



Mr Tony Schwartz  
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26 July 2018

Dear Mr Schwartz,

<b>Application No.</b>	1- 5708531093
<b>Applicant</b>	Ms Sherry Hayden
<b>Application for</b>	Removal of a packaged liquor licence
<b>Proposed licence name</b>	BWS – Beer Wine Spirits
<b>Trading hours</b>	Monday to Saturday 9:00 am – 7:00 pm Sunday 10:00 am to 7:00 pm
<b>Current premises</b>	266 Corkhill Drive, Tilba Tilba (currently known as “Pam’s General Store”)
<b>Proposed premises</b>	1-9 Young Street, Bermagui NSW 2546
<b>Legislation</b>	Sections 3, 11A, 12, 29, 30, 31, 40, 45, 48 and 59 of the <i>Liquor Act 2007</i> (NSW)

**Decision of the Independent Liquor and Gaming Authority on  
Application for removal of a packaged liquor licence – Pam’s General Store to be  
known as BWS – Beer Wine Spirits, Bermagui**

The Independent Liquor and Gaming Authority (“Authority”) considered application number 1-5708531093, seeking the removal of a packaged liquor licence (“Application”) and has decided, pursuant to section 59 of the *Liquor Act 2007* (NSW) (“Liquor Act”), to **refuse** the Application.

The attached statement of reasons has been prepared pursuant to section 36C of the *Gaming and Liquor Administration Act 2007* (NSW) in the context of a high-volume liquor jurisdiction requiring the publication of reasons as soon as practicable.

If you have any enquiries about this letter, please contact the case manager via email to [andrew.whitehead@liquorandgaming.nsw.gov.au](mailto:andrew.whitehead@liquorandgaming.nsw.gov.au)

Yours faithfully

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

## Statement of reasons

### Background

1. On 4 May 2017 the Independent Liquor and Gaming Authority (“Authority”) received an application dated 5 April 2017 (“Application”) from Ms Sherry Hayden (“the Applicant”), seeking the approval under section 59 of the *Liquor Act 2007* (NSW) (“Act”) to remove a packaged liquor licence number LIQP700384484 attached to premises at 266 Corkhill Drive, Tilba Tilba formerly trading as *Pam’s General Store* (“Current Premises”) to new premises located at 1-9 Young Street, Bermagui (“Proposed Premises”).
2. The purpose of removing the licence is to operate a new packaged liquor business to be known as “BWS – Beer Wine Spirits” within the Bermagui CBD that will be situated immediately adjacent to an established Woolworths Supermarket, within a building that would house only these liquor and grocery businesses.
3. While Ms Hayden is the Applicant on the record, the Application is being prosecuted by Endeavour Drinks Group, a retail liquor business that is part of the Woolworths group of companies. Mr Tony Schwartz from the law firm Back Schwartz Vaughan acts for both the Applicant and Endeavour Drinks Group in this matter.

### Decision

4. Having considered together the positive and negative social impacts that the Authority considers likely to flow from approving the removal of the licence, the Authority is *not* satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of approving the Application would *not* be detrimental to the well-being of the local and broader communities. The Application is refused pursuant to section 59 of the Act.

### Material considered by the Authority

5. The Authority has considered the Application, community impact statement (“CIS”) and all submissions received in relation to the Application. At the time of making this decision there are around 1200 pages of material before the Authority.
6. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision, as all parties required to be notified were provided with a reasonable opportunity to make submissions.
7. In accordance with the Authority’s *Guideline 6*, the Authority has also had regard to relevant Liquor and Gaming New South Wales (“LGNSW”) liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, New South Wales Department of Health *HealthStats* data and Australian Bureau of Statistics (“ABS”) socio-demographic data, sourced by LGNSW staff from publicly available sources.
8. The list of 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 objects of the Act, as set out in section 3(1), are 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; facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with

minimum formality and technicality and contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

11. In the pursuit of these objectives, section 3(2) of the Act requires the Authority, when determining a liquor related application, to 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.

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

12. Section 12 of the Act prescribes the standard trading period for different types of liquor licences. Additionally, section 11A imposes a condition upon all licences that fall within the scope of that section, 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.

#### Removal of liquor licence

13. Section 59(2) of the Act provides the minimum legal requirements regarding the removal of a licence to another premises.
14. Pursuant to section 59(3) of the Act, when determining an application to remove a licence to other premises, the Authority is to deal with and determine the application as if it were an application for the granting of a licence in respect of those other premises. The Authority has the same powers in relation to such application as the Authority has in relation to an application for a new licence.
15. Section 59(5) of the Act provides that the Authority *must* refuse an application for approval to remove a licence unless the Authority is satisfied that:
  - practices will, as soon as the removal of the licence takes effect, be in place at the premises to which the licence is proposed to be removed that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on those premises and that all reasonable steps are taken to prevent intoxication on those premises, and
  - those practices will remain in place.

#### Minimum procedural requirements

16. Section 40 of the Act (which applies through the operation of section 59(3) of the Act) and relevant provisions in the *Liquor Regulation 2008* (NSW) ("Regulation") prescribe the minimum procedural requirements for the making of a liquor licence application to be validly made to the Authority.

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

17. Through the operation of section 59(3) of the Act, section 45(3) of the Act also applies to this Application and provides that the Authority may only grant a licence if 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. Sections 48(2) and (3) of the Act require that certain “relevant applications” (including an application to remove a packaged liquor licence to other premises) must be accompanied by a CIS that is prepared in accordance with the relevant requirements that are specified in the Act and Regulation.
19. Section 48(5) provides that the Authority may only grant an application to which section 48 applies 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 before it.

#### Provisions specific to a packaged liquor licence

20. Further legislative provisions that are specific to a packaged liquor licence are set out in sections 29 to 31 of the Act and in the Regulation.

#### **Key findings**

21. 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 other requirements

22. The Authority is satisfied that the Application and accompanying CIS was validly made in that it meets the minimum content and consultation requirements of sections 40 and 59 of the Act and clauses 6 through 11A of the Regulation.
23. This finding is made on the basis of the information provided in the Application form, the CIS material and two Certificates of Advertising – one signed by Mr Schwartz dated 29 May 2017 and another signed by Mr James Alexander Scott-Mackenzie – an authorised officer of Woolworths Limited – dated 30 May 2017.
24. One procedural issue was identified by the Authority on 21 March 2018 when it attended a public meeting in Bermagui. The Site Notice notifying the Application (required by clause 9 of the Regulation to be affixed to the Premises not later than two days after the Application is made and remain affixed until the Application is determined) was not in a position that was legible to passers-by.
25. As recorded in video evidence taken by staff assisting the Authority, the Notice was on its side, attached to an automatic internal glass door located to the right side of the building when a person enters the main exterior doors to Woolworths. The internal door leads into the proposed liquor store area, currently utilised as a storage space for the supermarket. These interior doors would automatically open when a person approaches them, making the Site Notice difficult to observe, let alone read.
26. This issue was put to the Applicant’s solicitors for comment who advised, in a submission dated 5 April 2018, that the Site Notice had been posted to the Premises since 4 May 2017 (the date the Application was lodged with the Authority). The Applicant submits that it is legible to members of the public and that there has been no “gap” in its display. A number of photographs taken by Mr James Scott-Mackenzie (Woolworth’s Business Development Manager) when he visited Bermagui between Thursday 3 August 2017 and Saturday 5 August 2017 depict the Site Notice as being on display. The Applicant submits that it is not unusual in shopping centre environments for Site Notices to be placed at the actual

location where the business will operate and not, for example, on the external facade of a shopping centre, which may be some 50-100 metres away. The Applicant contends that the Woolworths supermarket has been very well patronised since it opened with a substantial number of people walking past the Notice each day, and the public have had ample opportunity to be informed of this Application during the 10 months in which the Site Notice has been on display.

27. The Applicant claims that the “stickiness” of the Site Notice had “recently” caused it to appear at a “90-degree angle”. The Applicant submits that the change in position is a minor or technical matter and may be disregarded pursuant to clause 9C of the Regulation.
28. While the Authority accepts that the Site Notice had remained posted for an extensive period, placement of the Notice on its side, on a moving internal door did not comply with the requirement of clause 9(4) of the Regulation that such notice be “fixed to the premises or land in such a position that it is legible to members of the public passing the premises or land”.
29. Ordinarily this type of non-compliance may be fatal to a licence application. However, the Authority accepts the Applicant’s claim that this change in position of the Notice had occurred inadvertently and only recently during the course of a total exposure period of over one year in duration. The Authority determines that in these circumstances the non-compliance is of a minor and technical nature for the purposes of clause 9C(2) of the Regulation.
30. The Authority is satisfied, on the information provided in the Application and CIS that the proposed trading hours for the Premises meet the requirements under sections 11A, 12 and 29 of the Act.

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

31. Pursuant to section 45(3)(a) of the Act, the Authority is satisfied that the Applicant is a fit and proper person to carry on the business to which the proposed licence relates. This finding is made on the basis that no probity concerns regarding the Applicant (or the proposed operator of the Woolworths business) were raised in response to consultation with relevant law enforcement agencies, including NSW Police (“Police”) and the Compliance section of LGNSW.
32. Pursuant to sections 45(3)(b) and 59(5) of the Act, the Authority is satisfied that practices will be in place, from the commencement of licensed trading at the Proposed Premises, to ensure the responsible serving of alcohol and prevention of intoxication. This finding is made on the basis of the Applicant’s business planning documents titled *Liquor Store “House Policy”* and *Woolworths Best Practice Policy and Interventions*.
33. Pursuant to section 45(3)(c) of the Act, the Authority is satisfied that any development consent that is required for the conduct of the business or activity to which the licence relates (a packaged liquor business) is in force with respect to the Proposed Premises. This finding is made on the basis of DA:2013.405, issued by Bega Valley Shire Council (“Council”) on 16 April 2014 permitting “Construction of a supermarket and two specialty retail tenancies, car parking, landscaping and associated advertising signage”. The Authority further notes that the Applicant has provided a Complying Development Certificate J140282 issued by Vic Lilli & Partners on 29 September 2014 in respect of the proposed fit-out of a commercial tenancy as a liquor store.

### Community impact statement

34. The Applicant is required to submit a CIS by reason that the Application is a “relevant application” under section 48(2) of the Act. The Authority has taken into consideration the CIS and other available information when making the below findings on the overall social impact of licensing the Proposed Premises in respect of the local and broader communities.
35. Consistent with *Authority Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Bermagui, while the “broader community” comprises the Bega Valley Shire local government area (“Bega LGA”).

### Community and stakeholder submissions

36. Over 100 written submissions have been lodged in relation to this Application, although some submitters have lodged multiple submissions throughout the community consultation and Application process. Of these submissions, only one written submission was made in support of the Application from Mr T Davies, a resident of the State suburb of Tanja. The writer supports the proposal on the basis that it will offer one-stop shopping in a convenient location and that BWS will provide products that he requires and staff who are helpful and knowledgeable. The writer contends that the community will benefit from increased competition and the new liquor store will provide long-term employment opportunities for locals. The writer states that he is not aware of any examples of members of the community who drink irresponsibly and there is no vandalism, empty bottles in the streets, nor is the local paper full of alcohol related stories of violence or other problems.
37. NSW Police do not object to the Application and have observed that the Applicant is meeting its responsible service of alcohol responsibilities. Police request that a number of conditions be imposed upon the licence should it be granted.
38. Roads and Maritime Services (“RMS”) responded with a standard submission making no objection to the Application while recommending that the licensee join the Bega Valley Liquor accord, maintain awareness of any specific local alcohol-related issues to impact the community and display relevant public education material in store, including material focused on drink driving and pedestrian-alcohol safety with “safe party” information provided to any persons buying large quantities of alcohol.
39. NSW Aboriginal Affairs do not advise any objection to the Application on the proviso that the NSW Aboriginal Land Council and Local Aboriginal Land Council have been notified and afforded the opportunity to comment.
40. The Compliance section of LGNSW advised that they do not intend to carry out any further assessment of this Application at this time.
41. Submissions from local representatives of the Aboriginal or Torres Strait Islander (“ATSI”) community were made by the Merrimans Local Aboriginal Land Council, opposing the Application. The Land Council contends that: there are sufficient liquor outlets in Bermagui; that Bega LGA has one of the worst liquor related crime statistics in NSW while Bermagui has one of the *lowest* crime rates in the State – but this will change should the licence be granted; that the new liquor business will give rise to increased trouble and crime and increased young people drink driving in the community.
42. A further submission was made by Mr S Buckley, a member of Merrimans Land Council raising concerns about the potential for the liquor sold by this new business to contribute to increased violence and trouble in Bermagui.

43. Further submissions were received from a number of local private and community organisations. The Bermagui and District Branch of the Country Womens Association sent a one-page submission dated 19 December 2016 and a further one-page submission dated 23 January 2017 opposing the Application. Another local community group which requested that its identity not be disclosed made a one-page submission dated 14 December 2016 opposing the Application.
44. The business owner of the Bermagui Beach Hotel made submissions opposing the Application, including a two-page letter dated 23 December 2016, a two-page letter dated 19 June 2017 and a 6-page letter dated 10 July 2017 attaching a 25-page report from a consultant engaged by the hotel, Ms R Saltman. The hotel was represented by HWL Ebsworth Lawyers. The Authority does not propose to repeat in detail the submissions of Ms Saltman, but the key contentions included:
- The circumstances in which development consent was granted for use of the premises effectively “sidestepped” any need to address its social impact upon the local community;
  - The social impact of removing this licence should be assessed on the same basis as if it were a new application;
  - The claimed community benefit of a new state of the art building, car-parking and external CCTV has already been exhausted through the building that has already been constructed;
  - While Bega LGA has enjoyed moderate population growth between 2011 and 2016, there has been negligible growth in Bermagui’s population;
  - Woolworth’s claim that it contributes to the strong economic growth of the local community is exaggerated;
  - The association between unemployment and risky drinking levels;
  - For the year ending December 2016 rates per 100,000 persons for non-domestic violence, assault police and disorderly conduct, were significantly higher in the broader community than those of NSW;
  - While large numbers of persons residing elsewhere in the LGA may not currently be customers of the supermarket, that does not mean that they will not be customers of the liquor store in future;
  - There is no evidence that Mr Patrick Paroz has any experience of policing in coastal regions that are remote from Sydney;
  - Mr Paroz did not consult with the local Indigenous community;
  - Mr Paroz’s views are contradictory in that on the one hand, he claims that towns separated by significant distances have little or no impact on crime statistics in other towns, while on the other hand he submits that it is not possible, nor effective policing practice, to adopt a generic approach to policing across “such diverse communities”;
  - The scope of operations at the former Pam’s General Store, which sold a small selection of beers and wines, was significantly smaller than the proposed BWS store;
  - The closure of Pam’s General Store, coupled with the addition of a new liquor store in the local community, is likely to increase harm to an at-risk group within that local community;

- It is also possible that some of the alcohol purchased in Bermagui could contribute to crime rates elsewhere;
- Although alcohol-fuelled domestic violence counts in the local and broader community appear low, this does not mean that such incidents are not occurring;
- Underreporting of crime is common, particularly for the Aboriginal community at Wallaga Lake;
- The BWS brand, customer loyalty program and its customer service should not be accepted as social benefits arising from granting this Application;
- Proposed support within the community is small and fettered;
- There is a higher proportion of Indigenous people in the local and broader communities compared to NSW;
- The fact that there is very little to no evidence of *alcohol-related crime* in Wallaga Lake recorded over a two-year period, cannot be taken to mean that the local Indigenous community are not at an elevated risk of *alcohol related harm*;
- Mr Ken Campbell, Chairman of the Merrimans Local Aboriginal Land Council has reaffirmed that the Aboriginal community was opposed to the BWS liquor store, through concern about the increased availability of alcohol and its impact upon indigenous youth;
- An increased risk of alcohol related harm arises through the very high proportion of older persons, the higher rates of persons with disabilities and the higher proportions of labourers in the local and broader communities.
- Liquor outlet density in the broader community is higher than NSW and outlet density in the local community is significantly higher than NSW rates. There is no justification for facilitating a higher rate of licensed premises in Bermagui than exists elsewhere;
- The BWS store will offer discounts from time to time in alcohol prices to the population of Bermagui;
- There is no justification for downgrading the relevance of Socio-Economic Indexes For Areas (“SEIFA”) scores for the local and broader communities;
- Granting this Application would result in potential harms for the local and broader communities, having regard to vulnerabilities of the indigenous population, persons with disabilities, the unemployed, labourers and to the low socio-economic status of these communities as a whole. Such harms would be further compounded by increasing what are already higher than average licence outlet densities across the local and broader communities;
- The volume of community opposition to an application is one measure of the impact that granting of a licence may be expected to have upon the well-being of the local community.
- There is a view in the community that less crime is reported because it is generally known that the police station is not staffed full-time and that calls are diverted to stations which are remote from Bermagui;
- Council remains concerned about levels of consultation carried on with the preparation of the CIS, with respect to underage drinking and secondary supply of liquor to minors generally in the Bega LGA, and underage drinking in the Aboriginal community specifically;



- Little has changed since the last licence application was refused other than there has been an improvement in the rate of alcohol-related hospital admissions, the proposed operating hours have been reduced at closing and there are no longer any crime hotspots in Bermagui. These changes are not sufficient to overcome the significant negative social impacts that are likely to arise if this Application is granted, nor do they demonstrate that the overall social impact of granting the Application will not be detrimental to the local and broader community.
45. Another local commercial competitor, the proprietors of Bermagui Cellars, opposed the Application in a two-page submission dated 23 December 2017, a half page LGNSW online submission dated 12 June 2017 and a twenty-one-page submission dated 7 July 2017.
  46. A local law practice, Millar Crew Legal and Consulting, made a four-page submission dated 19 June 2017 on its own behalf opposing the Application.
  47. The Bermagui Preschool made a two-page submission dated 16 June 2017 opposing the Application, as did the Bermagui Surf Life Saving Club in a one-page submission dated 19 June 2017.
  48. Bega Shire Council made a three-page submission dated 16 June 2017, Council submits that the contentions made in its previous submission dated November 2014 (opposing the previous application for a licence) may be relied upon by the Authority in this instance.
  49. In its current submission Council calls into question the degree of community consultation conducted, particularly with respect to the Aboriginal community. The Authority notes that Council's previous submission dated November 2014 had raised social impact concerns based upon what it contends is the "prevalence" of liquor licences already serving the communities; the licensed opening hours sought; the impacts of liquor sales upon the general health and wellbeing of the community; the lack of any "localised research" available on the social impact of liquor in the community and the absence of any specific feedback from health and community service providers working in and around Bermagui and the (then) lack of feedback from local Aboriginal organisations.
  50. Council's previous submission had also focussed on Bermagui being a socially disadvantaged area; with "at risk" groups among the population. Council contended that this new liquor business would contribute to underage drinking and secondary supply in Bermagui and that there is a risk of increasing licence density and the contribution this may make to alcohol related crime.
  51. The remaining written community submissions were from residents of Bermagui (the bulk of written submissions) but also residents in nearby suburbs within the broader community including Murrah, Wallaga Lake Heights, Wallaga Lake, Tathra, Tanja, Wapengo, Quaama, Barragga Bay and Coolagolite. There were also some submissions made by residents of Akolele and Central Tilba which form part of the broader community of the Current Premises – the Eurobodalla Shire Local Government Area
  52. The Authority does not propose to repeat in detail the community submissions but the key contentions advanced included:
    - the location of the store in a residential area;
    - increased traffic impacts and noise from the new liquor business, including heavy vehicles;

- adverse economic impact this new enterprise will have upon existing local licensed businesses;
- impact of this new liquor store upon the character of the Bermagui village;
- the prospect of smashed glass and liquor related litter arising from the liquor sold at this location;
- the contribution of the liquor sold by this new business to localised property damage that is currently experienced in the community;
- that the Application should be treated as a new licence rather than a removal by reason of the distance between the Current and Proposed Premises;
- the differences in business models between the current family licensed business in Bermagui and the proposed major liquor chain;
- the larger floor space and larger number of product lines and liquor volume that will be stocked by the proposed business;
- the low socio-economic status of the local community, including pensioners;
- the risk of local people on low incomes further diverting their money to liquor and gaming expenditure;
- that the small village of Bermagui is already adequately catered for by the incumbent licensees;
- that domestic violence is an existing issue, particularly within the Aboriginal community;
- that there are health issues associated with the abuse of liquor in the local community;
- that there is a lack of a full time local Police presence and a considerable distance to the nearest 24/7 Police station some 30 minutes away;
- that there is only one medical centre in Bermagui; that liquor abuse places demands upon medical services; that the licensed trading hours sought are extensive;
- that there is a risk of the liquor sold from the Proposed Premises contributing to alcohol related anti-social behaviour and/or violence in the community;
- that there is a risk of the liquor sales contributing to alcohol abuse amongst the Aboriginal community;
- that the local roads are treacherous and there is a risk of liquor sales contributing to drink driving in the communities;
- that the consultation process was designed to minimise community responses;
- that “nothing has changed” since the previous decision of the Authority to refuse a licence for the Proposed Premises;
- that there will be a risk of “cheap prices” and alcohol promotions, loyalty programs and discounts offered by the new business encouraging liquor purchases;
- that the sale of alcohol to minors and secondary supply to minors is already an issue in Bermagui during holiday periods and this new business will contribute to that;
- that any new employment benefits will be minimal as the new business will likely force the incumbent businesses to close, resulting in a net loss of local employment;

- that the Wallaga Lake Koori Village (in an area neighbouring Bermagui) is moving towards implementing a “dry” community and this proposal will work against that object;
- that the existing licensed premises are operated by local persons who know the community well and adopt a responsible approach to the supply of liquor;
- that there is a significant amount of unreported crime occurring in the local area;
- that the new business by reason of its situation close to the Supermarket will expose children and young people to alcohol consumption;
- that there is negligible population growth in Bermagui;
- that the alcohol-related hospitalisation data for the broader community is concerning;
- that there are significant “at risk” groups in the local and broader communities, including persons of ATSI background and older persons; and
- that there is a risk of this new business offering “cheap” prices that will induce consumption by minors and alcoholics.

### The Public Meeting

53. At 6:30 pm on Wednesday 21 March 2018, the Authority conducted a two-hour public meeting at the Bermagui Community Centre. Over 130 people attended and given the small population of Bermagui (1,536 persons according to the ABS *QuickStats* population data from the 2016 Census) this represented a substantial turnout, notwithstanding that some persons may have been residents from other areas in the broader community. In terms of the strength of community response, this was the largest attendance at a public meeting convened by the Authority in respect of a liquor licence application since the Authority commenced operations in 2008. It was also notable that this response occurred notwithstanding some disruption to the Bermagui community caused by the bushfires in and around nearby Tathra three days previously.
54. The Authority has before it an audio recording of the meeting. Twenty-nine people chose to speak, with all but the Woolworths executive, Mr James Scott-Mackenzie (accompanied by his lawyer, Mr Schwartz) opposing the Application. The overwhelming majority of speakers identified themselves as residents of Bermagui.
55. Oral submissions were made by Mr Mackenzie, followed by community submissions from: Mr T Hill (Merrimans Local Aboriginal Land Council CEO); Mr G Campbell (speaking on behalf of the local ATSI community); Mr M Trenerry (the licensee of Bermagui Cellars, a local liquor store); Mr J Black; Mr A Millar; Ms B Craze; Ms C Griff (a Councillor who spoke in her personal capacity); Mr D Payne; Mr G Steel; Mr G Stone; Mr G Day; Ms H O'Connor; Ms I Payne; Mr R Hughes; Mr J Miller; Ms M Smith; Ms N Myers (teacher at the local pre-school); Mr N Rutherford (licensee of Bermagui Surf Life Saving Club); Mr S Buckley (Department of Education ATSI liaison officer, speaking in his personal capacity); Ms T McHugh; Mr K Bowden; Mr S Burke; Ms E Smith; Mr M McDonald; Mr C Sager; Ms J Dodds (a local Councillor speaking in her personal capacity); Mr L Redmond (the licensee of the Bermagui Beach Hotel); and Mr M Wheatley.
56. At the commencement of the meeting, Mr Mackenzie spoke briefly on behalf of the Applicant, submitting that the Applicant has already changed its proposal in response to community consultation by proposing to cease trading earlier in the evening, at 7:00pm. Woolworths will also leave the existing shade cloth over the proposed licensed area of the building to limit visibility and will not display the usual BWS advertising livery outside the

Premises. Mr Mackenzie submits that the purpose of the new liquor store is to provide the convenience of one-stop liquor and grocery shopping, which is currently available via Woolworths and other retailers at some 2100 locations across Australia. He advises that should the Application be granted, Woolworths will work with the community to address any concerns that may arise.

57. Without purporting to repeat the detail of the community submissions, some of the key contentions made during the meeting included:
- that “one-stop shopping” is not actually good for the local Aboriginal community who utilise the supermarket;
  - that the local community includes many alcohol dependent people, for whom one-stop shopping creates the additional risk of choosing liquor over food;
  - that there is no need for another takeaway liquor outlet in Bermagui given the existing local liquor availability;
  - that “nothing has changed” in Bermagui since the previous packaged liquor licence application was refused by the Authority;
  - that granting this Application will result in money being removed from the local economy;
  - that local residents do not wish to deal with the prospect of alcohol-related amenity issues occurring on or near the site while taking children to the adjoining supermarket;
  - that Bermagui is already served by adequate access to packaged liquor;
  - that further access to packaged liquor will see an increase in local consumption of liquor;
  - that increased liquor consumption leads to further anti-social behaviour;
  - that there is a limited Police presence in Bermagui;
  - that the local community is socially disadvantaged, with a median weekly household income that is 50% below the median for New South Wales;
  - that the local community already has a high liquor outlet density with a stagnant population growth;
  - that there are current issues in Bermagui with limited local visibility and public lighting;
  - that there are three existing local licensed premises able to sell takeaway liquor who behave responsibly and are adequate for this local community;
  - that Bermagui is an increasingly popular destination for holiday makers, with groups of men seen drinking in public spaces;
  - that the median age of Bermagui is 58 and this is the oldest in New South Wales;
  - that if the new licence is granted people will not “plan” their evenings appropriately (by shopping earlier in the day) and be more likely to hang around the town of an evening;
  - that granting the licence may prompt other licensees to seek to open later to compete;
  - that the local community already has issues with liquor abuse, especially among youths; and

- that the location of this licensed business, adjacent to the town's main supermarket will be problematic for local youth and provide a new incentive for those in the community who are struggling with alcohol to buy liquor products.

### Positive social impacts

58. The Authority is satisfied, on the information provided by the Applicant in the CIS and accompanying material, that removing this licence will provide some additional benefits to the local and broader community, by way of an increase in consumer convenience and choice to those members of the communities, including those visiting the communities, who seek "one-stop shopping" as they purchase liquor products from a BWS store co-located with a Woolworths supermarket.
59. In this sense, the proposal may potentially serve the "expectations, needs and aspirations" of the communities - in particular the local community of Bermagui - in furtherance of the statutory object in section 3(1)(a).
60. The Authority accepts the estimated main trade area identified by the Applicant's consultant, Mr Gavin Duane economist and director of Location IQ, in a report dated 1 September 2017. This trade area will centre upon Bermagui but incorporate customers from several State suburbs within the broader community that surround Bermagui. The Authority finds that by reason of the extensive nature of the broader community and some degree of separation of the village of Bermagui, the primary focus of social impact assessment is the local community.
61. However, the *extent* of that benefit is somewhat constrained in this instance by reason that, on the evidence or material before the Authority, the relevant communities (particularly the local community) are trenchantly opposed to this new packaged liquor business operating in Bermagui.
62. While the extent to which a licence will serve community expectations, needs and aspirations is an *objective* matter for the Authority to determine and should not be reduced to a mere popularity contest - the Authority cannot ignore the overwhelming local opposition expressed in the form of numerous written and oral submissions in response to this Application.
63. The fact that so many local submitters were willing to speak against the proposal at the public meeting, with those submissions apparently supported by the overwhelming majority of those who were in attendance, warrants additional weight when assessing whether granting *this* Application would actually advance the expectations of *this* local community.
64. While there is always the potential for local opposition to be orchestrated by local commercial interests, the community opposition did not present as pre-fabricated and the oral submissions were considered, individualised and credible.
65. It is quite uncommon, in the Authority's experience, for a packaged liquor application to receive such an asymmetric response, and for local opposition to be sustained over several years. The Authority notes the community opposition that was identified in the Authority's decision published on 14 January 2016, to refuse a similar type of application for the Premises.
66. So while the additional convenience flowing from this new business cannot be dismissed, the weight that would ordinarily be given to this positive benefit is substantially reduced in the context of a community that simply *does not want* another packaged liquor licence in this location.

67. The Authority accepts the Applicant's contention that the *Woolworths Everyday Rewards* ("EDR") customer loyalty data provided in the Applicant's submission dated 5 April 2018 demonstrates that a portion of the local population who have shopped at the Bermagui Woolworths Supermarket also swiped their EDR card at BWS locations in other towns. The Authority accepts the Applicant's general contention that the BWS brand is popular among liquor shoppers and that granting this new licence would provide the convenience of one-stop shopping to those customers of Woolworths Bermagui who also wish to buy liquor from a BWS outlet while shopping for groceries next door. However, the Authority cannot accept, on the basis of such EDR data, the Applicant's contention that a silent majority of Bermagui residents actually support this proposal when so few have articulated such support, despite having had an extensive opportunity to do so.
68. The Authority finds that granting the Application would provide some moderate benefits to the local and broader community by way of the development of the liquor industry, which is an object of section 3(1)(b) of the Act.
69. On the Applicant's contentions with regard to the amenity of the new store, the Authority accepts on the information in the CIS that the BWS business will provide a well-stocked new liquor store with a substantial range of beer, wine and spirits products. The Authority accepts that an estimated 15% of the product range will be exclusive to BWS. The Authority further accepts that BWS offers a loyalty program that provides targeted offers to customers, in line with their preferred products, based on customer buying patterns. The liquor store will serve those in the community who prefer to purchase liquor at a dedicated liquor store rather than a hotel.
70. On the contended benefit of *quality customer service* and the availability of a popular brand of liquor retailer (BWS) the Authority accepts, on the basis of the Endeavour Drinks policy documentation provided by the Applicant, that Woolworths liquor stores train and educate their staff on customer service skills and various safety and compliance matters.
71. On the contended community benefit of *improved access* to liquor products, the Authority accepts that the off-street parking provided by the adjoining Supermarket will provide easy access and an additional level of convenience for customers who seek to purchase liquor at the same time as buying groceries.
72. Placing the scope for industry development in perspective, this proposal concerns a new packaged liquor business for the communities. Noting the number and location of existing licenced premises that are authorised to sell takeaway liquor in those communities, the *type* of business will not contribute to the *diversification* of the industry. That is, the Applicant is not proposing to introduce a new *style* of licensed enterprise but a newer and larger liquor store. There is little that is particularly *innovative* about this proposal, even though it will develop the packaged liquor services that are currently provided to the communities.
73. On the contended benefit of *increased employment* and career opportunities, the Authority accepts the Applicant's advice in the CIS that once operational, the new liquor business will engage 3 full time and 4 permanent part time/casual staff. The Authority accepts the Applicant's advice that 51 of the 56 employees of the Supermarket live within Bermagui. The Authority has considered a two-page letter from Mr Kevin Sellars, State Manager of BWS for NSW/ACT, which outlines the steps engaged by Endeavour Drinks Group for locating and training new staff. On the basis of this information and noting the location of the Proposed Premises in a somewhat out of the way coastal town, the Authority is

satisfied that any additional employment will likely to be sourced predominantly from within the local and broader communities. An issue arises as to whether increased employment at the BWS may displace trade and employment at incumbent local liquor businesses and this issue is unclear on the material before the Authority. If this new business does no more than cannibalise local demand, and not lead to any growth in local consumption, that may well reduce the net benefit of increased employment. The Authority gives less weight to this otherwise credible benefit by reason of the uncertainty as to displacement of employment in other local businesses.

74. As for the Applicant's submissions on its proposed *community support*, the Authority accepts, on the information provided in the CIS, that the new liquor business may contribute to the amenity of community life, for the purposes of section 3(2)(c) of the Act, through the *BWS Local Community Fund*, whereby each BWS store in Australia is allocated a *share* of over \$250,000.00 to support a local charity, club, other organisation or community group through the provision of Wish Gift Cards.
75. The Bermagui Hotel's consultant, Ms Saltman, observes in her submission dated July 2017 that Woolworths operates 1100 BWS nation-wide and that any such actual charitable support may potentially be as low as \$227 per store, depending on the level of allocation. Ms Saltman also questions whether \$250,000.00 is an annual commitment or not.
76. The Authority finds it credible that this program may deliver benefits of a potentially significant monetary value to the local or broader community. However, it is difficult to give great weight to this aspect of the proposal when the timing, nature or quantum of this *potential* funding is unclear on the information before the Authority.
77. The Authority further accepts the Applicant's advice in the CIS that Woolworths operates a broader program of donating 1% of its pre-tax profits to the local communities in which it operates. The Authority further accepts the Applicant is committed to providing an annual donation of \$1,000 to the Bermagui-Cobargo Eels NRL Club, an annual donation of \$1,000 to the Bermagui Breakers AFL Club, access to an additional \$1,000 per annum for other local organisations and in-kind support for various fundraising efforts as the opportunities are presented. These donations are stated by the Applicant to be "separate to, and over and above, any support provided by the Supermarket".
78. The Authority concludes that Woolworths maintains a significant program of providing community financial support and that some modest benefit to the amenity of community life will be facilitated through the specified donations should the Application be granted.

#### Negative social impacts from granting the Removal Application

79. Having regard to the nature of this proposal detailed in the Application and CIS and all the material before it, the Authority considers that over time there is a risk that liquor sold from this new 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.

#### *Town Planning and Anti Competition Submissions Discounted*

80. Some of the concerns articulated by local community submitters, while genuinely held, may be given little weight for the purposes of this assessment. A number of submitters have expressed concerns to the effect that a Woolworths backed liquor store will have a deleterious economic impact upon the incumbent local hotel and liquor stores.

81. Concern about potential competition impacts upon local businesses do not necessarily equate with concerns about unlawful competition, which is the province of the Australian Competition and Consumer Commission. The Authority's jurisdiction requires it to consider the *overall social impact* of granting certain types of liquor licences.
82. Nevertheless, the extent to which the relevant communities are, or are not, served by the incumbent licensed businesses is a relevant factual matter when considering the *extent of benefits* on offer by the proposal in question.
83. The prevailing licence density and the prospect of lower prices from the entry of a new business (to the extent that this is apparent), may also provide a risk factor when assessing the scope for negative impacts to flow from granting another licence of this type, scale, location and potential for adverse impact upon the communities that it serves.
84. A number of local submitters have raised what are essentially *town planning* concerns, such as increased heavy vehicle traffic, industrial noise or a change in the character of the local village through the introduction of a new major liquor chain store. While the Authority accepts that these concerns are genuinely held, the Authority is concerned with matters that fall more squarely within the scope and purpose of the liquor legislation.
85. As noted above, the Authority must be satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent to operate a packaged liquor business is in force - but it is not the Authority's role to revisit the merits of the planning approval that Council has granted for the proposed use of the Premises.

*Some changes in circumstances since refusal of the previous application*

86. While some community submitters have contended that there has been "no change" in circumstances since the Authority's previous decision to refuse a licence for the Proposed Premises, and Council defers heavily to its previous submissions, there have been some changes in circumstances, and this new proposal has been considered on its merits.
87. Notably, the trading hours sought by the Applicant on this occasion are more limited (the previous proposal sought licensed hours from 9 am to 9 pm daily. Police do not oppose this Application. The Authority is satisfied that consultation with the community, including the indigenous community, has been sufficient and this has prompted several submissions from local aboriginal groups that have been influential in the making of this decision. The Authority further accepts the BOCSAR data noted in the Applicant's CIS Statement of Impact indicating a decrease since 2014 in the number of alcohol related assault and disorderly conduct offences in Bermagui.

*Authority Guideline 6 Risk Factors*

88. Having regard to the social impact risk factors that are identified in *Authority Guideline 6*, the Authority notes that the relevant *licence type* is a packaged liquor licence - the primary purpose of which is the sale or supply of liquor by retail for consumption *away from* the licensed premises.
89. It follows that the social impact of this type of liquor business will primarily occur off the premises, where liquor will be consumed, as consumption on the Proposed Premises will be limited by the legislation to product tastings only.
90. As for the *scale* of the Proposed Premises, at approximately 144 square metres this a medium scale operation by comparison to other packaged liquor licensed businesses throughout the State. While not untypical of BWS liquor stores operating in association



with Woolworths supermarkets, this proposal is not at the smaller end of the retail liquor industry, nor does it represent a “big box” retailer either. Granting the Application will result in the *doubling* in size of the liquor business that is currently associated with the licence. At Pam’s General Store, the licence operated in respect of a total licensed area comprising 70 square metres.

91. With regard to the proposed *licensed trading hours*, the Applicant is seeking to trade between 9:00 am to 7:00 pm from Monday to Saturday and from 10:00 am to 7:00 pm on Sunday. These hours are reasonably extensive across the course of the week, although the business would close some time earlier than the 10:00 pm trading that is potentially available under section 12 of the Act.
92. The proposed evening closing time is consistent with the licensed trading hours of Bermagui Cellars, which is licensed from 10:00 am to 7:00 pm. The hours would be more limited than the licensed hours of the Bermagui Beach Hotel - which, while formally licensed to sell takeaway liquor from 5:00 am until 11:00 pm Monday through Saturday and from 10:00 am to 10:00 pm Sunday, actually commences trading from 11:00 am, according to the hotel website.
93. The evening licensed hours sought by the Applicant are a moderating factor that reduce the scope for liquor sold from this business to contribute to late night adverse social impacts, particularly on higher risk weekend evenings. Nevertheless, with respect to the prospect of ‘at risk’ persons substituting liquor for grocery purchases (discussed in the community submissions below) or the supply of packaged liquor to minors or persons drinking in public during holiday periods, the trading hours sought would provide ample scope to contribute to these adverse social impacts.
94. As for the suitability of the *location* of the Proposed Premises, the key indicia of risk that are specified in Guideline 6 when assessing the relative vulnerability or otherwise of a community to adverse liquor related social outcomes are: licence density, alcohol related crime and socio demographic data. These factors present a mixed picture for the local and broader communities in this case.

#### *Licence density and current liquor availability*

95. Calculations performed by licensing staff on the basis of ABS QuickStats 2016 census population data and LGNSW licensed premises information as at 30 December 2017 indicate that:
  - The rate of packaged liquor licences within Bermagui is **65.1** per 100,000 persons of population, compared to **39.1** for the Bega LGA and **33.6** for New South Wales.
  - The rate of hotel licences in Bermagui is **195.3** per 100,000 persons, compared to a rate of **57.1** for the Bega LGA and **28.4** for New South Wales.
  - The rate of registered club licences in Bermagui is **65.1** per 100,000 persons compared to a rate of **36.1** for the Bega LGA and **17.5** for New South Wales.
96. LGNSW licensed premises information as at 30 December 2017 indicates that Bermagui already has **1** packaged liquor licence, **1** registered club licence and **3** hotel licences. The licensed premises are:
  - Bermagui & District Liquor Supplies (LIQP700385618) at 4 Bunga Street, Bermagui.
  - Bermagui Country Club (LIQC300235483) at Tuross Street, Bermagui.
  - Bermagui Beach Hotel (LIQH400109032) at 6 Lamont Street, Bermagui.

- Zest of Bermagui (LIQH440010002) at 30 Lamont Street, Bermagui.
  - Horse & Camel Winebar Bermagui (LIQH440010018) at 73-75 Lamont Street, Bermagui.
97. Noting that packaged liquor, “full” hotel (as distinct from general bar) and club licensed premises are all authorised to sell takeaway liquor (albeit with clubs tending to focus on the sale of liquor to members), the number and location of existing licensed businesses and the small local population of Bermagui are matters that are emphasised by numerous opposing submitters, including the Council.
98. The prevailing high licence density in the local community is apparent from the data and somewhat skewed by the small local population. Nevertheless, the location of incumbent takeaway liquor outlets *diminishes the potential benefits* offered both by increasing the number of packaged liquor licences and by increasing the risk of adverse social impacts. For example, *higher licence density in low income communities* are factors identified in the research specified in *Authority Guideline 6* as associated with higher rates of domestic violence [see for example, Livingston, M: “A longitudinal analysis of alcohol outlet density and domestic violence” *Addiction* (2011) Society for the Study of Addiction].
99. It is reasonable for local submitters to seek to adopt a preventive approach to the licensing of further takeaway liquor outlets in the local community, particularly in light of 2014 research noted in *Guideline 6* that was conducted by BOCSAR (Donnelly *et al* 2014, “The effect of liquor licence concentrations in local areas on rates of assault in New South Wales”). That research identified a sharp increase in assault rates once packaged liquor licence concentration exceeded 0.75 per 1,000 persons (or 75 per 100,000 persons). Nonetheless, while high licence density is an adverse factor in this case, it has not been given decisive weight, given the quite small population in the local community and the absence of evidence of problematic local rates or concentrations of domestic assault or assault generally.

*Socio demographic profile and the representation of “at risk” groups*

100. The socio demographic data presents a mixed picture when assessing the risk of granting another packaged liquor licence in these communities. A number of local submitters (Mr G Steel, Ms C Poulton, Mr J Miller, Ms M Miller, Dr M Scollay, Ms C McGee, Mr M Manning, Ms H Davenport, Mr P Payten, Ms R Upward, Ms K Holman, Ms C Bimson, Mr D McMillan, Mr J Brown, Bermagui Preschool, the owners of the Bermagui Beach Hotel and Bega Valley Shire Council) have identified the low socio-economic status of the community of Bermagui as a cause for concern.
101. These submissions are supported by SEIFA rankings on the index of relative socio-economic advantage and disadvantage for the communities by comparison to other suburbs and local government areas in New South Wales. As noted above, low socio-economic status is a risk factor identified in the research associated with higher risk of certain adverse alcohol related social impacts.
102. Other submitters expressed specific concerns about the impact of liquor sold from this new business upon those with alcohol abuse problems in the local and broader community. Several representatives of the local Aboriginal community and other submitters who attended the local meeting (Mr T Hill, Ms G Campbell, Mr S Buckley and Mr L Redmond) contended with some force that the co-location of this liquor business within the same building as the main Supermarket that those in the communities rely upon for groceries will promote the substitution of liquor purchases over grocery and fresh food purchases by

those who have difficulty managing liquor addiction. This issue was also raised among the written submissions, such as the submission from Ms L Cantrill dated 18 June 2017.

103. At the local meeting convened by the Authority, Mr T Hill (Merrimans Local Aboriginal Land Council CEO) raised specific and credible concerns about one-stop shopping not being a net good for the local Aboriginal people as that component of the community includes many alcohol dependent people for whom one-stop shopping creates the risk of choosing liquor over food.
104. Mr G Campbell also spoke on behalf of the ATSI community and contended that he has witnessed how liquor availability has affected Aboriginal people in Kempsey with people doing their grocery shopping and being drunk by 9:00 am.
105. A further submission sent via email to the Applicant's solicitors from a Mr R Kelly identifies himself as an Indigenous man who grew up and continues to live around the Wallaga Lake community. Mr Kelly raised concerns about the prospect of cheaper alcohol becoming available at the same place where food is purchased, raising concerns that this will bring about more alcohol fuelled violence while making it easier for Indigenous youth in the community to get hold of liquor.
106. Although, this community is somewhat removed from the situation in Kempsey, the Authority gives weight to the knowledge of the local aboriginal submitters on the situation facing indigenous persons in the local and broader community (including those who rely upon the Woolworths supermarket for groceries). The Authority accepts their assertions and infers from the location of the liquor store that it is quite likely that liquor products will be purchased at the expense of groceries by at risk persons.
107. The Authority notes that submissions to the effect that this proposal is "too convenient" were not confined to the ATSI community but raised by numerous submitters with respect to the local community generally. Submitters such as Mr S Buckley, Mr S Burke, Ms C and Mr S Banados, Ms Davenport, Mr P Payten, Ms R Upward, Mr G Steel, Ms C Poulton, Mr J and Ms M Miller, Dr M Scollay, Bermagui Pre-school all made credible contentions that the location of this liquor business will be particularly problematic for those on low incomes, including pensioners or those suffering from alcohol addiction - with many submitters emphasising the low socio-economic status of the local community as a whole as a compounding factor of concern when assessing likely social impact.
108. The ABS SEIFA data establishes that this local community is quite disadvantaged, with the Index of Relative Socio-Economic Advantage and Disadvantage based on the ABS 2016 Census placing the suburb of Bermagui in only the 2<sup>nd</sup> decile, while the Bega LGA ranked in the 5<sup>th</sup> decile, compared to other suburbs and LGAs across the State.
109. The Authority has before it various extracts of the ABS QuickStats data for the suburb of Bermagui (provided by licensing staff and the Authority Secretariat and extracted in submissions from the Applicant and the Applicant's consultants) which indicates the following:
  - Bermagui has a population of 1,536.
  - Aboriginal and/or Torres Strait Islander persons make up 3.5% of the population in Bermagui compared to 2.9% for New South Wales.
  - The median age in Bermagui is 56 compared to 38 for New South Wales.
  - The median weekly household income in Bermagui is \$843 compared to \$1486 for New South Wales.

- 35.2% of the population of Bermagui have a household income of less than \$650 by way of gross weekly income compared to 19.7% for NSW.
110. While published health data is not available at the level of the local community, the available alcohol related health data for Bega LGA indicates similar levels of adverse alcohol related health impacts to New South Wales wide rates. The LGA recorded a smoothed estimate of standardised alcohol mortality ratio of 102.8 (between 2012 and 2013) and a smoothed estimate of standardised alcohol hospital separation ratio of 97.8 (between 2013 to 2015) with the NSW average fixed at 100.
111. However, the demographic profile of the local community gives credence to local community concerns regarding the potential for adverse alcohol related social impacts in three respects.
112. First, when considered in light of the SEIFA and household income data, it is apparent that a large proportion of this local community are on low or fixed incomes.
113. Second, the older median age of the local community is a factor associated with increased alcohol abuse, in research such as the 2016 National Household Survey (a data series that is disclosed in Authority Guideline 6). While the 2016 Survey recorded that persons aged 18-29 have the highest levels of risky drinking, some older Australians (particularly females in the 50-59 age group) record elevated rates of risky drinking. Risky drinking is low among persons over 60, although this group has high levels of people drinking on a daily basis. Relevantly, the Survey indicates that rural communities are exposed to relatively higher levels of risky drinking.
114. Third, there is a higher than state average representation of persons of ATSI background in the local community, and the Authority accepts the submissions made by representatives of the local aboriginal community that many in that community rely upon the Woolworths supermarket as their place to purchase groceries and those with alcohol abuse issues are at risk of substituting liquor for grocery purchases. The National Household Survey identifies persons of ATSI background as experiencing high levels of risky drinking.

#### *Alcohol Related Crime*

115. The available published alcohol related crime information gives rise to a moderate degree of concern with respect to the *broader* community, with only reduced data available at the local level, likely due to the small local population. BOCSAR crime rates obtained by the Authority for the year ending December 2017 indicates that:
- Bega LGA recorded a rate of **123.7** incidents of *alcohol related domestic violence assault* per 100,000 persons (a count of 42 incidents) compared to a rate of **114.4** for NSW (a count of 8855 incidents). BOCSAR rate data is not provided for the suburb of Bermagui, although a count of 3 incidents is noted.
  - Bega LGA recorded a rate per 100,000 persons for incidents of *alcohol related non-domestic violence assault* of **144.3** (which recorded a count of 49 incidents) compared to a rate of **130.7** for NSW (which recorded a count of 10,114 incidents). BOCSAR rate data is not provided for the suburb of Bermagui, although a count of 3 incidents is noted.
  - Bega LGA recorded a rate per 100,000 persons for incidents of *malicious damage to property* of **804.2** (which recorded a count of 273 incidents) compared to a rate of **788.7** for NSW (which recorded a count of 61,039 incidents). BOCSAR rate data is not provided for the suburb of Bermagui, although a count of 12 incidents is noted.

116. The Authority notes, on the basis of the various BOCSAR hotspot maps provided as part of the Applicant's final response dated 5 April 2018, that between January 2017 and December 2017 there were no hotspots for the concentration of crime near the Proposed Premises.
117. On the whole, the available crime data supports the Applicant's submissions that the local community is currently exposed to low levels of alcohol related crime, albeit the Authority notes some evidence of anti-social conduct in the form of malicious damage.
118. Several community submitters, including the Merrimans Aboriginal Land Council, Ms Kenny-Levick, Mr Southwood and Mr Buckley, acknowledge that crime is relatively low in Bermagui compared to other parts of the Bega LGA but express a strong desire to keep it that way. They submit that the licence should be refused as a *preventive* measure – to avoid an increase in alcohol accessibility leading to more alcohol related crime. This submission received apparent support at the public meeting in addition to being specified in several written submissions. The Authority accepts that this local community has clearly articulated an expectation or aspiration to not *risk* adversely impacting the favourable status quo with respect of lower alcohol related crime.

#### *Local Amenity Impacts*

119. Aside from the question of alcohol related crime, numerous submitters (Mr G Day, Ms C McGee, owners of the Bermagui Beach Hotel, Ms K Holman, Dr M Macdonald, Mr G Potts, Mr G Smith, Dr B Cullis, Mr S Burke, Mr J Brown, Ms C Banados and Mr S Banados, the Bermagui and District Branch of the Country Women's Association of NSW, Dr E Hills) have focussed their concerns upon the prospect that this new liquor store will attract and generate customers who will engage in anti-social conduct, specifically public drinking and minors drinking, including by way of secondary supply. These types of social impacts go to *local amenity* - a statutory consideration to which the Authority must turn its mind pursuant to section 3(2)(c) of the Act.
120. At the public meeting Mr J Miller contended that this seaside town is a popular destination for holiday makers and that takeaway liquor sales pose a hazard by way of people drinking in public spaces - particularly during a holiday period. In his written submission dated 14 June 2017 Dr B Cullis contends that he is "often" confronted with drunken and disorderly behaviour occurring late at night, which is a particular problem during the holiday season and on long weekends.
121. The Authority finds those submissions to be credible and accepts that public drinking is in fact a noticeable problem for local residents during these higher risk times of the year.
122. These amenity concerns are compounded by the lack of a full time local Police presence – a factor raised by a large number of submitters (Mr P Rumble, Ms P Rumble, Dr E Hills, Mr D Payne, Ms C McGee, Ms M Manning, Mr M Manning, Mr J Clarke, Mr G Potts, Ms N Pearson, Mr J Miller, Ms M Miller, Dr M Scollay, Bermagui Preschool, Ms H Davenport, Mr P Payten, Ms C Bimson, Mr D McMillan, Ms R Upward, Bermagui Surf Life Saving Club, the proprietors of Bermagui Cellars, Mr J Brown, Mr G Steel, Mr G Stone, Ms M Smith, Ms N Myers). The social impact concern is that this limits the capacity for alcohol related anti-social conduct to be monitored, deterred or addressed, since the nearest full-time police station is around 30 minutes' drive away in places like Cobargo or Narooma.
123. In his submission dated 7 September 2017 the Applicant's consultant Mr Pat Paroz advises that the Far South Coast Local Area Command has a total of 12 police stations,

with only Bateman's Bay operating on a 24/7 basis. The Authority accepts this is the case and notes that Bateman's Bay is around 100 kilometres away.

124. While the available BOCSAR evidence of anti-social conduct is limited – with some indication of malicious damage events recorded in the suburb, the Authority finds credible the numerous accounts presented in written and oral submissions by local residents that public drinking is in fact an issue facing the local community during holiday periods.
125. The Authority accepts that this type of conduct poses a real source of nuisance and intimidation to residents, and significantly detracts from local amenity. The beachside nature of Bermagui serves as an attracting feature for visitors while the geography also provides a degree of isolation from the nearest full time Police station. This reduces, in practical sense, the ability for Police to become aware of, monitor and deter those more ephemeral or lower level incidents of anti-social conduct or nuisance as and when they occur.
126. Another factor of concern to the Authority is the declaration of Alcohol Prohibited Areas in Bermagui that are acknowledged in the Applicant's statement of impact dated 2 May 2017. These areas provide evidence that the community is attempting to manage the abuse of liquor in public places.
127. Aside from the declaration of these areas, it is apparent from the images of the site and surrounds provided in the Gavin Duane Location IQ report that this new liquor store, which would be located only a short walking distance from the beach and parklands, will be very well placed to serve as a new source of takeaway liquor, for a problematic minority of those in the community (including visitors) who abuse liquor by either drinking in public, or supplying it to minors.
128. While liquor is already available in the local community to those who would abuse it, licensing a substantial new liquor store in *this* location will more likely than not frustrate the management of these amenity impacts in Bermagui.
129. The Authority does not consider it likely that the BWS licensee or its staff would knowingly permit abuses of packaged liquor - but in practice, staff will only be able to monitor and respond to misconduct occurring at or near the point of sale. Their ability to obtain an immediate Police response may be hampered by the lack of full time Police presence. The Authority accepts that factors such as the CCTV system, well developed plans and procedures and passive surveillance through a busy supermarket will provide additional security for patrons and scope to monitor any misconduct occurring on or near the site.
130. The Authority does not have sufficient evidence or analysis before it to predict whether liquor consumption will increase, decrease or not change with the grant of another licence. The Applicant's consultant estimates some increase in packaged liquor sales within the local community, but little overall difference to the total volume of liquor consumed across the relevant communities.
131. Even if the Authority accepts the Applicant's submissions in its Statement of Impact, that the new business will do little more than cannibalise existing local demand (noting that Gavin Duane of Location IQ suggest some *increase* in local *packaged* liquor sales by reason of the convenience factor), this new business will be very well placed to contribute to a moderately challenging local environment with respect to alcohol related anti-social conduct that is primarily evident during holiday periods and long weekends. The co-location of this substantial new store with the main supermarket relied upon by many in Bermagui and surrounding areas for groceries increases the risk that financially

constrained persons in “at risk” groups may substitute liquor purchases for grocery purchases.

132. The scale, trading hours and particularly the location of the proposed new business are factors that increase the scope for *this* licenced business to contribute to prevailing alcohol related community concerns that impact the community in Bermagui and the community surrounding areas, including the indigenous community in Bermagui and Wallaga Lake.

Overall social impact

133. Having considered the positive and negative impacts that are likely to flow from approving the removal of the licence, the Authority is *not* satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of approving the Application will not be detrimental to the well-being of the local or broader communities.

134. The Application is refused pursuant to section 59 of the Act.



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 before the Authority

1. NSW Department of Health *HealthStats* data for the Bega Valley LGA (“Bega LGA”) for alcohol attributable deaths (between 2012 and 2013) and hospitalisations (between 2013 and 2015).
2. Development Approval 2013.405 issued by Bega Valley Shire Council (Council) on 16 April 2014 permitting construction of a supermarket with two specialty retail tenancies, carparking, landscaping and associated advertising signage.
3. Complying Development Certificate J140282 issued by Vic Lilli & Partners on 29 September 2014 in respect of the fit-out of a commercial tenancy as a liquor store.
4. Australian Bureau of Statistics (“ABS”) Quickstats data based on the 2016 Census for the suburb of Bermagui, the suburb of Tilba Tilba, the Bega LGA and the Eurobodalla Local Government Area (“Eurobodalla LGA”).
5. Socio-Economic Indexes For Areas (“SEIFA”) data on the basis of the 2016 ABS Census data for the suburb of Bermagui and Bega LGA.
6. Authority statement of reasons dated 14 January 2016 refusing a previous application lodged by Mr Anthony Charles Leybourne Smith on behalf of Woolworths Limited for a new packaged liquor licence (to be called BWS – Beer Wine Spirits) at 1-9 Young Street, Bermagui (“Proposed Premises”).
7. A one-page letter from Roads and Maritime Services (“RMS”) to Back Schwartz Vaughan (“BSV”) dated 29 November 2016 advising that RMS does not object to the application (“Application”).
8. A one-page letter from Aboriginal Affairs dated 29 November 2016 advising no objection provided that the New South Wales Aboriginal Land Council and the Local Aboriginal Land Council were advised of the proposal and objection process.
9. Submission (comprising a three-sentence email to BSV and a two-page letter to BSV) from Merrimans Local Aboriginal Land Council dated 1 December 2016 opposing the Application.
10. Article written by Mr Albert McKnight titled *Plan to transfer liquor licence from Pam’s Store, Tilba for new Bermagui BWS outlet* published online at Narooma News, dated 2 December 2016.
11. Submission (comprising a one-paragraph email to BSV) from Ms B Craze (address not specified but states she is a citizen of Bermagui – BSV identifies this submitter as a resident of Bermagui) dated 2 December 2016 opposing the Application.
12. Submission (comprising a half-page email to BSV) from Ms L Irwin (address not specified however BSV identify this submitter as a resident of Bermagui) dated 2 December 2016 opposing the Application.
13. Submission (comprising a one-page BSV online survey form) from Mr R Hughes of Young Street, Bermagui dated 2 December 2016 opposing the Application.
14. Submission (comprising a two-page BSV online survey form) from Mr G Day of Young Street, Bermagui dated 4 December 2016 opposing the Application.



15. Submission (comprising a five-sentence email to the Authority) from Ms M Opie of Bermagui, dated 4 December 2016 opposing the Application. [BSV identifies this submitter as a resident of Cobargo. The Authority notes that the submitter provides a PO Box address in Cobargo but in a later submission provides a residential address in Bermagui. On this basis, the Authority considers this submitter as a resident of Bermagui].
16. Submission (comprising a one-page letter to BSV) from Ms M Pearse and Mr G Pearse (operators of a hospitality business at Murrah, South of Bermagui, identified by the BSV as residents of Bermagui) dated 6 December 2016 opposing the Application.
17. Submission (comprising half a page) from Mr P Rumble and Ms P Rumble of Young Street, Bermagui dated 7 December 2016 opposing the Application.
18. Submission (comprising a two-page BSV online survey form) from Ms M Kenny-Levick of Lake View Drive, Wallaga Lake Heights dated 8 December 2016 opposing the Application.
19. Submission (comprising a two-page BSV online survey form) from Mr W Southwood (address not specified but a PO Box in Bermagui has been listed – Mr Southwood states that his home and place of work are 8kms from the Proposed Premises – BSV identify this submitter as a resident of Bermagui) dated 8 December 2016 opposing the Application.
20. Submission (comprising a one-paragraph email to BSV) from Dr H O'Connor of Fairhaven Point, Wallaga Lake dated 12 December 2016 opposing the Application.
21. Submission (comprising a one-page letter to BSV) from a local organisation that has requested that its details not be published dated 14 December 2016 opposing the Application.
22. Submission (comprising a three-page letter sent via email to BSV) from Dr E Hills of Flower Circuit, Akolele dated 17 December 2016 opposing the Application.
23. Submission (comprising a one-page BSV online survey form) from Mr J Shaw of Mogareeka Street, Tathra dated 17 December 2016 opposing the Application.
24. Submission (comprising a two-page BSV online survey form) from Mr D Payne of Parbery Avenue, Bermagui dated 18 December 2016 opposing the Application.
25. Submission (comprising a one-page letter to BSV) from Bermagui & District Branch Country Women's Association of NSW dated 19 December 2016 raising concerns about the time in which the community consultation occurred and seeking an extension of time to lodge a submission.
26. Submission (comprising a one-page email to BSV) from Mr M Darling of Haxstead Road, Central Tilba dated 20 December 2016 opposing the Application. [Note that BSV identifies this submitter as a resident of Bermagui, however seeing as the submission contains an address in Central Tilba, the Authority considers this submitter to be a resident of Central Tilba].
27. Submission (comprising a one-page BSV online survey form) from Ms J Osgood of Wallaga Street, Bermagui dated 21 December 2016 opposing the Application.
28. Submission (comprising a two-page email to BSV) from Ms C McGee, a resident of Bermagui (full address not specified) dated 21 December 2016.
29. Submission (comprising a one-page letter to BSV) from Ms M Manning of Dickinson Avenue, Bermagui dated 21 December 2016 opposing the Application.

30. Submission (comprising a two-paragraph email to BSV and a two-page submission) from Ms C Banados and Mr S Banados of Fairhaven Point Way, Wallaga Lake dated 21 December 2016 opposing the Application.
31. Submission (comprising a two-page letter to BSV) from Mr T Davies (address not specified but he does state that he is a resident of Tanja) dated 21 December 2016 in support of the Application.
32. Submission (comprising a one-page letter to BSV) from Mr M Manning who describes himself as a resident, business proprietor and commercial property owner in Bermagui (Bermagui Pharmacy on Lamont Street, Bermagui) dated 21 December 2016 opposing the Application.
33. Submission (comprising a one-page BSV online survey form) from Mr J Clarke of Lamont Street, Bermagui dated 22 December 2016 opposing the Application.
34. Submission (comprising a two-page BSV online survey form) from Mr H Stanley (address not specified but apparently the Proposed Premises is 10kms from his home and home based volunteering work) dated 23 December 2016 opposing the Application.
35. Submission (comprising a two-page letter to BSV) from HWL Ebsworth Lawyers on behalf of the owner of Bermagui Beach Hotel, Horseshoe Bay Holdings Pty Ltd, dated 23 December 2016 opposing the Application.
36. Submission (comprising a two-page BSV online survey form) from Ms K Burns of Dr George Mountain Road, Tanja dated 23 December 2016 opposing the Application.
37. Submission (comprising a one-sentence email to BSV and a two-page letter to BSV) from Mr M Trenerry and Ms F Trenerry, the proprietors of Bermagui Cellars dated 23 December 2016 opposing the Application.
38. Submission (comprising a two-page BSV online survey form) from Ms C Tay of Keating Drive, Bermagui dated 24 December 2016 opposing the Application.
39. Submission (comprising a two-page BSV online survey form) from Ms B Arentz of Montague Street, Bermagui dated 26 December 2016 opposing the Application.
40. Submission (comprising two-pages sent via email to BSV) from Ms K Holman (address not specified but a PO Box in Bermagui was provided – BSV identify this submitter as a resident of Bermagui) dated 26 December 2016 opposing the Application.
41. Submission (comprising a one-page BSV online survey form) from Ms R Perry of George Street, Bermagui dated 26 December 2016 opposing the Application.
42. Submission (comprising a one-page letter to BSV) from Mr P Storey of O'Connells Point Road, Wallaga Lake dated 26 December 2016 opposing the Application. [Note that this submitter provides as part of the address both the suburb of Wallaga Lake and Bermagui - BSV identifies this submitter as a resident of Bermagui].
43. Submission (comprising a two-page BSV online survey form) from Ms C Griff of Haighs Road, Tanja dated 27 December 2016 opposing the Application.
44. Submission (comprising two-page BSV online survey form) from Ms Y Beurteaux of Hunters Road, Wapengo dated 27 December 2016 opposing the Application.
45. Submission (comprising a one-paragraph email to BSV) from Mr R Kelly (address not specified but he states that he grew up and continues to live around the Wallaga Lake

community – BSV identify this submitter as a resident of Wallaga Lake) dated 27 December 2016 opposing the Application.

46. Submission (comprising a two-page BSV online survey form) from Mr M MacDonald of Haighs Road, Tanja dated 27 December 2016 opposing the Application.
47. Submission (comprising a one-page BSV online survey form) from Mr M Perry of George Street, Bermagui dated 27 December 2016 opposing the Application.
48. Submission (comprising a one-sentence email to BSV and a five-page letter to BSV) from Millar Crew Legal and Consulting, a business that operates in Wallaga Street, Bermagui dated 27 December 2016 opposing the Application.
49. Bureau of Crime Statistics and Research (“BOCSAR”) crime data for the year ending December 2017 comparing rates per 100,000 persons for incidents of *alcohol related domestic assault*, *alcohol related non-domestic assault* and *malicious damage to property* for NSW, Bega LGA and the suburb of Bermagui.
50. Submission (comprising a one-page BSV online survey form) from Bermagui & District Branch Country Women’s Association of NSW of Corunna Street, Bermagui dated 23 January 2017 opposing the Application.
51. Email from Senior Constable Craig Barlow of Far South Coast Local Area Command of NSW Police to BSV dated 29 March 2017 attaching a three-page submission.
52. Removal Application Form lodged by the Ms Sherry Hayden (“Applicant”) on 4 May 2017. This document, signed by the Applicant and dated 5 April 2017 is accompanied by: Site Notice, Consent Authority Notice and Notice to Police and a 6-page submission on why an alternative 6-hour closure period should be fixed between 3:00 am and 9:00 am. This material was prepared by BSV on behalf of the Applicant dated 1 May 2017.
53. Community Impact Statement (“CIS”) Form lodged by the Applicant on 4 May 2017. This document is prepared by BSV, signed by an authorised officer of Woolworths Limited on behalf of the Applicant and dated 24 April 2017. A list of stakeholders notified of the Application is attached to this document.
54. A 52-page submission titled “Statement of Impact” prepared by BSV on behalf of the Applicant dated 2 May 2017. This document accompanied the CIS material lodged with the Authority on 4 May 2017 and was accompanied by the following material:
  - A 16-page document prepared by BSV on behalf of the Applicant (undated) outlining the operational matters, security, harm minimisation and responsible service of alcohol (RSA) measures adopted by BWS stores in NSW. This document also includes the *Liquor Store House Policy* updated June 2016 and the following business policy documents: *Woolworths Best Practice Policy and Interventions*, *Woolworths Liquor Group Responsibilities*, *School Uniform Policy*, *Refusal of Service – Intoxication Policy*, *ID 25* and *Secondary Supply Police*.
  - Healthstats data published by the NSW Department of Health for alcohol attributable hospitalisations by NSW Local Government Area for 2013-14 to 2014-15 and alcohol attributable deaths by NSW Local Government Area for 2012-2013.
  - One-page list of licensed premises in the local and broader communities of the Proposed Premises provided by the Applicant.
  - A 15-page document providing submissions on the experience of Woolworths Limited in operating its 325 BWS stores in NSW and the impact the opening of various BWS stores have had in relation to alcohol related crime. This document was prepared by BSV on behalf of the Applicant and dated 2 November 2015.

- A 5-page document detailing the product range that is exclusive to Woolworths' liquor stores prepared by the Endeavour Drinks Group on behalf of the Applicant dated May 2016.
  - A 5-page document providing information on where customers who live in postcode 2546 (covering numerous State suburbs in the Bega Shire LGA) shop, sourced from Woolworths *Everyday Rewards* customer loyalty data prepared by The Quantum Group Pty Ltd on behalf of the Applicant dated September 2014.
  - A 6-page document providing information on *Everyday Rewards* data, prepared by The Quantum Group Pty Ltd on behalf of the Applicant dated December 2016.
  - A document titled "Statistical data that applies to the Supermarket" (being the Bermagui Supermarket) sourced by BSV on behalf of the Applicant (undated).
  - A map depicting the driving route from Koori Village to the Current Premises (4.2 kilometres) and from Koori Village to the Proposed Premises (15.9 kilometres).
  - A 22-page report prepared by the Applicant's consultant Mr Patrick Paroz of Pat Paroz & Associates Pty Ltd dated 10 April 2017. Attached to this report are the following documents: two photographs of playground and park directly opposite Bermagui Beach Hotel; four photographs taken between 6:30 am and 7:00 am Saturday 10 December 2016 of Dickson Park; two photographs of external signage for Bermagui Country Club in relation to take-away alcohol sales; two photographs advertising inside and outside of Bermagui Country Club for Bermagui Cellars; BOCSAR crime statistics for January 2015 to December 2016; Australian Securities and Investments Commission ("ASIC") financial statements and reports for the Bermagui Country Club Limited dated 28 June 2012 (including the joint venture/building and development report 2011/2012 and director's report); ASIC current and historical company extract for the Bermagui Country Club Ltd as at 13 December 2016; ASIC current company extract for Bermagui Cellars Pty Ltd as at 13 December 2016 and the curriculum vitae of the author.
  - A table prepared by the Applicant comparing demographic characteristics, at-risk groups, outlet density and SEIFA data for NSW, the State suburb of Mullumbimby and the State suburb of Bermagui.
  - A two-page price comparison between the incumbent liquor store Bermagui Cellars and BWS as at 8 March 2017 and 24 January 2017, prepared by BSV.
  - A five-page document conducting a review by BSV lawyer of the Livingston research referred to in Authority Guideline 6 "A longitudinal analysis of alcohol outlet density and domestic violence" prepared by BSV on behalf of the Applicant.
  - A two-page letter to the Authority from Mr Kevin Sellars, State Manager BWS NSW/ACT dated 3 April 2017 addressing the proposed employment benefits associated with a new BWS store associated with the Woolworths Supermarket.
55. A 35-page document titled "Response to Submissions" prepared by BSV on behalf of the Applicant dated 1 May 2017 and lodged with the Authority on 4 May 2017. The following documents accompany this submission:
- Research report titled "(Mis)perceptions of crime in Australia" by Brent Davis and Kym Dossetor published in Trends & Issues in Crime and Criminal Justice no 396 July 2010.
  - Page 1 of the Bega District News on 2 December 2016 containing an article by Mr Albert McKnight titled *New tactic for bottle* and page 1 of the Triangle Community News newspaper dated February 2017 (Issue number 160) containing an article by Mr Geoff Steel titled *Woolworths won't take no for an answer on liquor licence*.
  - Data provided by Ms Kylie Routledge of the BOCSAR on 21 December 2016 for incidents of alcohol related crime recorded by the NSW Police Force by LGA: number, rates and ranks

from October 2011 to September 2016 confirming that in the 12-month period ending September 2016 that Bega LGA ranked 50 for all incidents of alcohol related crime.

- An article by Ms Nicole Butler titled *Let me introduce you to Josephine Cashman* dated 18 November 2013 published online at The Stringer.
  - Three graphs depicting incidents of malicious damage to property in Bermagui 2006-2016, theft in Bermagui 2006-2016 and assault in Bermagui 2006-2016.
  - List of 32 submitters who lodged submissions and are described by BSV as opposing residents or local submitters.
  - A one-page document for Woolworth's *Drinks Academy*.
  - Page 1 of the December 2016 edition of the Triangle Community News newspaper (Issue number 159) containing an article by Mr Jazz Williams titled *The Music Keeps Growing at Wallaga Lake*.
  - BOCSAR NSW recorded crime statistics 2006 to September 2016 for number of selected drink driving offences recorded by NSW Police by LGA - Bega LGA.
56. Submission (comprising a three-page letter to the former Office of Liquor, Gaming and Racing now Liquor and Gaming NSW ("LGNSW")) from Dr E Hills of Flower Circuit, Akolele dated 10 May 2017 opposing the Application. [This is the second submission from Dr Hills who identifies himself as a counsellor].
57. Submission (comprising four sentences sent via email) from Mr D Webster of Webhil NSW Pty Ltd of Lamont Street, Bermagui [Note that this is a PO Box address but that BSV identifies this submitter as a resident of Bermagui] dated 29 May 2017 opposing the Application. [This submitter provides a web address for the Bermagui Beach Hotel].
58. Two Certificates of Advertising for the Application signed by Mr Schwartz dated 29 May 2017 and Mr James Alexander Scott-Mackenzie dated 30 May 2017.
59. Submission (comprising two-pages sent to the submissions LGNSW mailbox) from Mr G Potts (address not specified) dated 30 May 2017 opposing the Application.
60. Submission (comprising a two-pages) from a local resident of Bermagui who wishes to remain anonymous dated 30 May 2017 opposing the Application.
61. Submission (comprising a four-page letter to LGNSW) from Senior Constable Craig Barlow of Far South Coast Local Area Command of NSW Police dated 30 May 2017.
62. Submission (comprising a three-page email) from Mr S Glasson (address not specified but BSV identify this submitter as a resident of Bermagui) dated 2 June 2017 opposing the Application.
63. Submission (comprising seven sentences in the form of a LGNSW online submission form) from Ms B Arentz of Montague Street, Bermagui dated 4 June 2017 opposing the Application. [Note this is the second submission from Ms Arentz].
64. Submission (comprising a six-sentence email to LGNSW) from Ms E McFadden of Barragoot Street, Bermagui dated 6 June 2017 opposing the Application.
65. Submission (comprising five sentences in the form of a LGNSW online submission form) from Ms M Opie of Combens Lane, Bermagui dated 6 June 2017 opposing the Application. This is the second submission from Ms Opie. [BSV identifies this submitter as a resident of Cobargo. The Authority notes that the submitter provides a PO Box address in Cobargo but provides a residential address in Bermagui. On this basis, the Authority considers this submitter as a resident of Bermagui].

66. Submission (comprising three sentences in the form of a LGNSW online submission form) from Mr R Harrop of Murrah River Forest Road, Bermagui dated 6 June 2017 opposing the Application.
67. Submission (comprising four sentences in the form of a LGNSW online submission form) from Ms J Severn of Bermaguet Street, Quaama dated 8 June 2017 opposing the Application.
68. Submission (comprising two sentences in the form of a LGNSW online submission form) from Ms N Pearson (address not specified but states that she is within 50 metres of the Proposed Premises – BSV identify Ms Pearson as a resident of Bermagui) dated 8 June 2017 opposing the Application.
69. Submission (comprising half a page in the form of a LGNSW online submission form) from Ms F Trenerry of Strudwicks Road, Bermagui dated 12 June 2017 opposing the Application. [Although this submission appears to be lodged as an individual, the Authority notes that Ms Trenerry is a proprietor of a competitor business, Bermagui Cellars and this is the second submission from Ms Trenerry].
70. Submission (comprising nine sentences in the form of a LGNSW online submission form) from Ms S Mester of Dilker Road, Tathra dated 12 June 2017 opposing the Application.
71. Submission (comprising six sentences in the form of a LGNSW online submission form) from Mr G Smith of Dickinson Avenue, Bermagui dated 12 June 2017 opposing the Application.
72. Submission (comprising five sentences in the form of a LGNSW online submission form) from Dr A Smith of Murrah Street, Bermagui dated 13 June 2017 opposing the Application.
73. Submission (comprising eight sentences in the form of a LGNSW online submission form) from Ms C McFerran of Benny Gowings Road, Murrah dated 13 June 2017 opposing the Application. [The Authority notes that alongside the Murrah address, the submitter identifies a PO Box address for Bermagui and BSV identify this submitter as a resident of Bermagui. However due to an address in Murrah being provided, the Authority considered this resident to be a local resident of the suburb of Murrah].
74. Submission (comprising five sentences in the form of a LGNSW online submission form) from Ms C Tay of Keating Drive, Bermagui dated 13 June 2017 opposing the Application. [This is the second submission from Ms Tay who identifies herself as a working health professional - psychologist].
75. Submission (comprising five sentences in the form of a LGNSW online submission form) from Ms L Kempster of Bermagui Road, Akolele dated 13 June 2017 opposing the Application. [BSV identifies this submitter as a resident of Bermagui, but seeing as the submitter supplies an address in Akolele the Authority considers this to be the local community of the submitter].
76. Submission (comprising three sentences in the form of a LGNSW online submission form) from Mr J Black of Murrah Street, Bermagui dated 13 June 2017 opposing the Application.
77. Submission (comprising five sentences in the form of a LGNSW online submission form) from Mr M Thornton of Keating Drive, Bermagui dated 13 June 2017 opposing the Application.
78. Submission (comprising a three-page email to LGNSW) from Mr J Miller and Ms M Miller of Barragoot Street, Bermagui dated 14 June 2017 opposing the Application.

79. Submission (comprising ten sentences in the form of a LGNSW online submission form) from a local business owner in Bermagui who wishes to remain anonymous dated 14 June 2017 opposing the Application.
80. Submission (comprising half a page in the form of a LGNSW online submission form) from Dr B Cullis of Murrah Street, Bermagui dated 14 June 2017 opposing the Application.
81. Submission (comprising a five-page email to LGNSW) from Mr G Steel and Ms C Poulton of Montague Street, Bermagui dated 14 June 2017 opposing the Application.
82. Submission (comprising approximately half a page in the form of a LGNSW online submission form) from Ms H Stone of Fairhaven Point Way, Wallaga Lake dated 14 June 2017 opposing the Application.
83. Submission (comprising a four-page email to LGNSW) from Dr M Scollay (address not specified but identified by BSV as a resident of Bermagui) dated 14 June 2017 opposing the Application.
84. Submission (comprising approximately two-pages in the form of a LGNSW online submission form) from Bermagui Preschool of Young Street, Bermagui dated 16 June 2017 opposing the Application.
85. Submission (comprising a one-page email) from Ms T Berry of Bermagui dated 16 June 2017 opposing the Application.
86. Submission (comprising a one-page email) from Mr J Brown of Rilys Rd, Coolagolite dated 16 June 2017 opposing the Application. [BSV identifies this submitter as from Bermagui, however seeing as an address in Coolagolite has been provided, that is the suburb the Authority considers this submitter to be a resident of].
87. Submission (comprising three-pages lodged via email) from Bega Valley Shire Council dated 16 June 2017 opposing the Application and reiterating their submission lodged in November 2014 in relation to the previous application.
88. Submission (comprising a two-page BSV online survey form) from Ms L Cantrill (address not specified but states that her home is 1.4kms from the Proposed Premises and her work is 2kms from the Proposed Premises – BSV identify this submitter as a resident of Bermagui) dated 23 December 2016 opposing the Application. [A second submission was provided by Ms Cantrill on 18 June 2017 specifying an address in Hay Street, Bermagui].
89. Submission (comprising a four-page email to LGNSW) from Ms H Davenport of Parbery Avenue, Bermagui dated 18 June 2017 opposing the Application.
90. Submission (comprising approximately half a page in the form of a LGNSW online submission form) from Mr J Carter of Fairhaven Point Way, Wallaga Lake dated 18 June 2017 opposing the Application.
91. Submission (comprising nine sentences in the form of a LGNSW online submission form) from a resident of Bermagui who wishes to remain anonymous (address not specified but BSV identify this submitter as a resident of Bermagui) dated 18 June 2017 opposing the Application.
92. Submission (comprising approximately two-pages in the form of a LGNSW online submission form) from Mr P Payten of Sherwin Lane, Bermagui dated 18 June 2017 opposing the Application.

93. Submission (comprising five sentences in the form of a LGNSW online submission form) from Mr P Storey of O'Connells Point Road, Wallaga Lake dated 18 June 2017 opposing the Application. [This is the second submission from Mr Storey].
94. Submission (comprising a two-page document attached to lodged via the LGNSW online submission form) from Ms L Cantrill of Hay Street, Bermagui dated 18 June 2017 opposing the Application. [This appears to be the second submission from Ms Cantrill].
95. Submission (comprising a two-page email to LGNSW) from Ms R Millard and Mr T Millard of Cobargo Road, Bermagui dated 18 June 2017 opposing the Application.
96. Submission (comprising approximately half a page in the form of a LGNSW online submission form) from Mr S Buckley of Hay Street, Bermagui (who also identifies himself as a member of the Merrimans Land Council) dated 18 June 2017.
97. Submission (comprising eleven sentences in the form of a LGNSW online submission form) from a resident of Lamont Street, Bermagui who wishes to remain anonymous (also a local business owner) dated 18 June 2017 opposing the Application.
98. Submission (comprising three sentences in the form of a LGNSW online submission form) from a resident of Bermagui who wishes to remain anonymous (street name not specified but in another submission is identified as Lamont Street, Bermagui) dated 18 June 2017 opposing the Application. [This is the second submission from this resident of Bermagui].
99. Submission (comprising a two-page letter to the Authority) from HWL Ebsworth Lawyers on behalf of Horsehoe Bay Holdings Pty Limited, the owner of the Bermagui Beach Hotel, dated 19 June 2017 opposing the Application and advising when a full submission will be lodged. [This is the second submission from Bermagui Beach Hotel].
100. Submission (comprising half a page in the form of a LGNSW online submission form) from Ms C Bimson of Tathra-Bermagui Road, Barragga Bay dated 19 June 2017 opposing the Application.
101. Submission (comprising five sentences in the form of a LGNSW online submission form) from a local resident of Horse Head Road, Murrah who wishes to remain anonymous dated 19 June 2017 opposing the application.
102. Submission (comprising a four-page letter to the Authority) from Millar Crew Legal and Consulting, a business operating from Wallaga street, Bermagui dated 19 June 2017 opposing the Application. [This is the second submission from Millar Crew Legal and Consulting].
103. Submission (comprising approximately one-page in the form of a LGNSW online submission form) from Bermagui Surf Life Saving Club located at Lamont Street, Bermagui dated 19 June 2017 opposing the Application.
104. Submission (comprising a two-page email to LGNSW) from Ms M and Mr T Callaghan of Wallaga Lake Road, Bermagui dated 19 June 2017 opposing the Application.
105. Submission (comprising a two-page email to LGNSW) from Ms R Upward (address not specified but states that she is a local resident of Bermagui – BSV also identifies this submitter as a resident of Bermagui) dated 19 June 2017 opposing the Application.
106. Submission (comprising approximately one-page in the form of a LGNSW online submission form) from Ms S Burke of Bermagui Road, Central Tilba dated 19 June 2017 opposing the Application.



107. Submission (comprising approximately one-page in the form of a LGNSW online submission form) from Dr M MacDonald of Haighs Road, Tanja dated 19 June 2017 opposing the Application. [This is the second submission from Dr MacDonald].
108. Submission (comprising eight sentences in the form of a LGNSW online submission form) from Ms C Griff of Tathra Bermagui Road, Tanja dated 19 June 2017 opposing the Application. This submission identifies Ms Griff as a Counsellor for Bega LGA. [The Authority notes that an earlier submission was received from a Ms C Griff, however these two submissions provide different residential address but indicate the same email addresses. On the basis that the two email addresses are the same, the Authority considers this to be the second submission from Ms Griff].
109. Submission (comprising twelve sentences in the form of a LGNSW online submission form) from Mr D McMillan of Sinclair Street, Bermagui dated 19 June 2017 opposing the Application.
110. Submission (comprising a three-sentence email to LGNSW) from Ms M Manning of Dickinson Avenue, Bermagui dated 21 June 2017 opposing the Application. [This is the second submission from Ms Manning].
111. Submission (comprising twenty-one pages sent via email to LGNSW) from Mr M Trenerry and Ms F Trenerry, owners of Bermagui Cellars, dated 7 July 2017 opposing the Application. [This is the third submission from the owners of Bermagui Cellars].
112. Submission (comprising a six-page letter to the Authority) from HWL Ebsworth Lawyers on behalf of Horsehoe Bay Holdings Pty Limited, the owner of the Bermagui Beach Hotel, dated 10 July 2017 opposing the Application. Bermagui Beach Hotel have attached to this submission a 25-page report assessing the social impact of this licence prepared by consultant Ms Rose Saltman of RM Planning dated July 2017. Ms Saltman's *curriculum vitae* accompanies this report. [This is the third submission from Bermagui Beach Hotel].
113. Article written by Mr Alasdair McDonald titled "Koori community opposes Bermagui Woolworths liquor licence" published online at *Narooma News*, dated 13 July 2017.
114. Transcript (produced by Isentia) of the ABC South East NSW radio 7:30 News - Interview with Mr Ken Campbell, Chairman of Merrimans Local Aboriginal Land Council dated 30 August 2017.
115. A 5-page letter from BSV on behalf of the Applicant to licensing staff dated 15 September 2017. In this submission the Applicant responds to an email from licensing staff dated 24 July 2017 and addresses certain conditions that may be imposed on the licence if granted, while enclosing the further submissions discussed immediately below.
116. A 33-page document titled *The Applicant's Closing Submissions* prepared by BSV on behalf of the Applicant dated 15 September 2017. Of this material, a 22-page submission compares the Authority's refusal of the previous application with the circumstances of the current Application was provided with this submission and attaches: a 14-page *literature review* prepared by BSV on behalf of the Applicant – including a graph depicting the New Zealand Annual Liquor Advertising Spend in 2016 dollars, with per capita liquor consumption for persons aged 15+ in New Zealand (provided to support the contention that there is no correlation between advertising expenditure and alcohol consumption); a Site Plan showing the location of CCTV cameras on the Proposed Premises; BOCSAR hotspot map for malicious damage to property from April 2016 to March 2017 in Bermagui; BOCSAR crime data for the Bega LGA and NSW for April 2015 to March 2017 for

incidents of alcohol related domestic assault, alcohol related non-domestic assault, alcohol related assault police, malicious damage to property and alcohol related disorderly conduct; a map depicting the usual residence of persons in the Aboriginal and Torres Strait Islander (“ATSI”) community in Bega LGA and a graph depicting age distribution in Bermagui compared with NSW.

117. A 48-page document in which the Applicant responds to a submission from the Bermagui Beach Hotel, prepared by BSV on behalf of the Applicant dated 15 September 2017. The following material is attached:

- Updated statistical evidence for NSW, the broader community and the local community in relation to socio-economic, demographic and licence density data. Updated data on the 2016 Census and the population and the population of Bermagui in 2011 and 2016. Updated alcohol related crime data for NSW, the broader community and the local community.
- A 41-page report from consultant Mr Gavin Duane of Location IQ dated 1 September 2017 including a copy of Mr Duane’s curriculum vitae.
- A 30-page supplementary report from the Applicant’s consultant Mr Patrick Paroz dated 7 September 2017 attaching a 12-page review of alcohol related crime following the opening of the BWS stores in the New South Wales regional towns of Tuncurry and Woolgoolga and the Dan Murphy’s store in Bega and a 10-page document comprising, inter alia, photographs of Bermagui Beach Hotel and Bermagui Cellars.
- A one-page statutory declaration and report of Mr James Scott-Mackenzie (Woolworths Limited Business Development Manager) dated 15 September 2017 attaching a 22-page document detailing his observations of BWS Narooma, Pam’s General Store, the Woolworths Supermarket at Bermagui, Bermagui Cellars, Bermagui Beach Hotel and Bermagui generally (including observations relating to litter, graffiti, anti-social behaviour, public drinking) and discussions with Merrimans Local Aboriginal Land Council when he visited Bermagui on 3-4 August 2017.
- An 11-page document prepared by BSV (undated) providing a comparison of statements made by consultant Ms Rose Saltman (prepared on behalf of the owners of the Bermagui Beach Hotel) with statements made by this same consultant when previously instructed by BSV to act on behalf of Woolworths Limited in respect of the Dan Murphy’s Mosman application.
- Another copy of the two-page price comparison between Bermagui Cellars and BWS as at 8 March 2017 and 24 January 2017, prepared by BSV.
- Curriculum vitae of Mr Tony Schwartz.
- BOCSAR crime data for Bega LGA from April 2012 to March 2017 for incidents of alcohol related assault, alcohol related disorderly conduct and incidents of other offences against the person.
- A 5-page article from ABS Australian Social Trends 4102.0 March 2010 titled *Health and Socioeconomic disadvantage*. The Applicant contends that this is Australian based research that confirms that if people in this location have poorer health outcomes, that alcohol is less likely to be a contributing factor.
- Endeavour Drinks Group *Responsible Buying Charter, Buyers Guide* dated May 2016 comprising nine pages.
- Extracts from *Martin Morris & Jones Pty Ltd v Shoalhaven City Council* [2012] NSWLEC 1280. The Applicant contends that this case related to whether a Dan Murphy’s Nowra store (to be located in a highly disadvantaged community) would have an unacceptable adverse social impact in the locality. Whilst there were many issues surrounding that case, the Land

and Environment Court approved of the issue of the relevant planning approval. The Applicant contends that this case held that literature and the respective findings cannot be automatically applied or without any limitation to each matter under consideration and is precisely why the Livingston research must be reviewed, and its relevance or applicability to this Application discussed.

- Article titled “Research Centre Boost - Thanks to BWS Donation Effort” published in the *Bankstown Canterbury Torch*, Sydney on 29 March 2017 (which is a local Canterbury Bankstown newspaper). The Applicant contends that this is evidence that BWS licensees are encouraged to participate in fund raising efforts.
- Pages 1 and 35 of the Australian Government, Department of Infrastructure and Regional Development “Regional Jobs and Investment Packages”, South Coast Region of New South Wales, Local Investment Plan, dated May 2017. The Applicant provides this data as an insight into tourism in Bega LGA.

118. A 24-page document in which the Applicant responds to community submissions other than the Bermagui Beach Hotel, prepared by BSV on behalf of the Applicant dated 15 September 2017. The following material is attached:
  - An index detailing all submitters to this Application.
  - A 27-page document addressing the concerns of Mr and Mrs Trenerry of Bermagui Cellars.
  - Email from RMS to BSV dated 30 May 2017 advising no objection to the Application.
119. Email from BSV to licensing staff dated 24 October 2017 updating the unemployment data in Bermagui from the 2016 Census.
120. Email from LGNSW Compliance dated 2 November 2017 advising that the Compliance Operations Unit does not intend to carry out any further assessment of the Application.
121. Licence density calculations performed by licensing staff on the basis of LGNSW licensed premises information as at 30 December 2017 and data from the ABS 2016 Census.
122. LGNSW licensed premises records for the suburb of Bermagui and the Bega LGA sourced by licensing staff on 30 December 2017.
123. Google geographical maps depicting the location of the Proposed Premises and 266 Corkhill Drive, Tilba Tilba (“Current Premises”) sourced by licensing staff on 8 January 2018.
124. Google street view photographs of the Proposed Premises and the Current Premises extracted by licensing staff on 8 January 2018.
125. BOCSAR data for 2016 on the proportion of incidents by offence type, day of week and time of day in the Bega LGA and the Eurobodalla LGA, sourced by licensing staff on 8 January 2018.
126. A three-page letter from BSV on behalf of the Applicant to the Authority dated 27 February 2018 regarding the public meeting to be conducted in Bermagui on 21 March 2018.
127. Email from the Customer Experience and Regulatory Education Unit of LGNSW to Authority Secretariat regarding the Local Aboriginal Land Council feeling misrepresented in the Application.
128. An *aide memoire* prepared by the Authority Secretariat for the public meeting in March 2018 providing an overview of the Application, key points raised in submissions and certain social impact data.

129. Audio recording of oral submissions made at public meeting held at the Bermagui Community Centre under section 36B of the *Gaming and Liquor Administration Act 2007* 6:30 pm Wednesday 21 March 2018. The speakers featured on the recording are: Mr J Mackenzie (Executive of Woolworths Endeavour Drinks Group); Mr T Hill (Merrimans Local Aboriginal Land Council CEO); Mr G Campbell (speaking on behalf of the local Aboriginal and Torres Strait Islander community); Mr M Trenerry (licensee of Bermagui Cellars); Mr J Black; Mr A Millar; Ms B Craze; Ms C Griff (Councillor but did not speak in her professional capacity); Mr D Payne; Mr G Steel; Mr G Stone; Mr G Day; Ms H O'Connor; Ms I Payne; Mr R Hughes; Mr J Miller; Ms M Smith; Ms N Myers (teacher at the local pre-school); Mr N Rutherford (licensee of Bermagui Surf Life Saving Club); Mr S Buckley (Department of Education Aboriginal and Torres Strait Islander liaison officer but did not speak in his professional capacity); Ms T McHugh; Mr K Bowden; Mr S Burke; Ms E Smith; Mr M McDonald; Mr C Sager; Ms J Dodds (Councillor); Mr L Redmond (licensee of Bermagui Beach Hotel); and Mr M Wheatley.
130. Submission (comprising a seven-page letter to the Authority) from BSV on behalf of the Applicant dated 5 April 2018 providing a response to the procedural issue raised by the Authority with regard to clause 9 of the *Liquor Regulation 2008*.
131. A 33-page submission to the Authority titled "Final Response" on behalf of the Applicant dated 5 April 2018 responding to issues raised during the public meeting. This is accompanied by the following material:
- BOCSAR NSW recorded crime statistics 2006 to 2017 for the number of selected drink driving offences recorded by NSW Police in Bermagui, Wallaga Lake, Tilba Tilba, Central Tilba, Corunna and Narooma.
  - A four-page document, prepared by BSV, providing a summary of what has changed since the previous application (undated).
  - Article from the Daily Advertiser Wagga Wagga NSW dated 23 March 2018 titled *Time to lose the locks* in relation to the Dan Murphy's store at Wagga Wagga.
132. Plans/diagrams of the Proposed Premises highlighting the licensed area in red and the location of the licensed area in relation to the supermarket.