



Mr Frank Bresnik
154 Bicentennial Drive
Jerrabomberra NSW 2620

Dear Mr Bresnik

**Application for Packaged Liquor Licence –
Yellow Belly Café & General Store**

I am writing to you regarding an application made by Oznik Pty Ltd, which was received by the Independent Liquor and Gaming Authority on 13 February 2015.

As described in the Authority's Regulatory Delegations Manual, the Authority has delegated to the Manger of Licensing (Delegate) the power to determine certain packaged liquor licence applications that fall within a designated risk threshold. This Application falls within the relevant threshold enabling the matter to be determined under delegation.

The Delegate considered the Application on 8 March 2016 and has decided, pursuant to section 45(1) of the *Liquor Act 2007* to *refuse* the Application.

Authority staff informally notified the Delegate's decision via email dated 8 March 2016. This letter serves to provide a formal record of the decision to refuse the Application.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.

This letter attaches the delegate's statement of reasons. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statement of reasons as soon as practicable.

If you have any queries, contact the case manager, Ms Santina Causa via email at santina.causa@ilga.nsw.gov.au.

Yours faithfully

Allison Waring
Delegate

4 APRIL 2016

STATEMENT OF REASONS

INTRODUCTION

1. On 13 February 2015, the Independent Liquor and Gaming Authority (**Authority**) received an application (**Application**) made by Oznik Pty Ltd (**Applicant**).
2. The Application seeks the grant of a packaged liquor licence within the meaning of section 29 of the *Liquor Act 2007* (**Act**) in respect of premises located 27 Bettana Avenue, Googong NSW 2620 (**Premises**). By way of background, Googong is a newly formed town and will, once completed, house approximately 18,000 people.
3. The Premises is presently trading as the Yellow Belly Café and General Store. The proposed packaged liquor licence would form a department within this general store. The Applicant has also lodged, and was granted a separate application for an on-premises liquor licence in respect of a café to be conducted on the Premises. This letter only concerns the packaged liquor licence application"
4. The Application seeks trading hours between 10am and 10pm Monday to Sunday for the proposed new packaged liquor business.
5. The Application seeks that the 6-hour daily closure period required by section 11A of the Act be fixed at between 4am and 10am.
6. As described in the Authority's Regulatory Delegations Manual, the Authority has delegated to the Manger, Licensing (**Delegate**), the power to grant certain packaged liquor licence applications that fall within a designated risk threshold. This Application falls within the relevant threshold enabling the matter to be determined under delegation.
7. Authority staff informally notified the Delegate's decision to refuse this Application in an email dated 8 March 2016. This letter serves to provide a formal record of the decision to grant the Application.
8. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.
9. This statement of reasons has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

MATERIAL BEFORE THE DELEGATE

10. **Application Form and Community Impact Statement (CIS) dated 21 August 2015.** The Application seeks to exercise licenced trading hours between 10am and 10pm Monday through Sunday and that the 6 hour daily closure period required by section 11A of the Act be fixed between 4am and 10am.
11. The contentions and submissions made by the Applicant in the CIS document as to the overall social impact of granting the Application are as follows:

"The risk in respect of this application is the consumption of alcohol in a public place.

Although this is not illegal, the neighbourhood environment would potentially be adversely affected if alcohol purchased was then consumed in a nearby park.

Being in close proximity to the park if inappropriate or excessive consumption of alcohol is observed police will be notified.

The benefit of a packaged liquor licence is that it will provide the local community with a local store providing a full range of service.

It will also reduce the risk of drinking and driving as customers can purchase alcohol to take home rather than attend a licenced premises in Queanbeyan (10km away) and then drive home”.

12. **Plan of the Premises.** The Applicant has provided a diagram of the Premises and indicating the boundaries of the proposed licenced area. The service area of the proposed packaged liquor licence is indicated as being approximately 14.5 square metres. The areas covered by the proposed on-premises licence for the café are recorded as approximately 102 square metres for an indoor licenced area and 95 square metres for an outdoor licenced area.
13. **Notice of Appointment of Approved Manager dated 20 December 2015.** This document nominates Mrs Roslyn Bresnik as the appointed manager of the proposed packaged liquor licenced premises.
14. **Yellow Belly Café and General Store “Drug and Alcohol House Policy”.** This internal policy document outlines the policies of the Yellow Belly Café and General Store for the responsible service of alcohol. The *House Policy* makes the following provisions or contentions about what will occur:
 - Staff will be prohibited from consuming alcohol or partaking in any illegal or recreational drugs during rostered work hours.
 - Employees taking prescribed medication must abide by any warnings issued with the medication and advise the supervisor or general manager of the situation before commencing a shift.
 - Management of Yellow Belly are “aware of and adhere to all the rules and regulations applicable to responsible service of alcohol”.
 - Yellow Belly “does not sanction or approve” any promotions that encourage the rapid or excessive consumption of alcohol.
 - Yellow Belly “acknowledges that drunkenness, underage drinking, and alcoholism are serious social issues and therefore supports initiatives that assist in addressing and preventing these issues”.
 - Staff will require valid proof of age from “young adults” to be presented in the form of an Australian driver’s licence, passport or proof of age card.
 - Staff will be educated in the responsible service of alcohol.
15. **Yellow Belly Café and General Store *Alcohol Plan of Management (Plan of Management)*.** This undated document sets out the responsible sale of alcohol (RSA) plan for the conduct of the Yellow Belly Café and General Store. The Plan of Management includes the following provisions:
 - Our principles. The Yellow Belly Café & General Store “will not promote any practice that may promote & encourage rapid or excessive use of alcohol”.
 - Hours of operation. The proposed hours for the selling or service of alcohol is 10am to 9pm Monday to Saturday and 10am to 8pm Sunday.

- NSW Liquor Code of Practice. A copy of the NSW Liquor Industry Code of Practice will be “readily available” by being displayed within the visual access of personnel involved in the sale and supply of liquor.
- Plan of management. The licensee must maintain the Plan of Management at the Premises and made available for inspection by members of NSW Police or the Office of Liquor, Gaming & Racing.
- Purpose of this plan. The stated purpose of the Plan of Management is to establish performance criteria in “various aspects” of the food and beverage service provided at the Yellow Belly Café.
- Use of the Plan. All staff involved with the sale or supply of liquor will be made familiar with the Plan of Management.
- Signage. All signage under the Act will be displayed in prominent locations throughout the Premises.
- Identification requirements. All staff are required to validate proof of age with a current drivers licence or valid passport.
- Responsible service, supply and sale of alcohol. All Yellow Belly staff involved with the sale or supply of alcohol will have completed RSA qualifications and comply with “all applicable laws, regulations and adhere to the Liquor Codes of Practice”. All staff will endeavour to prevent intoxication by ensuring that all staff involved in the sale or supply of alcohol are RSA certified, restricting activities that encourage misuse of liquor, ensuring that low alcohol and non-alcoholic beverages are available (including free water), ensuring that patrons displaying signs of intoxication are not served, ensuring that food is available when alcohol is served, ensuring that alcohol will only be served at tables within the Café’s area of service.
- Staff training. All staff must have completed a valid RSA certificate prior to working in the Front of House alcohol service area and abide by the *House Policy*. Refresher training will be held regularly to update/review any changes to RSA qualifications and the Act. Staff are aware of acceptable proof of age documentation.
- Harm minimisation. The licensee and employees will take “all reasonable steps” to prohibit any activities or promotions likely to promote irresponsible service of alcohol. The *House Policy* will be prominently displayed, continually updated and continually applied. Alcohol will not be allowed to be taken into areas other than those indicated by appropriate signage.
- Amenity of the neighbourhood. The licensee shall take “all reasonable measures” to prevent adverse impact on the surrounding environment including preventing loud and unruly behaviour from patrons, amplified and crowd noise emanating from the Premises, persons urinating publically, rubbish in the streets and around the Premises, and property theft or vandalism.
- Maintaining operational integrity. Management of the café will ensure compliance with the Plan of Management and will conduct reviews to this end.
- Amendment to the Plan of Management. Police consent will be sought before modifying the Plan of Management.
- Miscellaneous procedures. A copy of the *House Policy* must be maintained in the RSA certificate register and must be updated if there are any legislative changes.
- Incident register. An incident register will be kept on the Premises and will include a log of any alcohol related incidents, including intoxication, underage drinking, visits from Police or the Office of Liquor, Gaming & Racing.

16. **Submission from the Applicant on section 31 of the Act, emailed to Authority staff on 21 May 2015.** This submission is directed to section 31 of the Act. The Applicant makes the following submissions:
- The location of the Premises. The Premises is located within Club Googong, a community and sporting facility. The Yellow Belly Café and General Store is the only “significant” commercial tenant and is presently the only business in Googong Township to offer food and beverage services.
 - The nature of the business. The primary business of the Yellow Belly Café and General Store is the preparation and sale of food. The sale of liquor is being established as a physically separate and secondary aspect of that business. The proposed packaged liquor licence will not be granted in respect of premises comprising a take-away food shop, as defined in section 31 of the Act. The proposed packaged liquor area (which is less than 15 square metres) is intended to be located in an area separate from the rest of the general store and the café. Products will be stored in two fridges and a set of adjacent shelves.
 - Other premises. There are presently no premises that sell packaged liquor in Googong. The nearest packaged liquor retailer is Walsh’s Hotel in Queanbeyan, approximately 8 kilometres away. This Application provides a close alternative for patrons and residents and reduces the likelihood of drink driving.
 - Alcohol related harm. Drink driving or other liquor related harm would not be encouraged should this Application be granted given the scale and nature of the operation in a “family centric community”. No concerns have been raised by NSW Police in this regard.
17. **Queanbeyan City Council (Council) Development Application (DA) No. 44-2012, dated 25 September 2012.** This DA records the grant of development consent by Council for the “erection and use of a recreation facility (indoor), neighbourhood shop, ancillary café and landscape features” at the Premises. The hours of trade permitted by the DA are recorded as between 6am and 10pm daily. The DA also addresses, *inter alia*, the regulation of construction, fire safety, maintenance, and amenities.
18. **Submission from Council to the Applicant’s solicitor, dated 14 October 2013.** This submission advises that Council does not object to the Application provided that it is consistent with the terms of the DA. Council submits that the term “neighbourhood shop” appearing in DA no. 44-2012 allows for the sale of “some alcohol” but that alcohol could not be the “predominant item for sale”.
19. **Australian Securities and Investments Commission (ASIC) Company Extract created on 10 December 2014:** for Oznik Pty Ltd disclosing that the directors of this company are John Osmialowski, Frank Bresnik, Roslyn Bresnik, and Kellie Osmialowski.
20. **Submission from the then Office of Liquor, Gaming and Racing dated 10 August 2015 now Liquor and Gaming NSW (LGNSW).** This submission attaches an Environmental and Venue Assessment Tool (EVAT) Assessment Report and notes that LGNSW “does not intend to carry out any further assessment”. The EVAT Assessment Report provides that venue and location risk factors are low to moderate.
21. **Submission from NSW Police – Monaro Local Area Command (LAC), dated 9 December 2015.** This submission notes the following:
- “We have no objections and are more than happy to agree with ILGA’s final determination with respect to trading hours.”

- 22. Publicly available BOCSAR crime mapping data for July 2014 to June 2015.** These crime maps indicate that the Premises is not located in or near any hotspots for the concentration of *domestic* and *non-domestic assault* or *malicious damage to property*.
- 23. Crime data sourced from BOCSAR for calendar year 2013 detailing rates of offences for the Wollondilly LGA compared to rates for NSW as a whole.** This data details rates of certain reported crime incidents that were also recorded by Police as *alcohol-related*. This report indicates that for calendar year 2013 in the Queanbeyan LGA as a whole:
- the rate of *alcohol-related assault police* incidents was **11** per 100,000 persons compared to **24** per 100,000 persons for NSW as a whole.
 - the rate of *alcohol-related domestic-violence assault* incidents was **129** per 100,000 persons compared to **145** per 100,000 persons for NSW as a whole.
 - the rate of *alcohol-related malicious damage to property* incidents was **153** per 100,000 person compared to **122** per 100,000 persons for NSW as a whole.
 - the rate of *alcohol related non-domestic violence assault* incidents was **153** per 100,000 persons compared to **191** per 100,000 persons for NSW as a whole.
- 24. Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS) in 2011,** indicating that the state suburb of Queanbeyan falls within the 5th decile on the Index of Relative Socio-economic Advantage and Disadvantage (IRSAD) for all suburbs in New South Wales, while the Queanbeyan LGA falls within the 9th decile for all LGAs within in New South Wales (with a ranking of 10 being the most advantaged).
- 25. Authority licensing records.** These records, which are updated regularly and available for purchase from LGNSW indicate that within the state suburb of Googong there are currently no licenced premises. The records also indicate that in the neighbouring suburb of Queanbeyan there are presently five (5) registered club licences, four (4) full hotel licences, and six (6) packaged liquor licences.
- 26. Authority licence density data.** This data records the liquor licence density in respect of the Queanbeyan LGA compared to the State of New South Wales as a whole. It indicates that within Queanbeyan LGA there are:
- **13.16** club licences per 100,000 persons compared to NSW as a whole which has **20.48** per 100,000 persons;
 - **26.32** full hotel licences per 100,000 persons compared to NSW as a whole which has **30.36** per 100,000 persons;
 - **34.22** packaged liquor licences per 100,000 persons compared to NSW which has **32.85** per 100,000 persons.

LEGISLATION

- 27. The power to grant a new liquor licence is provided by section 45 of the Act, which states:**

45 Decision of Authority in relation to licence applications

- (1) *The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant*

the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.

(2) ...

(3) *The Authority must not grant a licence unless the Authority is satisfied that:*

- (a) *the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and*
- (b) *practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and*
- (c) *if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates – that development consent or approval is in force.*

28. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

29. Section 48(5) of the Act states:

48 Community impact

(5) *The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*

- (a) *the community impact statement provided with the application, and*
- (b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions), that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.*

30. An application for a packaged liquor licence is a type of licence prescribed by section 48(2) requiring a CIS and satisfaction of the overall social impact test.

31. In determining the Application, the Delegate also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states:

3 Objects of Act

- (1) *The objects of this Act are as follows:*
 - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*

- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
 - (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

32. As this Application relates to the grant of a packaged liquor licence to a general store the Delegate has also had regard to section 31 of the Act:

31 Restrictions on granting packaged liquor licences

- (1) *A packaged liquor licence must not be granted for premises that comprise a general store unless the Authority is satisfied that:*
 - (a) *in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and*
 - (b) *the grant of the licence would not encourage drink-driving or other liquor-related harm.*

- (2) *A packaged liquor licence must not be granted for premises comprising a service station or take-away food shop.*

- (3) *In this section:*

"general store" means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.

"service station" means premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.

"take-away food shop" means premises that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises).

REASONS

33. The Delegate is satisfied, on the basis of the Application material that Applicant seeks a packaged liquor licence for premises that constitute a “general store” within the meaning of section 31(3) of the Act. A “general store” is defined by the Act as being a “convenience store, mixed business shop, corner shop or milk bar” with a floor area of 240 square metres or less.
34. The Applicant has supplied a document addressing section 31 of the Act, including a description of the area and operation of the Premises. It is contended that the floor area of the Premises is 82 square metres and that a range of “convenience” products are sold from the Premises. The Applicant has also supplied plans and photographs of the Premises which are consistent with this description.
35. Under section 31(1) of the Act the Authority must not grant a packaged liquor licence to a general store unless it is satisfied that in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public.
36. The Act does not define what “neighbourhood” means. The *Australian Concise Oxford Dictionary* (2nd Edn) provides the following definition:
- neighbourhood**
1. **a** A district, esp one forming a community within a town or city. **b** the people of a district; one’s neighbours.
37. The following further guidance as to how the concept of a neighbourhood may be applied arises is provided in the following case law:
38. In *Re Miscamble’s Application* [1966] VR 596 at 602 the Victorian Supreme Court held that the meaning of ‘neighbourhood’ is a question of fact, to be assessed in the circumstances of the particular case. The relevant time for determining what is ‘the neighbourhood’ is the date of application to the Court rather than the date of making of the covenant in respect of restrictive covenants, but this thinking is relevant to licensing laws.
39. Second, the New South Wales Supreme Court in *O’Sullivan v Woodford* [1983] 2NSWLR9 at 15G, 16C and 16G-17B has held that “neighbourhood” for the purposes of s 29(1)(e) of the *Liquor Act 1912* is purely territorial and has no connection with trading area (*Armstrong v Edgecock* (20 September 1984)) and the word “neighbourhood” in s29(1)(e) relates to and has to be based on the physical, geographical site of the proposed premises and is not to be equated with goodwill or a trade or a business area, or the scope and extent of the business”.
40. In *Morgan v Goodall* [1984] 1 NSWLR 108 at 110 the New South Wales Supreme Court held that the reference to “the neighbourhood” in the Liquor Acts cannot be interpreted as a reference to a “locality” within the Interpretation Act 1897, s 17; it is to be treated as

a general reference to an area, to be ascertained as a matter of evidence and discretion, from which people might come whose requirements or demands for liquor must be considered - *Morgan v Goodall* [1984] 1 NSWLR 108 at 110.

41. The Delegate has considered what the neighbourhood in relation to the propose Premises may mean. The Delegate notes that the neighbourhood of a densely populated inner city area may be more geographically constrained than the neighbourhood in a less populated regional area. Googong is a suburb of Queanbeyan. It has until recently been sparsely populated but is currently subject to residential development.
42. The Delegate accepts the Applicant's contention that there are no other packaged liquor licenced facilities within the state suburb of Googong. That finding is established by the LGNSW records of licenced premises, which indicate that there are no licensed premises of any kind in this state suburb. In those circumstances the Delegate has no difficulty being satisfied that there are no liquor licensed premises located within the neighbourhood of the Premises.
43. However, the Delegate is not satisfied that with respect to the neighbourhood of the Premises there is no take-away service that is *reasonably available* to the relevant public.
44. The Delegate is satisfied on the basis of LGNSW licencing records before the Delegate, that there are a range of licensed businesses within the neighbouring suburb of Queanbeyan which hosts:
 - five (5) registered club licences
 - four (4) full hotel licences and
 - six (6) packaged liquor licenced businesses.
45. According to the Applicant, the nearest packaged liquor outlet is 8km away. Accepting that this is the case, the Applicant has provided little by way of positive evidence establishing how it is *unreasonable* for the relevant public to access packaged liquor from that outlet or the numerous other liquor outlets in Queanbeyan authorised to sell takeaway liquor.
46. It is in a practical sense incumbent upon an applicant to demonstrate how liquor is not reasonably available to the public in the relevant neighbourhood of the Premises.
47. While the Delegate accepts that licensing a business within the suburb of Googong would likely provide greater convenience to those living in the community of Googong, that is not the test.
48. The Act prohibits the licensing of general stores unless in the neighbourhood concerned, no other take away liquor service is reasonably available to the relevant public. The Delegate does not accept that the distance to the nearest outlet in Queanbeyan, a drive of 8 kilometres away (which driving at 60kms per hour would take 8 minutes) is sufficient

to constitute an "unreasonable" distance to travel to acquire packaged liquor for persons in the neighbourhood of the Premises.

49. In conclusion, the Delegate is not satisfied that the Applicant has fulfilled the requirements of section 31(1)(a) of the Act. The Delegate is not satisfied that within the neighbourhood of the premises no other packaged liquor service is reasonably available to members of the public.
50. In making this decisions the Delegate has had regard to all of the statutory objects of section 3(1) and has taken into account all of the considerations prescribed by section 3(2).


Allison Waring
Delegate

DATED: 4 APRIL 2016