



Mr James Alexander Scott-Mackenzie  
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26 February 2018

Dear Mr Scott-Mackenzie

<b>Application No.</b>	1-5751685895
<b>Applicant</b>	Mr James Alexander Scott-Mackenzie
<b>Application for</b>	Removal of a packaged liquor licence
<b>Licence name</b>	BWS – Beer Wine Spirits
<b>Trading hours</b>	Monday to Saturday 8:00 am – 9:59 pm Sunday 10:00 am – 9:00 pm
<b>Current Premises</b>	78 Main Street Merimbula NSW 2548
<b>Proposed Premises</b>	107-113 Main Street Merimbula NSW 2548
<b>Issue</b>	Whether to grant an application for the removal of a packaged liquor licence
<b>Legislation</b>	Sections 3, 11A, 12, 29, 30, 31, 40, 45, 48 and 59 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority**  
**Application for the removal of a packaged liquor licence – BWS – Beer Wine Spirits**

The Independent Liquor and Gaming Authority (“Authority”) considered your application above for the removal of a packaged liquor licence (“Application”) and, pursuant to section 59 of the *Liquor Act 2007*, decided to **approve** the Application subject to the following conditions:

1. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 2:00 am and 8:00 am during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. Restricted trading and NYE (std)  
Retail Sales  
Good Friday Not permitted  
December 24<sup>th</sup> Normal trading Monday to Saturday  
8:00 am to 10:00 pm Sunday  
Christmas Day Not permitted  
December 31<sup>st</sup> Normal trading
3. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of removing this licence to premises at 107-113 Main Street, Merimbula NSW.
4. The premises is to be operated at all times in accordance with the Endeavour Drinks Group (EDG) “Liquor Store House Policy” and “Best Practice Policies and Interventions” documents, as submitted to the Independent Liquor and Gaming Authority (“the Authority”) in support of the application and as may be varied from time to time after consultation with the Authority. A copy these documents is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Authority.
5. 1) The licensee must maintain a closed-circuit television (CCTV) system at the supermarket/general store in accordance with the following requirements:
  - (a) the system must record continuously from opening time until one hour after the supermarket/general store is required to close,

- (b) recordings must be in digital format and at a minimum of six (6) frames per second,
- (c) any recorded image must specify the time and date of the recorded image,
- (d) the system's cameras must cover the following areas:
  - (i) all entry and exit points to the supermarket/general store, and
  - (ii) all publicly accessible areas (other than toilets) within the licensed premises.

2) The licensee must also:

- (a) keep all recordings made by the CCTV system for at least 30 days,
- (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
- (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

6. The licensee/approved manager or a representative of BWS Merimbula must attend and become an active participant in the local liquor accord meetings.

### **Removal of the packaged liquor licence**

Notwithstanding the Authority's approval of the Application, the packaged liquor licence the subject of the Application is not to be exercised at 107-113 Main Street, Merimbula NSW unless and until the Authority has been:

- provided with evidence that the premises is complete and ready to trade, and
- Liquor and Gaming NSW has granted a transfer of the licence to a suitable qualified person.

The packaged liquor licence remains at 78 Main Street, Merimbula NSW subject to the same conditions and trading hours that were immediately in force before this Application was approved until such time as the Authority is notified that the licence has been removed.

If you have any questions, please contact the case manager at [charles.rivers@liquorandgaming.nsw.gov.au](mailto:charles.rivers@liquorandgaming.nsw.gov.au).

Yours faithfully



Philip Crawford  
Chairperson  
For and on behalf of the Independent Liquor and Gaming Authority

## Statement of reasons

### Decision

1. On 5 January 2017, Mr James Alexander Scott-Mackenzie (“Applicant”) lodged an application (“Application”) with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”). The Application sought the removal of a packaged liquor licence (“Licence”) from the premises at 78 Main Street, Merimbula NSW (“Current Premises”) to the premises at 107-113 Main Street, Merimbula NSW (“Proposed Premises”).
2. It is proposed that the Licence will be attached to a Woolworths Supermarket at the Proposed Premises and will be trading as “BWS – Beer Wine Spirits”.
3. Pursuant to section 59 of the *Liquor Act 2007* (“Act”), the Authority has decided to approve the Application.
4. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 29, 30, 31, 40, 45, 48 and 59 of the Act, and relevant provisions of the *Liquor Act Regulation 2008* (“Regulation”).

### Material considered by the Authority

5. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
6. 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.
7. In accordance with the Authority’s *Guideline 6*, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
8. A list of the material considered by 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 key objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations, needs and aspirations 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 exercising its powers, have due regard to the need to minimise harm associated with misuse and abuse of liquor, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

### Removal of liquor licence

12. Section 59 of the Act requires the Authority to determine an application to remove a licence to another premises as if it were an application for a licence at that premises, and provides that the provisions in respect of a licence application extend to a licence removal application.
13. Section 59 also provides that the Authority must not approve the removal application unless it is satisfied that practices will be in place following the removal and remain in place to reasonably ensure the responsible service of alcohol and to prevent intoxication on the premises to which the license is proposed to be removed

#### Trading hours and 6-hour closure period

14. Section 12 of the Act sets out the standard trading period for various types of liquor licences. Additionally, section 11A imposes a condition on all licences prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

#### Minimum procedural requirements

15. Section 40 of the Act prescribes the minimum procedural requirements for a liquor licence application to be validly made to the Authority.
16. Section 59(2) of the Act prescribes the minimum procedural requirements for a valid application to remove the licence to another premises.

#### Fit and proper person, responsible service of alcohol, and development consent

17. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
- a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
  - b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
  - c) the applicable development consent required for use of the premises for the proposed business is in force.

#### Community impact statement

18. Section 48 of the Act requires certain applications, including an application for a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
19. Section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter brought to its attention.

#### Provisions specific to a packaged liquor licence

20. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.
21. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.
22. Section 30 requires a separate liquor sales area to be set up on the licensed premises if its primary business is not to sell liquor for consumption away from the premises.
23. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

#### **Key findings**

24. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

#### Validity, procedural and trading hour requirements

25. The Authority is satisfied on the material before it that:
- d) the Application has been validly made and meets the procedural requirements under sections 40 and 59 of the Act,
  - e) the proposed trading hours for the Proposed Premises meet the requirements under sections 11A, 12 and 29 of the Act in respect of trading and 6-hour closure periods,

- f) if the Application were to be approved, liquor will be sold and supplied in a separate liquor sales area at the Proposed Premises, and in accordance with the authorisation conferred by a packaged liquor licence, as required by sections 29 and 30 of the Act, and
- g) section 31 of the Act does not apply to the Application, as the Proposed Premises is not intended to be used for any of the purposes specified in the section.

#### Fit and proper person, responsible service of alcohol, and development consent

26. Pursuant to sections 45 and 59 of the Act, the Authority is satisfied that if the Application were to be approved, practices will be in place from the commencement of licensed trading at the Proposed Premises, and will remain in place, to ensure the responsible serving of alcohol. In making this finding the Authority has had regard to the material before it, including the Applicant's Plan of Management documents titled "Endeavour Drinks Group Liquor Store House Policy" and "Best Practice Policies and Interventions".
27. The Authority is also satisfied that, for the purposes of section 45 of the Act:
- h) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies, and
  - i) the requisite development consent is in force, based on the notice of determination issued by Bega Valley Shire Council on 24 November 2016.

#### Community impact statement

28. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Proposed Premises on the local and broader communities.
29. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Merimbula, and the relevant "broader community" comprises Bega Valley Shire Local Government Area ("the LGA").

#### Positive social impacts

30. The Authority notes that the Proposed Premises is located on the same street as, and within less than 100 metres of, the Current premises. The Authority also notes that the Proposed Premises comprises a new Woolworths Supermarket, where liquor is proposed to be sold within a separate liquor sales area.
31. The Authority accepts, on the material before it, the Applicant's contention that granting the removal of the Licence to the Proposed Premises will:
- a) provide local residents with a more conveniently located, modern and secure packaged liquor facility, and
  - b) offer a 'one stop shop' experience to consumers who will be able to purchase packaged liquor with grocery and other household items at the same place.
32. Given the short distance between the Current Premises and the Proposed Premises, the Authority also considers that:
- a) the existing customers at the Current Premises will not be deprived of their access to packaged liquor, and
  - b) any inconvenience they experience as a result of the removal is reasonably likely to be offset by the benefits offered by the Proposed Premises.
33. The Authority nevertheless notes that there is little evidence of community support for the Application. The only indication of any such support is the fact that no submissions in opposition to the Application were received from the community.

34. Having regard to the information available, the Authority is satisfied that approving the Application will be in line with the expectations, needs and aspirations of the local and broader communities, and contribute to the responsible and balanced development of the liquor and retail industries.

#### Negative social impacts

35. The Authority notes that the density of packaged liquor licences in both Merimbula and the LGA is higher than the NSW state average, but finds that the proposed relocation of the Licence within the same suburb will not have any impact on the density.

36. The Authority notes from the BOCSAR data that, for the year to June 2017:

- a) Merimbula and the LGA reported higher than average rates of alcohol related assault (both domestic and non-domestic assault),
- b) the rate of malicious damage to property is higher in Merimbula, and slightly lower in the LGA, in comparison with the corresponding NSW figure, and
- c) the Proposed Premises was located within a low density hotspot for incidents of non-domestic assault, a medium density hotspot for incidents of malicious damage to property, and not within any hotspots for incidents of alcohol related assault and domestic assault.

37. The Authority also notes from the most recent HealthStats NSW data available at the time of its consideration that the LGA recorded a similar level of alcohol attributable deaths and hospitalisations compared to the corresponding NSW figures.

38. Mindful of its duty under section 59(3) of the Act to deal with the Application as if it were an application for a new liquor licence at the Proposed Premises, the Authority considers that:

- a) the relevant statistics raise some concerns in respect of the prevailing level of alcohol related crime and health issues in the local and broader communities, and
- b) there may be a risk that liquor sold or supplied at the Proposed Premises, over time, will contribute to an increase in alcohol related crime, health and other social issues in the community.

39. The Authority is nevertheless satisfied that most, if not all, of the potential harm associated with the sale or supply of liquor at the Proposed Premises will be offset by the reduction in alcohol related harm following the removal of the Licence from the Current Premises, which is located in the vicinity of the Proposed Premises, and operated under the same corporate umbrella.

40. The Authority also considers the potential risk identified to be further mitigated by:

- a) the absence of any objections from any members of the public, or other key stakeholders such as NSW Police, NSW Health or Council, in relation to the Application, and
- b) the comprehensive practices and procedures in the Applicant's Plan of Management documents and the proposed licence conditions in respect of the responsible service of alcohol.

#### Trading hours

41. The Authority notes from the Application and community consultation material that the trading hours sought for the Proposed Premises between Monday and Saturday end at 10 pm.

42. The Authority also notes that if the Proposed Premises is authorised to trade until 10 pm, Monday to Saturday, it would in practice be authorised to also trade between 10 pm and 11 pm on those days pursuant to an exemption afforded by clause 70AB of the Regulation.

43. In the current circumstances, the Authority considers it appropriate to impose a closing time of 9:59 pm, Monday to Saturday, to prevent the unintended consequences of permitting the Proposed Premises to trade beyond the hours sought by the Applicant and represented to stakeholders, including Council and NSW Police, during the community consultation process.

### CCTV condition

44. The Authority has considered the Applicant's submission on 12 February 2018 requesting amendments to be made to the wording of the standard CCTV condition proposed to be imposed on the Licence.
45. The Authority does not consider it appropriate to vary the current wording of the CCTV condition, noting that it was developed following consultation with a range of stakeholders including Woolworths, and is imposed on all packaged liquor licences as a matter of policy.

### Overall social impact

46. The Authority has had regard to the ABS Socio-Economic Indexes for Areas ("SEIFA") data indicating that as at 2011, the LGA ranked in the middle and Merimbula ranked slightly below average in NSW, on the Index of Relative Socio-economic Advantages and Disadvantages. The Authority notes that this data is seven years old and does not draw any specific inferences from it, other than to note that it does not raise any immediate concerns.
47. Having considered the positive and negative social impacts that are likely to flow from the removal of the Licence, the Authority is satisfied that the overall social impact of approving the Application would not be detrimental to the well-being of the local and broader communities.
48. The Authority is also satisfied that a decision to approve the Application would be consistent with the objects of the Act to regulate liquor supply and facilitate responsible industry development in line with community expectations and needs.
49. Accordingly, the Authority has decided to grant the removal of the Licence from the Current Premises to the Proposed Premises.



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.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 considered by the Authority

1. ABS SEIFA data based on the 2011 Census ranking Merimbula and the LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol attributable deaths in the LGA for the period 2012-13 and alcohol attributable hospitalisations in the LGA for the period 2013-15.
3. Notice of Determination issued by Bega Valley Shire Council on 24 November 2016 approving the modification of development consent 2008.629 in relation to the Proposed Premises.
4. NSW Recorded Crime Statistics 2016 outlining the number and proportions of selected alcohol related offences in the LGA.
5. Floor plan dated 6 January 2017 indicating the proposed liquor sales area within the Proposed Premises.
6. Completed application dated 5 June 2017.
7. Completed Category B CIS dated 5 June 2017.
8. BOCSAR Crime Hotspot Maps for the year to June 2017, indicating the location of the Current Premises and Proposed Premises relative to hotspots for incidents of alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
9. NSW crime statistics for the two years to June 2017, published by BOCSAR, showing the counts, rates and two year trends of alcohol related assault (domestic and non-domestic) and malicious damage to property in Merimbula and the LGA.
10. L&GNSW liquor licensing records as at 28 August 2017, outlining the density of all types of liquor licences in Merimbula, the LGA and NSW, and listing all packaged liquor licences in Merimbula and the LGA.
11. Submissions from the Applicant, dated 5 June 2016 and 17 October 2017, in respect of the Application.
12. Certification of Advertising Application signed and dated 18 October 2017.
13. Plan of Management for the Proposed Premises dated October 2017, and documents titled "Endeavour Drinks Group Responsibilities", "Endeavour Drinks Group Liquor Store House Policy – NSW", and "Woolworths' Best Practice Policies and Interventions".
14. Google map images extracted from the Google website on 10 November 2017, showing the location and photos of the Current Premises and Proposed Premises in map view, earth view and street view.
15. Correspondence between L&GNSW and the Applicant between 2 August 2017 and 14 November 2017, in relation to the assessment of the Application.
16. Submission from NSW Transport Roads & Maritime Services, dated 13 November 2017, in relation to the Application.
17. Undated submission from NSW Police in relation to the Application.
18. Submission from the Applicant on 12 February 2018 in respect of the proposed conditions.