



Mr Anthony Charles Leybourne Smith  
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26 February 2018

Dear Mr Smith

<b>Application No.</b>	1-6414305868
<b>Applicant</b>	Mr Anthony Charles Leybourne Smith
<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>	Captain Cook Drive Barrack Heights NSW 2528
<b>Proposed Premises</b>	Corner of Harbour Boulevard & Cove Boulevard Shell Cove NSW 2529
<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 licensee or its representative must join and be an active participant in the local liquor accord.
4. 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 Corner of Harbour Boulevard & Cove Boulevard, Shell Cove NSW.
5. 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.
6. The licensee will ensure the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.

7. 1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises ("the premises") in accordance with the following requirements:
- (a) the system must record continuously from opening time until one hour after the premises 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 on the premises, and
    - (ii) all publicly accessible areas (other than toilets) within the 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.

### **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 Corner of Harbour Boulevard & Cove Boulevard, Shell Cove 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 Captain Cook Drive, Barrack Heights 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 [wendy.yeung.wye.kong@liquorandgaming.nsw.gov.au](mailto:wendy.yeung.wye.kong@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 21 September 2017, Mr Anthony Charles Leybourne Smith (“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 Captain Cook Drive, Barrack Heights NSW (“Current Premises”) to the premises at Corner of Harbour Boulevard & Cove Boulevard, Shell Cove 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:
- a) the Application has been validly made and meets the procedural requirements under sections 40 and 59 of the Act,
  - b) 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,

- c) 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
- d) 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 "Woolworths' Best Practice Policies and Interventions".
27. The Authority is also satisfied that, for the purposes of section 45 of the Act:
- a) 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
  - b) the requisite development consent is in force, based on the notice of determination issued by Shellharbour City Council on 17 July 2017.

#### 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 Shell Cove, and the relevant "broader community" comprises Shellharbour Local Government Area ("the LGA").

#### Positive social impacts

30. In respect of the existing liquor supply in the local and broader communities, the Authority notes that:
- a) there is only one licensed venue in Shell Cove, being a hotel, and no packaged liquor outlets,
  - b) the density of all types of liquor licences in Shell Cove and the LGA is considerably lower than the NSW state average, and
  - c) the removal of the Licence from the Current Premises to the Proposed Premises, both in the same LGA, will not have any impact on the liquor outlet density in the LGA.
31. The Authority further notes that the Current Premises ceased trading in 2012 and the Licence has been dormant since then.
32. The Authority therefore finds that the removal of the Licence to the Proposed Premises would provide additional access and convenience to those in the local and broader communities who wish to purchase packaged liquor, and that no consumers would be deprived of their existing access to packaged liquor as a result of the removal.
33. The Authority also accepts the Applicant's contention that the Proposed Premises would:
- a) provide local residents with a new, modern and secure packaged liquor facility, and
  - b) offer a 'one stop shop' experience to consumers who will be able to purchase packaged liquor while shopping at the adjoining Woolworths Supermarket.

34. The Authority nevertheless notes that there is little substantive 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.
35. Having regard to the information available, the Authority is satisfied that approving the Application would 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

36. The Authority notes from the BOCSAR data that:
- a) for the year to June 2017, the Proposed Premises was not located within any hotspots for incidents of alcohol related assault, domestic assault, non-domestic assault or malicious damage to property,
  - b) for the two years to September 2017:
    - i) the rate of alcohol related assault (both domestic and non-domestic) and malicious damage to property in both Shell Cove and the LGA was lower than the NSW state average, and
    - ii) there were no recorded incidents of alcohol related non-domestic assault in Shell Cove.
37. The Authority also notes from the most recent HealthStats NSW data available at the time of its consideration that the LGA recorded a lower level of alcohol attributable deaths and hospitalisations compared to the corresponding NSW figures.
38. On the basis of the above, the Authority considers that the prevailing level of alcohol-related crime and health issues in Shell Cove and the LGA does not raise any immediate concerns.
39. The Authority notes that no objections were received from any members of the public, or any of the other key stakeholders such as NSW Police or Council in relation to the Application.
40. The Authority also notes that NSW Health, while not opposing to the approval of the Application, raised concerns in its email of 25 July 2017 in respect of the potential local impact the Proposed Premises may have on children, noting that there are plans to build a High School near it.
41. The Authority accepts, based on the Applicant's response to NSW Health, the Applicant's Plan of Management documents and the proposed licensed conditions, that adequate practices and procedures will be in place to govern the responsible service of alcohol at the Proposed Premises, and mitigate any potential risks of harm to minors and other negative social impacts.

#### Trading hours

42. 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.
43. 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.
44. 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

45. 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.

46. 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

47. The Authority has had regard to the ABS Socio-Economic Indexes for Areas ("SEIFA") data indicating that as at 2011, the LGA was relative advantaged and Shell Cove ranked among the most advantaged 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.
48. 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.
49. 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.
50. 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 Shell Cove 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. Documents titled "Endeavour Drinks Group Responsibilities", "Endeavour Drinks Group Liquor Store House Policy – NSW", and "Woolworths' Best Practice Policies and Interventions", dated June 2016.
4. NSW Recorded Crime Statistics 2016 setting out the proportion of incidents by offence type, day of week and time of day in the LGA.
5. Premises plan dated 21 March 2017 for the Proposed Premises.
6. BOCSAR Crime Hotspot Maps for the year to June 2017, indicating the location of the Proposed Premises relative to hotspots for incidents of alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
7. Notice of Determination issued by Shellharbour City Council on 17 July 2017 approving development application 12/2016 in relation to the Proposed Premises.
8. Submission from Shellharbour City Council, dated 24 July 2017, in relation to the Application.
9. Emails from NSW Health Illawarra Shoalhaven Local Health District, dated 25 July 2017, in relation to the Application.
10. Submission from NSW Transport Roads & Maritime Services, dated 21 August 2017, in relation to the Application.
11. Completed application dated 21 September 2017.
12. Completed Category B CIS dated 21 September 2017.
13. NSW crime statistics for the two years to September 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 Shell Cove and the LGA.
14. L&GNSW liquor licensing records as at 1 November 2017, outlining the density of all types of liquor licences in Shell Cove, the LGA and NSW, and listing all liquor licences in Shell Cove and the LGA.
15. Google map images extracted from the Google website on 5 December 2017, showing the location and photos of the Proposed Premises in map view, earth view and street view.
16. L&GNSW liquor licensing records as at 5 December 2017, setting out the full details of the Licence.
17. Certification of Advertising Application signed and dated 8 December 2017.
18. A development plan for The Waterfront and Shell Cove Town Centre where the Proposed Premises will be located.
19. Submission from the Applicant on 12 February 2018 in respect of the proposed conditions.