



Mr Warwick Caisley  
Lands Legal  
Level 8, 131 York Street  
SYDNEY NSW 2000  
wcaisley@landslegal.com.au

30 August 2017

Dear Mr Caisley

<b>Application No.</b>	1-5394007818
<b>Application for</b>	New Packaged Liquor Licence Extended Trading Authorisation
<b>Proposed Trading Hours</b>	Monday to Saturday: 9:00 am to 10:00 pm Sunday: 9:00 am to 8:00 pm
<b>Applicant</b>	Thompson Retail (No.3) Pty Ltd
<b>Licensed premises name</b>	Cellarbrations at Warners Bay
<b>Premises</b>	Shop 7, Corner Howard and King Streets WARNERS BAY NSW 2282
<b>Issue</b>	Whether to grant or refuse an application for a new packaged liquor licence with an extended trading authorisation
<b>Legislation</b>	Sections 3, 11A, 29, 30, 31, 40, 45, 48, 49 and 51 <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority  
Application for a new packaged liquor licence and an extended trading authorisation –  
Cellarbrations at Warners Bay**

The Independent Liquor and Gaming Authority (“the Authority”) has considered your application for a new packaged liquor licence (“the Application”) and an extended trading authorisation (“ETA Application”). Pursuant to sections 45 and 49(2) of the *Liquor Act 2007* (“the Act”), the Authority has decided to **refuse** the Application and ETA Application.

If you have any questions about this letter, please email [santina.causa@justice.nsw.gov.au](mailto:santina.causa@justice.nsw.gov.au)

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', with a stylized, cursive script.

Philip Crawford

**Chairperson**

For and on behalf of the Independent Liquor and Gaming Authority

## Statement of reasons

### Decision

1. On 19 December 2016 the Independent Liquor and Gaming Authority (“the Authority”) received from the Applicant, through Liquor and Gaming NSW (“LGNSW”), an application dated 12 December 2016 for a new packaged liquor licence (“Application”) and an application for an extended trading authorisation (“ETA Application”) in respect of premises to be located at Shop 7, Corner of Howard and King Streets Warners Bay (“the Premises”) to be known as Cellarbrations at Warners Bay.
2. Pursuant to sections 45 and 49(2) of the *Liquor Act 2007* (“the Act”), the Authority has decided to refuse the Application and ETA Application.
3. In reaching this decision, the Authority has had regard to all the material before it, the legislative requirements under sections 3, 11A, 29, 40, 45, 48, 49 and 51 of the Act, and relevant provisions of the *Liquor Regulation 2008* (“the Regulation”).

### Material considered by the Authority

4. The Authority has considered the Application, ETA Application and the accompanying Community Impact Statement (“CIS”), and all submissions received in relation to the Application.
5. 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.
6. As foreshadowed in the Authority’s *Guideline 6*, the Authority has also had regard to relevant LGNSW liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, NSW Department of Health data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, obtained by LGNSW staff from publicly available sources.
7. The material considered by the Authority is listed in the Schedule, briefly described where appropriate.

### Legislative framework

8. The Authority has considered the Application and ETA Application in accordance with the following legislative provisions.

### Objects of the Act

9. The objects of the Act, as set out in section 3(1), are to regulate the supply of liquor in line with the expectations and needs of the community, facilitate the balanced development in the public interest of the liquor industry and contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
10. In the pursuit of these objectives, section 3(2) requires the Authority to, in determining a liquor licence application, have due regard to the need to minimise harm associated with the misuse and abuse of liquor (including harm from violence and anti-social behaviour), the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor, , and the need to ensure that the sale, supply and consumption of liquor contributes to and does not detract from the amenity of community life.

### Minimum procedural requirements

11. Section 40 of the Act and clauses 6-11A of the Regulation prescribe the minimum procedural requirements for a liquor licence to be validly made to the Authority.
12. Section 51 of the Act prescribes the minimum procedural requirements for an extended trading authorisation to be validly made to the Authority.

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

13. The Authority notes that section 51(3) of the Act provides that when determining an application for a licence related authorisation, the Authority has the same powers in relation to the application as the Authority has in relation to an application for a licence.
14. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
  - the applicant is a fit and proper person to carry on the proposed business,
  - practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
  - if any applicable development consent (“DC”) is required to use the premises for the business or activity to which the licence relates, such consent is in force.

### Restrictions on granting extended trading authorisation

15. Section 49(8) of the Act provides that the Authority must not grant an application for an extended trading authorisation in respect of such licensed premises unless the Authority is satisfied that:
  - practices are in place, and will remain in place, at the licensed premises 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
  - the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.

### Community Impact Statement

16. Section 48 of the Act requires certain applications, including an application for a packaged liquor licence and an application for an extended trading authorisation for a packaged liquor licence, to be accompanied by a CIS that is prepared in accordance with the relevant legislative requirements.
17. Section 48(5) provides that the Authority may only grant a relevant application for a licence, authorisation or approval 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 the Authority becomes aware of during the application process.

### Provisions specific to packaged liquor licence

18. Further legislative provisions specific to packaged liquor licences are set out in sections 29, 30 and 31 of the Act and the Regulation.

### **Key findings**

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

20. Pursuant to section 51(2) and section 40 of the Act (and subject to the Authority's discussion of clause 9 of the Regulation below), the Authority notes the information provided in the Application, ETA Application, the CIS and the Certificate of Advertising for both the Application and ETA Application signed by Warwick Caisley (the Applicant's Legal Representative) dated 15 December 2016 and by the Sole Director and Secretary of the Applicant company, Mr Rodney Kenneth Thompson dated 29 December 2016.
21. The Authority considered the Application at its Board meeting of 19 July 2017. On 18 July 2017, the Authority received a late submission from Hatzis Cusack, legal representatives for ALDI, alleging that the Site Notice that is required by clause 9 of the Regulation to remain posted to the site of the Premises until the Application is determined was not apparent upon inspection of the site by an ALDI Area Manager on 18 July 2017. By reason that the Application is refused on the basis of the overall social impact test in section 48(5) of the Act, the Authority has not needed to make a finding as to whether or not the Application complied with clause 9 of the Regulation at the time of the Authority's decision and if not, whether the Application is invalid. The late allegation was not put to the Applicant for an opportunity to reply.
22. Pursuant to section 45 of the Act, the Authority is satisfied that:
- for the purposes of section 45(3)(a), the Applicant is a fit and proper person to carry on the proposed business, on the basis that no issues of concern were raised regarding the probity of the Applicant following consultation with relevant law enforcement agencies,
  - for the purposes of section 45(3)(b), practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol and prevent intoxication, having regard to the Applicant's Plan of Management dated May 2017, and
  - for the purposes of section 45(3)(c), the requisite development consent is in force for the proposed use of the Premises as a liquor store, on the basis of development consent DA/1459/2005/E dated 3 May 2016 and DA/1459/2005/F dated 12 August 2016 issued by Lake Macquarie City Council ("Council") and the submission from Council dated 17 January 2017 attaching a copy of the local consent authority notice confirming that the appropriate consent is in place.
23. Because the Application has been refused by reason that the Authority is not satisfied that the requirements of section 48(5) have been met, the Authority has not needed to consider whether the ETA Application in respect of the extended trading hours sought meet the additional requirements of section 49(8) of the Act.
24. The Authority has taken into account the CIS and other available information in making the findings below about the social impact of the Premises on the local and broader communities.
25. For the purposes of this decision and consistent with its position in *Guideline 6* and longstanding practice, the Authority is satisfied that the relevant "local community" is the community within the State suburb of Warners Bay, and the relevant "broader community" comprises the local government area of Lake Macquarie City Council ("Lake Macquarie LGA").

#### Positive social impacts

26. The Authority has considered the Applicant's contentions, made in the CIS material, that the public benefits of granting the Application will include the provision of a "first-

class liquor facility” for the community within the expansion of an existing Warners Bay shopping centre.

27. The Applicant further contends that the liquor store will provide the convenience benefit of shoppers avoiding the need to make “special trips” to purchase liquor and the availability of “one-stop shopping” for liquor and groceries within this Shopping Centre.
28. These submissions are to the effect that granting the Application will serve the statutory object of regulating liquor in a manner consistent with the “expectations, needs and aspirations” of the local community within the meaning of section 3(1)(a) of the Act. There is also the implication that a new “first class” liquor store will contribute to the balanced development of the liquor industry in furtherance of the statutory object in section 3(1)(b).
29. With regard to the new business advancing community expectations needs and aspirations, there is little positive evidence of community support for the proposal, with several submissions from nearby residents of Howard and Queen Streets and a submission from local Police opposing the proposal.
30. The Authority nevertheless finds that a new business will provide another packaged liquor outlet that will increase the choice of liquor outlets for those in the local and broader community who utilise this Shopping Centre. There may also be some unspecified or unquantified benefits by way of competition through the entry of a new, relatively larger chain liquor store serving the local and broader community.
31. However, the extent of any increased benefits are constrained in a practical sense by the close proximity of several existing liquor outlets selling packaged liquor, as identified by Police.
32. The Authority accepts that the Applicant proposes to provide a “first class” liquor store but, in the absence of information as to product lines or demonstrating how the existing takeaway liquor outlets are deficient in the goods or services on offer, it is difficult to appreciate the nature and extent to which the liquor industry serving the local or broader community will be *developed* by this new outlet
33. As noted above, LGNSW licensed premises information indicates that there are **4** incumbent packaged liquor licensed premises located within the suburb of Warners Bay. They are BWS at 87 King Street (BWS); Liquorland at Warners Bay Shopping Centre Shop 1, 32 John Street (Liquorland); New South Wales Wine Society at 5/301 Hillsborough Road and Wine N More at 92 Warners Bay Road. This information also indicates that Lake Macquarie LGA has **54** packaged liquor licences.
34. The Wine Society (which specialises in wine) and the Wine N More licences are limited to telephone and internet sales, with no physical store. While these licences have nevertheless been taken into account as potentially supplying the relevant communities, although there is some uncertainty as to their potentially broad trade catchment area by reason of the online nature of these businesses.
35. The number, type, trading hours and location of these packaged liquor licensed premises somewhat decreases the scope for increased consumer benefits at the level of the local or broader communities on the whole.
36. The Authority accepts the Applicant’s submission in the CIS material that only **2** of the 4 packaged liquor licensed premises within Warners Bay are “full service” packaged liquor stores – BWS (approximately a 100 metres walk from the Premises) and Liquorland (approximately 230 metres walk from the Premises).

37. The Applicant refers to information published on the Council website about the population forecast increasing from 189,000 in the local government area as at June 2015 to an estimate of 204,000 with the population distributed around the Lake in some 90 communities. The Applicant does not disclose the timeframe in which that estimated growth will occur, which diminishes the utility of that estimate somewhat. The Authority accepts that some localised population growth is evident from the mixed development where the Premises is situated.
38. With regard to the proposed benefit of an increase in employment, the Authority finds it credible that the business may hire 6 persons, but in the absence of a specific commitment that they will be hired from the local or broader community it is difficult to give that submission great weight as a community benefit.
39. Claimed benefits with respect to reduced traffic movement are more concerned with town planning matters than alcohol related social impacts per se. Claimed localised economic spin off benefits for the handful of local businesses in the proposed Shopping Centre (through discouraging liquor shoppers from going elsewhere) present as credible on their face but involve complex assertions that would require expert analysis or supporting evidence for the Authority to give those benefits any significant weight in respect of the local or broader community *as a whole*.
40. On the information before it, the Authority finds that granting this Application will provide a modest contribution to advancing community expectations through another outlet and a moderate contribution to the balanced development of the liquor industry within the local community.
41. While shoppers from the broader community may also attend the expanded Shopping Centre, this additional licence will provide only marginal benefits at the level of the broader community, given the number and location of incumbent packaged liquor licences evident from the LGNSW data and Police submissions and the broad geographic area comprising the Lake Macquarie LGA.

#### Negative social impacts

42. Having reviewed all the material before it, the Authority considers that over time there is a risk that liquor sold from this packaged liquor licensed Premises (whose primary purpose is the sale or supply of liquor for consumption away from the licensed Premises) will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse packaged liquor.
43. The licence type sought by this Application is a packaged liquor licence, with the primary purpose of the sale or supply of liquor for consumption away from the licensed Premises.
44. The proposed trading hours sought (9:00am and 10:00pm Monday to Saturday and 9:00am to 8:00pm on Sunday) are quite extensive across the course of the week.
45. The proposed new liquor store is of a substantial scale, at approximately 200 square metres. The business will be around twice the size of many standalone liquor stores throughout the State.
46. The scale and trading hours are factors that objectively increase the scope for this new licensed business to contribute, along with other licensed premises, to prevailing adverse social impacts associated with the abuse of packaged liquor in the local and broader communities.
47. As for the location of the business, the CIS contends that the Premises is proposed to operate within a new or expanded mixed-use development comprising 112 residential units, 232 car parking spaces and 2996 square metres of commercial and retail space. It

will be in very close proximity to existing residential premises and the premises that form part of this development.

48. With respect to the environment in which this new liquor store will operate, the Authority has considered liquor licence density data calculated by licensing staff from the LGNSW licensed premises list as at 2 May 2017 and the ABS *Quickstats* population data derived from the 2011 Census. The State suburb of Warners Bay recorded a considerably higher rate of packaged liquor licences (**53.64** per 100,000 persons) compared to the New South Wales wide rate of **35.8** per 100,000 persons.
49. By comparison, the broader community across the Lake Macquarie LGA recorded a rate of packaged liquor licences at **28.57** per 100,000 persons, below the State-wide rate. As such, prevailing licence density poses a risk factor for the local community. The Authority is satisfied that packaged liquor is already quite accessible to the local community and granting this new licence will increase an already high-density rate.
50. The Authority does not consider licence density data in isolation, but as one of several risk factors when assessing the suitability of the proposed location of a new licensed business of the type proposed when assessing overall social impact upon a community.
51. BOCSAR crime data provides a mixed picture for alcohol related crime and other anti-social conduct in the communities. During the period from January 2015 to December 2016 the broader community of Lake Macquarie LGA recorded lower rates of *alcohol related domestic assault* (**96.7** per 100,000 persons) compared to New South Wales as a whole (116.9 per 100,000 persons).
52. The rate of *alcohol related non-domestic assault* across Lake Macquarie LGA (**85.4** per 100,000 persons) was also substantially below the rate for New South Wales (**136.5** per 100,000 persons).
53. However, the broader community was exposed to a higher rate of *malicious damage to property* (a rate of **910.8** per 100,000 persons) compared to the New South Wales rate (**834** per 100,000 persons) indicating some over exposure to this form of anti-social conduct.
54. BOCSAR data for the same period indicated that the local community of Warners Bay recorded a substantially lower rate of *alcohol related non-domestic assault* (**75.9** per 100,000 persons) compared to the New South Wales rate of **136.5** compared to NSW as a whole.
55. However, this local community recorded substantially higher rates of *alcohol related domestic assault* (**151.9** per 100,000 persons) compared to the New South Wales rate of **116.9** per 100,000 persons. While the five-year average for alcohol related domestic assault was slightly below the State-wide rate, this recent data remains of concern when assessing adverse alcohol related social impact in the local community.
56. The local community rate of *malicious damage to property* events (**860.8** per 100,000 persons) was also above the New South Wales rate of **834** per 100,000 persons.
57. Moreover, BOCSAR crime maps for April 2016 to March 2017 indicate that although the Premises is not located *within* any hotspots for incidents of alcohol related assault or non-domestic assault, the Premises is located on the edge of a *low-density hotspot* for incidents of *domestic-assault* and within a *high-density hotspot* for incidents of *malicious damage to property*. Furthermore, within walking distance to the North East of the Premises is a low and medium density hotspot for incidents of *alcohol related assault*.
58. Hotspot maps are useful in indicating potential areas of relative concern from a social impact perspective, particularly when assessing the location of a proposed new business and the community that it is likely to service. They are also useful when assessing



whether sales from the business are likely to impact communities that are already exposed to some concentration of alcohol related crime and disturbance, particularly alcohol related domestic violence, in which packaged liquor plays a role.

59. The Authority is particularly concerned, in the context of assessing a *packaged liquor licence*, with recorded rates of *domestic assault* and *alcohol related domestic assault* as BOCSAR data for NSW routinely records that the overwhelming majority of these incidents occur in private residences where packaged liquor may be expected to be consumed.
60. Malicious damage rates are relevant to a packaged liquor application in two ways. First, they provide another risk factor in terms of a given community's exposure to anti-social conduct. As noted by BOCSAR in its Excel Crime Reports for each LGA, it is often difficult for reporting Police officers to ascertain whether alcohol is a factor in property crime events where no perpetrator has been identified. The proportion of events that are recorded as alcohol related tend to be lower but nevertheless form a significant minority of total malicious damage events in a given community. Second, BOCSAR malicious damage data may also lend objective support to the observations made by Police or local residents as to the prevalence of anti-social conduct in a locality.
61. The Authority finds that this substantial new liquor store with extensive licensed hours may be expected to service, along with the incumbent takeaway liquor outlets, areas within the local community that are already sensitive with respect to the rate and concentration of domestic violence events and malicious damage events.
62. The rate of alcohol related domestic violence in the State suburb of Warners Bay is of particular concern to the Authority in the context of considering another new liquor store of substantial scale with extensive licensed trading hours.
63. The Authority considers it likely that the new liquor store will be well placed to contribute, along with the other local packaged liquor retailers, to what is a challenging situation in terms of the management of alcohol related domestic violence.
64. The new licence will increase accessibility and convenience in the local community, whether or not it increases the total consumption of liquor in that community. The new business will have substantial capacity to contribute to relatively poor outcomes in the local community with respect to alcohol related domestic violence. This is a negative factor arising from the scale, trading hours and location of this proposal, to which the Authority gives considerable weight.
65. The Authority has also had regard to the ABS Socio-Economic Indexes For Areas ("SEIFA") data indicating that the broader community of Lake Macquarie LGA ranked in the 7<sup>th</sup> decile within NSW on the Index of Relative Socio-Economic Advantage and Disadvantage. The Authority also notes that the local community of Warners Bay ranked within the 6<sup>th</sup> decile on this index. The SEIFA data does not indicate that socio-economic disadvantage is a compounding factor of concern at the level of either community as a whole.
66. NSW Department of Health data for the Lake Macquarie LGA during 2012-2013 recorded a Smoothed Estimate of Standardised Mortality Ratio (alcohol related deaths) at **109.50** and a Smoothed Estimate of Standardised Separation Ratio (alcohol related hospitalisation) at **84.80**. With the NSW wide rate fixed at 100, the rate for alcohol related deaths for the broader community is of some concern, while the rate of alcohol related hospitalisation is a more benign factor with respect to the broader community.

67. The Authority has carefully considered a detailed seven-page submission from the Lake Macquarie Local Area Command (“LAC”) of NSW Police dated 9 January 2017 and lodged on 13 January 2017, objecting to the Application.
68. Without purporting to repeat the entire submission, Police identify the number of licensed premises (including packaged liquor outlets, hotel premises providing a measure of public take away liquor sales, club premises and on-premises licences) in the Lake Macquarie LGA and the Warners Bay suburb and contend that the following licensed premises supplying takeaway liquor are within “close proximity” to the proposed new Premises.
- BWS Beer Wine Spirits: 87 King Street Warners Bay
  - Warners at the Bay: 320 Hillsborough Road, Warners Bay NSW 2282
  - Liquorland: Warners Bay Shopping Centre, Shop 1, 32 John Street Warners Bay
  - Warners Bay Hotel: 5 John Street Warners Bay
  - Pippi’s at the Point Hotel: 199 Main Road Speers Point
  - BWS – Beer Wine Spirits: Shops 1 & 2 Lake Macquarie Fair Wilsons Road Mt Hutton.
69. Police further contend that the Premises is situated within a locality of restaurants, cafes, small business and high-density housing and that a large proportion of restaurants have on-premises liquor licences enabling customers to consume liquor with their meals.
70. The Applicant submission dated 16 May 2017 advises that the licences specified by Police in relation to the Lake Macquarie LGA are “basically correct” but that licence density for that area remains “well below” the State average with respect to total liquor licences, hotel licences and packaged liquor licence categories.
71. The Authority notes that the Applicant’s calculations performed in relation to packaged liquor licences in the local community were based on only 2 packaged liquor licences, excluding consideration of the two restricted licences for NSW Wine Society and Wine N More. The Authority does not accept that approach.
72. The Authority accepts the Police concerns in relation to liquor licence density to the extent that there is higher than State average licence density in Warners Bay. The Authority further accepts that the clustering of a variety of licensed premises in the Warners Bay CBD significantly increases the potential for adverse amenity impacts arising from patron migration among licensed premises. The Authority notes that two of the six licensed premises noted above are in nearby suburbs, not Warners Bay. As such, these packaged liquor outlets are reasonably convenient to, but not situated within, the local community.
73. With respect to Police concerns as to the location of the Premises within eight kilometres of a high school and 500 metres of a primary school, the Authority finds that it is not uncommon for liquor outlets to be located within supermarkets or neighbourhood shopping centres as proposed in this instance. There is no school within close proximity to warrant concern from a social impact perspective.
74. Police make general submissions to the effect that crime rates are not high for the local community and the Local Area Command, although the Authority does not accept this observation with respect to *alcohol related domestic violence* in Warners Bay.

75. With regard to local community social impacts, Police raise concerns about the potential for an increase in secondary supply of packaged liquor to minors should the Application be granted, noting that there is a significant amount of waterfront parkland around the Warners Bay area, which is often frequented by families and minors. Police note that within this parkland, concerts and other events are often held whereby alcohol is consumed, and frequented by large numbers of people.
76. Giving some weight to the local knowledge of Police and the geography of the area, the Authority finds it credible that the location and popularity of nearby waterfront areas bring with it some additional risk that this substantial new liquor store, trading over extensive hours throughout the week in this location, will be targeted by a minority of patrons who abuse packaged liquor through public drinking and/or secondary supply to minors. Police have not provided details of the nature and frequency of public drinking in these areas but the Authority accepts that these aspects of the location pose credible additional risk factors that warrant consideration when assessing the scope for liquor sales from this business to contribute to this form of anti-social conduct.
77. The Authority accepts the Applicant's contention that the proportion of persons aged 15-24 in the suburb is lower than the State average, while the proportion of persons 60 and over is substantially higher, but the point being made by Police is that nearby waterfront locations are sensitive in that they draw upon a range of temporary visitors, whether or not they live in the suburb.
78. The Authority has also considered the additional LAC crime data provided by Police as to alcohol related domestic violence, including a graph depicting incidents in Warners Bay in event categories classified as "Domestic Violence", "DV and Alcohol" and "Alcohol" for 2015 and 2016.
79. Police contend that in 2015 and 2016 there were significant occurrences of domestic violence incidents combined with alcohol, which is of concern to them in light of the rise of domestic violence within the community. This Authority accepts that this LAC data reinforces the social impact concerns evident from BOCSAR crime rates with respect to alcohol related domestic violence in respect of the local community.
80. The Police graph derived from the NSW Police Alcohol Related Crime Information Exchange ("ARCIE") recording *last place of consumption* supports the Police contention that the overwhelming majority of *alcohol related incidents* where Police from the LAC were involved recorded *home/private residence* as the last place of consumption. This is of concern to Police, who contend that majority of these incidents would involve alcohol that has been purchased from a packaged liquor licensed outlet. The Authority finds that this evidence reinforces the relationship between the abuse of *packaged liquor* in the communities and alcohol related events requiring Police intervention.
81. Police contend that if the Application is granted there will be **4** packaged liquor outlets located within **500 metres** of each other, in addition to **15** on-premises licences in and around the Warners Bay CBD. The Authority accepts this observation.
82. Police make the general submission (without specifying the research) that there are "countless" published studies and literature in relation to alcohol availability and supply of alcohol, and the effects it has on minors, and both personal and domestic violence. Police contend that a common conclusion of these studies is that there is a high correlation between the availability of alcohol and incidences of anti-social behaviour, and both personal and domestic violence.

83. The Authority accepts that there is a documented association in the research (including research featured in Authority Guideline 6) between increased alcohol availability and various adverse social impacts. The applicability of that research to the specific circumstances of this Application and these communities is open to debate, given the prevailing levels of licence density evident from the licensing information. There is some indication that licence density is higher than State averages in Warners Bay, but the Authority does not consider that the level of licence density is acute. A complicating factor is that two of the incumbent local packaged liquor licences are limited to home delivery, although takeaway liquor is also available from local hotels.
84. Licence density per se is not decisive adverse factor in this case, but it is a risk factor that is of concern to the Authority in the context of the problematic local community alcohol related domestic violence data and (to a lesser extent) some problematic malicious damage data.
85. Police conclude with the submission that there are already “sufficient” licensed premises in the Warners Bay area from which individuals can purchase alcohol for consumption off the premises. The Authority does not consider that the existence of the incumbent licensed premises in Warners Bay presents a bar to entry for another packaged liquor licence to serve the local market.
86. However, the location and licence type of the incumbent providers reduce the scope of community benefits offered by adding another packaged liquor licence in this location, while posing an additional risk that this new business (given its scale, hours and location) has considerable scope to contribute to prevailing local community social problems, such as alcohol related domestic violence in residential areas, and malicious damage or anti-social conduct from the abuse of packaged liquor by a minority of consumers in nearby public and waterfront areas.
87. The Authority has also had regard to the objections received from nearby local residents of Warners Bay, including Mrs Halverson, Mrs Walker and Mr Edson (**Residents**). The Authority’s assessment of the key contentions raised by the Residents is as follows:
88. With respect to concern as to licence density (including the proposed ALDI to be located within 20 metres of the Premises) the Authority is satisfied that licence density poses a risk factor in respect of the local community, however this is considered in light of the prevailing alcohol related crime impacts disclosed in the BOCSAR and local Police data. The Authority has not considered the ALDI liquor application that was pending consideration at the time of this decision.
89. With respect to proximity of the Premises to a local preschool, primary school, church and social support service, the Authority accepts that the site is within walking distance of those sites, but no submissions were made by those organisations and the Premises is not in close proximity to any of those sites. The Premises is situated within a small mixed-use development that will include a Supermarket. This presents as an appropriate location on its face and the Premises has received development consent.
90. With respect to the Residents’ concern regarding increased traffic, parking and pedestrian safety, concerns of this nature have more of a town planning focus than an alcohol related social impact per se and have been given little weight by the Authority, noting that the Applicant does have planning permission to operate this type of business on the Premises.
91. The Residents concern as to the contribution the new liquor store may make to *alcohol related* traffic or pedestrian impacts are lent some support by a submission from RMS during the CIS phase that is briefly noted by the Applicant, but not actually furnished to

the Authority. RMS are reported to make some reference to alcohol related motor vehicle crashes in the area.

92. With respect to the Residents allegation that there has been insufficient consultation with the future owners of apartments that will form part of this mixed-use development, the Authority does not require the Applicant to conduct community consultation beyond the statutory notification requirements of the liquor legislation.
93. With regard to the alleged discrepancy between the licensed trading hours indicated on the public consultation Site Notice and the Application, the Authority notes that the Site Notice provided to the Authority accords with the hours sought in the Application. An issue has been raised by a commercial competitor, ALDI, late in the Application process, but the Authority has not needed to investigate or make a finding on that allegation of non-compliance.
94. With regard to the Residents' concern that the licensed trading hours are "excessive", the Authority notes that the hours proposed by the Applicant fall within the permissible range of trading hours that are open to a packaged liquor premises in New South Wales. Nevertheless, the extensive hours sought objectively elevate the scope for *this* new liquor outlet to contribute to the kind of adverse local crime and amenity impacts that have been identified in the BOCSAR data, local Police information and Residents' submissions.
95. With regard Residents' concerns that the new liquor store will contribute to anti-social behaviour and noise disturbance, the Authority is satisfied on the information before it that the Premises is in close proximity to residential homes, including those of the submitters. The location of the Premises in proximity to residential premises is a factor that may increase the scope for a minority of patrons who drink in public in neighbouring areas to disturb local amenity for nearby residents. It is difficult to gain a sense from the Residents submission as to how much of a problem public drinking is arising from the liquor supplied by the incumbent liquor outlets. This limits the weight that may be given to this contention.
96. As for the Residents' concerns that the new store has the potential to increase anti-social behaviour with regard to "rev-heads", "gratuitous bad language", "vandalism", "fighting" and "litter" to local streets, particularly on Friday and Saturday, the Authority accepts that these are genuine concerns regarding credible adverse impacts that may be associated with the abuse of packaged liquor.
97. While the Residents do not provide specificity as to the nature and frequency of these forms of anti-social conduct in the locality (and this limits the weight that may be given to these submissions) the BOCSAR data with regard to malicious damage lends objective support to their concerns, particularly when considered in combination with Police information as to the popularity of the locality in light of its waterfront location and other public spaces that are attractive to visitors.
98. Having considered the Authority's findings as to the likely positive benefits and negative impacts that may flow to the local and broader communities from adding another licence of this type for a business of this scale in this location, the Authority is *not* satisfied that the overall social impact of granting the Application will *not* be detrimental to the local community of Warners Bay.
99. In making this decision the Authority has taken into account the additional harm minimisation measures proposed by the Applicant, including a requirement for membership of the local liquor accord and an enforceable requirement to operate the Premises in accordance with the Plan of Management provided by the Applicant. The Plan of Management dated May 2017 provides a number of key management policies and procedures concerning the provision of identification and responsible service of

alcohol along with measures for the use of CCTV, incident reporting and the registering of complaints.

100. While the Authority does not consider it likely that staff of the business would knowingly sell liquor to minors, or intoxicated persons, or persons who engage in alcohol related crime, the licensee and staff will only have the practical ability to monitor, report or respond to issues arising in close proximity to the Premises.

101. In light of the substantial concerns held by the Authority with regard to the prevailing rates and localised concentrations of *alcohol related domestic assault* and to a lesser extent *malicious damage to property* in the local community, noting the opposition by local Police and several nearby local residents to the proposal, the Authority is *not* satisfied, on the material before it, that the overall social impact of granting *this* Application will not be detrimental to *this* local community.

#### Overall social impact

102. Having considered the positive and negative impacts that are likely to flow from granting a new packaged liquor licence subject to an extended trading authorisation, the Authority is ***not*** satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting this Application would not be detrimental to the well-being of the local community or broader communities - specifically, the local community of Warners Bay.

103. In making this decision the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the Act, but has given weight to the statutory considerations in section 3(2)(a) of the Act – the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other 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.

104. By reason that the Application is refused pursuant to section 45 of the Act, the ETA Application under section 49(2) of the Act must also be refused.



Philip Crawford  
Chairperson

#### **Important Information:**

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

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

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

## Schedule

### Material before the Authority

1. ABS SEIFA data based on the 2011 Census for the Lake Macquarie LGA and suburb of Warners Bay.
2. HealthStats NSW data showing alcohol-related deaths and hospitalisations in the Lake Macquarie LGA for the period 2012-13.
3. BOCSAR crime statistics comparing the suburb of Warners Bay and Lake Macquarie LGA to NSW for the period January 2015 to December 2016.
4. BOCSAR crime data for the period from January 2015 to December 2016 for Lake Macquarie LGA, NSW and Warners Bay.
5. BOCSAR crime maps for April 2016 to March 2017, for the local community of Warners Bay.
6. Application to modify Development Consent Notice of Determination DA/1459/2005/E dated 3 May 2016 issued by Lake Macquarie City Council.
7. Application to modify Development Consent Notice of Determination DA/1459/2005/F dated 12 August 2016 issued by Lake Macquarie City Council.
8. Email from Lauren Piper, Accredited Certifier of Buildcert Consultants dated 9 November 2016 confirming that the DA issued by Council has approved use of the Premises as retail premises, that an application for change of permitted use is not required and that the application would be for a fit out only.
9. Letter from the Applicant's legal representative, Mr Warwick Caisley of Lands Legal, to the Authority dated 12 December 2016 lodging the Application with the Authority.
10. Two-page submission letter from local resident, Mr S Edson of Howard Street Warners Bay, to the Authority dated 16 December 2016 objecting to the Application
11. Packaged Liquor Licence Application Form lodged on 19 December 2016. This document is signed by the Sole Director and Secretary for the Applicant company, Mr Rodney Thompson, and is dated 8 December 2016. Accompanying this document is the public consultation Site Notice for the Application, Notice to Police and Notice to the Local Consent Authority - all of which are signed by Rodney Thompson (the Sole Director and Secretary of the Applicant company) and dated 8 December 2016. Also provided is a copy of the Australian Securities and Investments Commission's ("ASIC") extract for the Applicant company, Thompson Retail (No.3) Pty Ltd, as at 15 November 2016.
12. ETA Application form lodged on 19 December 2016 and signed by the Director and Secretary for the Applicant, Mr Rodney Thompson, with Site Notice, Police Notice and Local Consent Authority Notice dated 8 December 2016.
13. Category B CIS form lodged on the 19 December 2016, signed by the Sole Director and Secretary for the Applicant company, Mr Rodney Thompson, dated 6 December 2016. This document is accompanied by a map depicting premises notified of the Application.
14. In a nine-page Annexure to the CIS, the Applicant discusses the nature of the proposed liquor store, population characteristics for the local and broader communities derived from the ABS Census, BOCSAR data for the period from July 2015 to June 2016 for Warners Bay suburb and Lake Macquarie LGA with comparisons to NSW wide rates. The Applicant also responds to community submissions from Roads and Maritime Services ("RMS"), residents of Howard Street and Queen Street Warners Bay. Also provided is a table of socio-demographic data for the populations of Warners Bay and Lake Macquarie

LGA with comparisons to NSW (compiled from the 2011 ABS Census), a discussion of the statutory objects and the contended public benefits of granting the Application, an artistic representation of the proposed mixed use development, a Plan of Management for the proposed licensed business, a diagram of the Premises and google maps and images for the Premises in relation to nearby sensitive sites.

15. Submission from Sergeant Adam Walton of Lake Macquarie LAC of Police dated 9 January 2017 objecting to the Application.
16. Submission from Mrs M Walker, local resident of Howard Street, Warners Bay, dated 9 January 2017.
17. Submission from Mrs B Halverson, local resident of Queen Street, Warners Bay, dated 10 January 2017.
18. Email from Cameron Alexander, Senior Building Surveyor – Fire Safety, on behalf of Council dated 17 January 2017 attaching a copy of the Local Consent Authority Notice of the Application advising that development consent is required and is in place.
19. Liquor licensing records from LGNSW as at 2 May 2017, for packaged liquor licences in the suburb of Warners Bay and Lake Macquarie LGA.
20. LGNSW licensed premises information as at 2 May 2017 for packaged liquor licences in the suburb of Warners Bay, Lake Macquarie LGA and the state of NSW.
21. Submission letter from the Applicant in response to public submissions via Mr Warwick Caisley of Lands Legal in an email to licensing staff dated 16 May 2017. The Applicant responds to the submissions from Council, Police and the public, advising that development consent is in place and attaching the following material:
  - (a) Certificate of Advertising signed by the Applicant's legal representative, Mr Warwick Caisley of Lands Legal on 15 December 2016 and by the Sole Director and Secretary for the Applicant company, Mr Rodney Thompson dated 29 December 2016.
  - (b) BOCSAR Hotspot maps for January 2016 to December 2016 for incidents of alcohol related assault, domestic assault and non-domestic assault.
  - (c) Google geographical maps depicting the location of the Premises in relation to King Street, St Mary's Primary School and Warners Bay Early Learning and Child Care.
  - (d) Google geographical map depicting the location of the Premises in relation to two churches, St Mary's Warners Bay Church and Warners Bay Baptist Church.
  - (e) Plan of Management dated May 2017.
22. Google maps showing the location of the Premises, extracted from the Google website on 13 June 2017.
23. Email from the Applicant's legal representative dated 7 July 2017, responding to an email from licensing staff dated 6 July 2017 and consenting to two conditions relating to CCTV.
24. Applicant's plan/diagram of the Premises highlighting the proposed licensed area of the licensed business in blue.
25. Late email communication from Hatzis Cusack lawyers dated 18 and 19 July 2017 alleging non-compliance with clause 9 of the Liquor Regulation 2008 (not relied upon by the Authority in this decision).