its scale, the proposed business is a medium scale packaged liquor operation that would rival, if not exceed, the size of many stand-alone liquor stores in NSW.

107. The hours proposed by the Applicant will not extend to the limit of evening licensed trading for the sale of packaged liquor across NSW (10:00pm), but a closing time of 8:00pm from Monday to Saturday and from 10:0am until 8:00pm on Sunday (according to the Application) or 5:00pm on Sunday (according to the CIS) will be reasonably extensive, by comparison to many stand-alone liquor stores in NSW.

108. The Delegate has considered the *House Policy for RSA and Responsible Gaming* for the Premises provided by the Applicant. The Delegate does not consider it likely that the Applicant or his staff would knowingly sell liquor to minors or intoxicated persons, and accepts that the Applicant would not engage in the irresponsible promotion of liquor.

109. The Delegate notes that there is little by way of additional harm minimisation measures proposed by the Applicant over and above the requirements of the legislation. The development certificate identifies planning controls, but few of these measures serve the collateral purpose of addressing adverse alcohol related impacts (for example, development conditions mandating additional CCTV, security or lighting requirements).

110. While the Delegate accepts that the Applicant and his staff will cooperate with local Police, the Delegate does not consider it likely that the Applicant and his staff will be in a meaningful position to monitor or respond to adverse alcohol related impacts occurring away from the point of sale. The Applicant has made the commendable proposal that the business would support the "white ribbon" domestic violence campaign, but otherwise those intentions are expressed in general terms.

111. Nevertheless, the Delegate is satisfied that there will more likely than not be adverse amenity impacts upon the local residential community of Kurri Kurri should a packaged liquor business operate at this location, occurring away from the immediate vicinity of the Premises itself and away from the point of sale.

112. The Delegate is satisfied on the basis of Authority licensing data and information provided by the Applicant that takeaway liquor will be readily available to the local and broader community from a range of packaged liquor, hotel and club licensed outlets whether or not this Application is granted.

113. NSW does not mandate the collection of sales data that has enabled researchers in other jurisdictions to correlate the relationship between wholesale liquor sales in a local government area and violence rates.

114. While there is insufficient data or analysis to find whether liquor sales or alcohol related crime will increase, decrease or remain constant across the local and broader communities with the introduction of a new licensed business, the Delegate considers it more likely than not that a new business of this *scale* and in this *location* will *contribute*, over time, to the prevailing relatively challenging environment for alcohol related crime attributable to the abuse of packaged liquor, particularly alcohol related domestic violence.

115. That is, the new business will contribute, along with the other incumbent packaged liquor licensed outlets – to a relatively unfavourable situation as evident from the BOCSAR data and the submissions from an independent local welfare agency, Barkuma. The relative vulnerability of the local and broader community to adverse alcohol related impacts is further exacerbated by poor socio-demographic data and high licence density for those communities, particularly the local community.

116. The Delegate has considered the arguments in favour of deregulation and the benefits of competition quoted by the Applicant's consultant from Professor Henry Clarke. Unhelpfully, the Applicant's consultant has neither cited this paper nor provided a copy of it and in those circumstances it is difficult to give that submission great weight. In so far as Professor Clarke argues that price competition will usually provide positive benefits through lower prices, that argument is accepted.

117. In so far as the paper proposes that alcohol related abuse and crime is the province of a minority in the community and that if few licences are available the community will be disadvantaged by higher prices, that argument is also accepted.

118. Unfortunately, the Applicant has made little effort to explain the extent of competitive benefits for the local or broader community in the context of communities that, in this case, already enjoy substantial access to a range of packaged licensed businesses and hotels that may sell takeaway liquor. While the suggestion is made, on the basis of Professor Clarke's opinion, that increasing liquor licences will drive down prices and leave more disposable income in the hands of poorer communities, it has not been persuasively explained how the benefits of one more packaged liquor licence in *this* location will make a meaningful difference to financially constrained consumers in what appears to be a well-established local market for retail liquor in these communities.

119. Parliament has not elected to deregulate the liquor market in NSW but has rather imposed a social impact test under section 48(5) of the Act. The Authority is guided by the objects of the Act and those considerations prescribed by section 3(2) of the Act.

120. In *Authority Guideline 6* the Authority alerts Applicants to the types of issues and sources of information the Authority will consider when assessing the positive benefits and negative impacts in a particular case. The overall social impact from granting an application will vary from proposal to proposal and from community to community.

121. In this instance the Application has not merely been refused by reason of prevailing domestic violence rates in the local and broader community. The Applicant argues that causes of domestic violence are complex and a range of factors must be considered including socioeconomic and cultural factors. The Delegate accepts this and has not merely taken into account the prevailing crime rates and concentration of domestic violence in Kurri Kurri in isolation but also troubling socio-demographic data (that is associated in the research noted in Guideline 6 with adverse alcohol related social impacts), and higher licence density (also associated in the Guideline 6 research with adverse alcohol related social impacts) and a strong submission from a local welfare agency providing support to the local Aboriginal and non-Aboriginal community. All of those adverse factors have combined, in the context of assessing the facts of this proposal, to militate against granting the Application.

122. Considering the modest benefits demonstrated by this Application and contribution of this business to prevailing negative impacts together, the Delegate is *not* satisfied in the circumstances of this Application that the overall social impact of granting *this* type of

licence to a business of *this* scale located at *this* particular site will not be detrimental to *this* local and/or broader community - particularly the local community of Kurri Kurri.

123. While the Delegate has considered all of the statutory objects and considerations prescribed by section 3 of the Act, it has given weight to the statutory consideration in subsection 3(2)(a) – the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and anti-social behaviour) and section 3(2)(c) – the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Arrangements will be made for the refund of any refundable component of the application fee. 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 - 8 MAY 2015
Chief Executive