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24 April 2017

Dear Mr Cusack

APPLICATION NO: 1-4519042730
APPLICATION FOR: Removal of a packaged liquor licence
APPLICANT: Mr Paul Summers
LICENSED PREMISES NAME: Summers IGA
CURRENT PREMISES LOCATION: 5 Denman Avenue
KOOTINGAL NSW 2352 (Current Premises)
PROPOSED PREMISES LOCATION: 13 Gate Street
KOOTINGAL NSW 2352 (Proposed
Premises)
ISSUE: Whether to grant or refuse an application to
remove a packaged liquor licence.
LEGISLATION Sections 3, 29, 30, 40, 45, 48 and 59 *Liquor
Act 2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR
REMOVAL OF A PACKAGED LIQUOR LICENCE – SUMMERS IGA, KOOTINGAL**

The Independent Liquor & Gaming Authority (“the Authority”) has considered application number 1-4519042730 and on 19 April 2017, pursuant to section 59 of the *Liquor Act 2007*, decided to **grant** the application to remove a packaged liquor licence subject to the following licence conditions:

1. Trading Hours

Monday to Saturday (supermarket) 8:00AM to 10:00PM
Monday to Saturday (drive through) 9:00AM to 10:00PM
Sunday (supermarket and drive through): 10:00AM to 10:00PM

2. Restricted trading & NYE

Retail sales
Good Friday Not permitted
December 24th Normal trading Monday to Saturday,
8:00 AM to 10:00 PM Sunday

Christmas Day Not permitted
December 31st Normal trading

3. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 2:00AM and 8:00AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
4. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained in the community impact statement, application and other information submitted in the process of removing this licence to premises at 13 Gate Street, KOOTINGAL NSW 2352.
5. The Authority approved the removal of the licence to 13 Gate Street, KOOTINGAL, NSW 2352 on 19 April 2017.
6. The liquor licence remains at 5 Denman Ave, KOOTINGAL, NSW 2352 subject to the same conditions and trading hours that were immediately in force before this approval was granted until such time as the Authority is notified that the licence has been moved.
7. The licensee or its representative must join and be an active participant in the local liquor accord.
8. The premises are to be operated at all times in accordance with the Plan of Management dated April 2016 as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
9. The licensee must ensure that the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.

If you have any enquiries about this letter, please contact the case manager via email to santina.causa@justice.nsw.gov.au

Yours faithfully



Philip Crawford

Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

STATEMENT OF REASONS

DECISION

1. The Independent Liquor & Gaming Authority (“the Authority”) is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to approve the application lodged on 7 June 2016 (“the Application”) for the removal of a packaged liquor licence, as all of those parties required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision.
2. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from approving the Application, the Authority is satisfied, for the purposes of section 48(5) of the *Liquor Act 2007* (“the Act”), that the overall social impact of removing this licence would not be detrimental to the well-being of the local and broader communities.
3. The Application is approved pursuant to section 59 of the Act.
4. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2).

MATERIAL CONSIDERED BY THE AUTHORITY

5. In making this decision, the Authority has considered the Application, the accompanying Community Impact Statement (“CIS”) and all submissions received in relation to the Application. As foreshadowed in Authority *Guideline 6*, the Authority has also had regard to relevant liquor licensing records maintained by Liquor & Gaming NSW (“LGNSW”), Bureau of Crime Statistics and Research (“BOCSAR”) crime data and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. The material considered while making of this decision is listed and, in some cases, briefly summarised in the Schedule.

LEGISLATIVE FRAMEWORK

6. The legal requirements regarding the removal of a licence to another premises are provided by section 59 of the Act and relevant provisions in the *Liquor Regulation 2008* (“the Regulation”).
7. Section 48 of the Act and clause 10 of the Regulation requires a Category “B” CIS to be lodged with an application to remove a packaged liquor licence to other premises.
8. Section 48 (5) provides that the Authority **must not** grant a licence, authorisation or approval to which a relevant application relates unless satisfied, having regard to the CIS and any other matter the Authority is made aware of during the application process (such as by way of reports or submissions) that the “overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community”.

9. For the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Kootingal while the “broader community” comprises the relevant local government area – the Tamworth Regional Local Government Area (“Tamworth LGA”).
10. When exercising functions under the Act the Authority has had regard to all of the statutory objects and considerations in section 3 of the Act, which states:
 - (1) *The objects of this Act are as follows:*
 - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
 - (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
 - (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

KEY FINDINGS

11. The Authority is satisfied, based on the Application and CIS material before it, that, for the purposes of Section 59(2) of the Act, the Application has been validly made and minimum procedural requirements have been satisfied.
12. Section 59(3) of the Act provides that the Authority shall deal with an application to remove a licence 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 the Application as the Authority has in relation to an application for a new licence.
13. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a licensed venue of the kind proposed in the Application. The Authority notes that no probity issues were raised with regard to the Application following consultation with law enforcement agencies, including NSW Police (“Police”) and LGNSW.
14. The Authority is further satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service of alcohol practices will be in place with the commencement of licensed trading. This finding is made on the basis of the *Management Plan* and *House Policy* dated April 2016.
15. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the use of the Proposed Premises falls within the scope of the development

consent that is currently in force. This finding is made on the basis of development application DA0174/2015 (“DA”), permitting use of the Proposed Premises as a supermarket, café, and drive-through bottle shop and for associated parking and signage, as modified by the Tamworth Council (“Council”) on 4 February 2016.

16. The Authority is further satisfied, for the purposes of section 30 of the Act, that the licensed area of the Proposed Premises will be adequately separated from the rest of the supermarket. This finding is made on the basis of the floorplan of the Proposed Premises and information provided in the “Additional Information” document provided with the CIS lodged 7 June 2016.

Social Impact – Positive Benefits

17. The Authority is satisfied, on the information provided in the Application and CIS, that this licensed business has been trading from the Current Premises since 1992. The Applicant is seeking the removal of the licence by reason of relocation of the associated IGA Supermarket.
18. The Authority is satisfied, on the basis of the Application, CIS and additional material supplied by the Applicant, that removing this licence a distance of approximately 150 metres within the same State suburb will provide the benefit of continued convenience and choice to members of the local and broader community who seek to patronise this packaged liquor business, which will include the additional facility of a drive through service.
19. Although local Police and two nearby residents are stridently opposed to the 6:00AM opening times, there was no substantial community opposition to the removal of the licence *per se*.
20. The Authority accepts, on the basis of the information provided about the proposal in the CIS, that granting the Application will provide a larger, more modern facility at the new location and will also provide a safer and more convenient facility given the proposed lighting and security features and the off-street parking that will include disabled and pram parking.
21. The Authority is also satisfied, on the basis of the CIS and additional material dated 23 November 2016 and 10 February 2017 supplied by the Applicant, that removal of the licence will enable the business to continue to better serve patrons, residents and visitors frequenting the local and broader communities.
22. On this basis, the Authority is satisfied that removing this licence 150 metres away within the same suburb is consistent with the “expectations, needs and aspirations of the community” in respect of the local community of Kootingal, being an object of section 3(1)(a) of the Act.
23. The Authority is satisfied, on the basis of liquor licensing records from LGNSW as of 23 February 2017, that the suburb of Kootingal has only 1 packaged liquor licensed premises (the subject of this Application) while the Tamworth LGA currently has 22 packaged liquor licensed premises.
24. Facilitating removal of the licence will enable the commercial development (and expansion) of a longstanding business and in this sense the Authority is satisfied

that granting the Application will reasonably develop, in the public interest, the liquor industry in respect of the local community and to a lesser extent the broader community, in furtherance of the statutory object in section 3(1)(b) of the Act.

25. In its submission dated 23 November 2016 the Applicant makes further submissions contending that positive benefits will also flow to the community by way of a “substantial” reduction in the *potential* for adverse impacts and alcohol-related crime. This contention is made by comparison to the prospect of the Proposed Premises operating as a licensed entertainment venue. The Applicant contends that this also poses a reduction in the potential demand upon Police resources (by comparison to use of the Proposed Premises as an entertainment venue) and a reduction in risk to Police safety. The Applicant contend that granting the removal will service a community “need” for packaged liquor; increase local choice and facilitate the introduction of new product lines, providing a reduction in traffic and an increase in public safety.
26. The Authority gives little weight to these further submissions (to the extent that they provide benefits beyond those found above) by reason that the Applicant has provided little evidence or analysis substantiating them. The proposition that the Proposed Premises might otherwise operate as an entertainment venue does not provide a firm basis upon which the Applicant may find *positive* community benefits arising from the operation of the business that is the subject of *this* Application (a packaged liquor store).
27. To the extent that this submission is intended to reduce the *negative social impacts* associated with removing the licence (by comparison to the operation of a live entertainment venue) there is insufficient evidence or material before the Authority to satisfy it that unless this Application is granted, a live entertainment venue will actually take its place.
28. With regard to the contended community benefit of increased *choice*, the licensed business at its new location will substantially increase in scale. By implication, this lends credence to the Applicant’s contention that the business will have scope to accommodate a greater range of products than it does on the Current Premises. However, the Applicant has not provided evidence or information specifying which product lines will be stocked in the Proposed Premises that aren’t readily available from the other packaged liquor retailers, hoteliers or registered clubs in the local or broader community. This reduces the weight that might otherwise have been given to this contended community benefit, on the material before the Authority.

Social Impact – Negative Impacts

29. Having reviewed all the material before it, the Authority considers that over time there is a risk that liquor sold from this licensed business at the new location will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity that are occurring in the local and broader communities from a minority of customers who abuse packaged liquor.
30. As the Applicant seeks to remove the licence from one location to another within the same local community, the Authority is satisfied that granting the Application will not

increase the density of packaged liquor licensed premises or businesses capable of selling takeaway liquor within the local or broader communities.

31. However, this is not a “like for like” relocation of the licensed business in question. The Authority is satisfied, on the basis of information provided to licensing staff by the Applicant’s solicitor on 7 March 2017, that while the Current Premises is 60sqm in scale, the Proposed Premises includes an internal bottle shop area of 180sqm plus a drive through facility of 140sqm licensed area, or a total licensed area of 320sqm. This will form part of a substantial combined liquor and supermarket business that is around 1006sqm in scale.
32. At 320 square metres, the licensed business operating on the Proposed Premises will be substantially greater in scale than the one trading on the Current Premises. This factor objectively expands the capacity of this licence, in its new configuration, to attract, service and impact the local and broader communities over time. The Authority is aware that the relocated liquor business will be considerably greater in scale than many stand-alone packaged liquor licensed premises or supermarket liquor departments across NSW.
33. There are a number of adverse prevailing social impact factors evident with respect to the *broader community* which invite careful scrutiny of the Application. They include higher than State average BOCSAR recorded rates of alcohol related crime, higher than State average RMS recorded rates of drink driving and higher than State average Department of Health recorded rates of alcohol related mortality.
34. There are also certain socio demographic traits pertaining to the *local community* that are indicative of relative community vulnerability to adverse alcohol related social impact. These include relatively lower socio economic status with respect to the local community as a whole, as evident from ABS SEIFA data. There is also a relatively high proportion of persons in the local population from an Aboriginal and Torres Strait Islander (ATSI) background.

Alcohol Related Crime

35. The Authority accepts the Applicant’s submission that Police have not provided any *direct* evidence of liquor being sold early in the morning linked to specific incidents of alcohol related crime or disturbance. The Authority is further reassured that Police, LGNSW and Council have not raised any concerns with the compliance history of the licensee.
36. However, while the Applicant’s trading history is relevant the test in section 48(5) of the Act is not confined to an assessment of the Applicant’s business alone. It requires an assessment of what the Authority considers to be the likely *community* benefits and impacts of granting the Applicant’s proposal in the context of what it is known about *these* communities.
37. The inherent difficulty with assessing alcohol related crime involving or associated with the abuse of *takeaway* liquor is that the liquor is intended to be consumed *away* from the licensed premises in question, usually in private or residential locations, making it difficult to link to the individual licensed businesses selling liquor

in a given community. Annual BOCSAR data for NSW as a whole routinely records that alcohol related domestic violence overwhelmingly occurs in private locations.

38. So while there is no direct evidence of any incidents of alcohol related crime or disturbance linked to discrete sales from this business, there is plainly a problem with alcohol related crime at the level of the broader community, of which the small community of Kootingal forms a part.
39. The BOCSAR *Report on Crime by LGA and Alcohol Related Status* for the period between July 2014 and June 2015 recorded that the Tamworth LGA had higher than State average rates per 100,000 persons of population in the offence categories of:
 - *alcohol related assault police;*
 - *alcohol related non-domestic assault;*
 - *alcohol related domestic assault;* and
 - *alcohol related offensive behaviour.*
40. A factor in the Applicant's favour is that BOCSAR crime maps for the period from October 2015 to September 2016 do **not** indicate that at the local level there are any particular concentrations or hotspots of *alcohol related crime* (which are derived by reference to the prevailing rates of that broader community).
41. In conclusion, the Authority is satisfied that Kootingal is a State suburb with a small population that forms part of a broader community that is relatively over exposed to alcohol related crime.

Health and Road Crash Data

42. NSW Department of Health data establishes that the broader community of the Tamworth LGA, of which Kootingal is a part, recorded a Smoothed Estimate of Standardised Separation Ratio for *alcohol attributed hospitalisations* during 2013-2015 of **83.1** (below the NSW average set at 100). However, the Smoothed Estimate of Standardised Mortality Ratio for *alcohol attributable deaths* was **124.9**, above the NSW rate.
43. The submission from Roads and Maritime Services ("RMS") dated 7 June 2016 advises that there were **91** alcohol-related casualty crashes in the Tamworth LGA between 2006 and 2015. RMS advises that between 2006 and 2015, on average, **6.3%** of casualty crashes in the Tamworth LGA were alcohol-related. This is below the Northern Region average of **9.0%**, but above the NSW average of **5.0%**. RMS recommend that, if the Application is approved, the licensee or representative actively participates in the local liquor Accord and encourage staff to visit the RMS website.

Local Socio Economic Disadvantage

44. ABS *Socio-Economic Indexes For Areas* ("SEIFA") data derived from the 2011 Census discloses that the State suburb of Kootingal ranked in only the 3rd decile while Tamworth LGA is ranked in the 5th decile on the Index of Relative Socio-

Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged) by comparison to other areas in New South Wales.

45. ABS data before the Authority also indicates that the local community has a small population, is relatively disadvantaged and that **8.8%** of this local community are of ATSI background, which is well above the State average of **2.5%**.
46. While research (such as the 2013 Australian Institute of Health and Welfare *National Drug Strategy Household Survey* specified in Authority *Guideline 6*) typically establishes greater rates of *abstention* among persons of ATSI background than the non-ATSI community, a considerably higher proportion of ATSI persons who do drink do so at “risky” levels compared to the non-ATSI population.
47. The high proportion of ATSI persons in the local community is a risk factor when assessing the relative vulnerability of that community to adverse alcohol related impacts.
48. In its final submission the Applicant has provided data, which the Authority accepts, that weekly income levels among the ATSI minority are higher in Kootingal CBD than in the Tamworth Urban Centre. Nevertheless, the Authority is satisfied that the *local community as a whole* is relatively disadvantaged with a SEIFA ranking on the 3rd decile.
49. Socio-economic disadvantage is a relevant compounding risk factor that is routinely associated with domestic violence in the research (see for example the introduction to Livingston “*A Longitudinal Analysis of Alcohol Outlet Density and Domestic Violence*” (2011) as specified in Authority *Guideline 6*).

Dispute Over Licensed Opening Hours

50. There is a dispute between the Applicant and local Police as to when licenced trading should commence should the Application be granted.
51. The total licensed trading hours sought by the Applicant are quite extensive across the course of the week, trading until 10:00PM every night. When considered against the licensed opening times that have been typically granted by the Authority in respect of packaged liquor licensed premises since the commencement of section 11A of the Act in December 2008, 6:00AM would be a relatively very early and somewhat unusual opening time, only one hour short of the 5:00AM opening that is *potentially* available during the standard trading period prescribed by section 12 of the Act.
52. To summarise, the Applicant’s case for 6:00AM opening is based on the following key contentions:
 - there is a demonstrated community “need” or “expectation” for this business to continue selling packaged liquor early in the morning. This need has been demonstrated since the grant of the licence in the early 1990s;
 - residents of Kootingal include “shift workers” and “farm workers” who attend this supermarket in the Current Premises earlier in the morning to purchase groceries and liquor after the conclusion of their shift;

- there is a benefit of convenience provided to those members of the community who choose to do their shopping early in the morning before commencing work or attending other activities during the day;
 - the liquor department for this supermarket is the only “separate dedicated” packaged liquor facility operating within the town of Kootingal;
 - the Applicant is not aware of any adverse issues, complaints or concerns having been raised as the result of the sale of packaged liquor from the Current Premises prior to 9:00AM during the past 24 years;
 - Council has approved the intended hours of use of the Proposed Premises for planning purposes;
 - early opening will be convenient for local residents who are employed as tradesmen or farm labours are regularly required to stay overnight (or for several days) on a site and purchase their supplies before heading to work as they are unable to readily access shops once they reach their location to undertake work; and
 - early opening will be convenient for local residents who use the local dams for leisure and make an early start to travel to these dams – a 6:00AM opening would allow customers to purchase both food and liquor supplies prior to leaving for a day’s activities
 - the Authority’s practice since the commencement of section 11A of the Act has been to usually accommodate licensed opening hours from 8:00AM for licensed businesses that form part of a supermarket if such hours are sought.
- 53.** In a submission dated 6 December 2016 local Police counter that the “appropriate” licensed trading times for this licensed business would be from 9:00AM to 10:00PM Monday through Saturday and from 10:00AM to 10:00PM on Sunday.
- 54.** While not opposing the Application to remove the licence, Police characterise the Applicant’s claim that the 6:00AM opening is required to cater for local shift workers as “nonsense” and submit that this claim is not supported by any evidence.
- 55.** Moreover, Police contend that members of the Tamworth and District Liquor Accord have maintained an agreed position that packaged liquor sales in the Accord area (which includes Kootingal) shall not commence before 9:00AM.
- 56.** In a submission dated 10 February 2017 the Applicant replies that this licence is presently exercised from as early as 6:00AM to meet the needs of the local community and that Police have provided no evidence in support of their proposal for 9:00AM trading nor do they identify any problems arising from this licence having been exercised from 6:00AM which the Applicant contends has occurred for over 20 years.
- 57.** The Applicant further contends that the Accord is concerned with particular alcohol related issues that have arisen in the Tamworth CBD, not Kootingal. The Applicant refers to four letters of support that it has provided from early morning patrons of the supermarket and evidence of recent sales prior to 9:00AM.

58. The Applicant reiterates that, since Kootingal is 20km from Tamworth CBD, residents of Tamworth would not likely journey to the Proposed Premises to purchase liquor. The Applicant consents to Police proposed licence conditions, while not accepting the Police position with regard to consistency with the Local Liquor Accord.
59. The Authority acknowledges that the Applicant has enjoyed *licensed* trading hours on the Current Premises from 5:00AM Monday to Saturday since the licence was granted in 1992. That is a legacy of the administrative practice of recording the “standard” trading period commencement time of 5:00AM on many liquor licences that were issued before the commencement of section 11A of the Act.
60. The Applicant does not contend that it has *actually* exercised this licence from 5:00AM. Without specifying how often this occurs, the Applicant contends in the CIS that the supermarket has elected to trade on the Current Premises *prior to 7:00AM* and that liquor has been sold at those times in the past. The Authority accepts that the Applicant has sold liquor prior to 7:00AM on the basis of the evidence of sales receipts that is discussed below.
61. However, the proposed removal of this licence requires the Authority to give fresh consideration to the overall social impact of granting *this* Application and to fix licensed trading hours, if the Application is granted, that are in the public interest. The Authority is also required to determine an appropriate mandatory 6-hour daily closure period pursuant to section 11A of the Act.
62. Parliament has prescribed a “default” closure period of 4:00AM to 10:00AM for all licensed premises where the grant of a licence (or certain authorisations) post-dated the commencement of section 11A.
63. Section 59 of the Act provides that an application to *remove* a licence is to be dealt with as if it were an application for a new licence for the premises in question. The Authority does not accept the Applicant’s submission that section 11A does not apply to this licence once it is removed to the Proposed Premises.
64. The Authority has discretion, pursuant to section 11A(3) of the Act, to fix an alternative closure period. The Authority may fix an alternative closure period to accommodate earlier licensed opening hours if satisfied, on the material before it, that it is in the public interest to do so.
65. Each application for an alternative closure period is considered on its merits. The Authority is aware that since the commencement of section 11A, the Authority has on numerous occasions granted applications in respect of stand-alone packaged liquor stores seeking a 9:00AM opening time, varying the section 11A closure period accordingly.
66. The Authority has also granted numerous applications in respect of packaged liquor licences associated with an adjacent supermarket seeking an 8:00AM opening. Since the commencement of the statutory obligation to publish decisions to *grant* licences from May 2015, Authority decisions to grant packaged liquor licences with alternative daily closure periods (to accommodate earlier opening hours) have been published on the now Liquor and Gaming website.

67. The rationale for 8:00am opening with respect to licences associated with supermarkets is typically based upon the additional measure of convenience that is facilitated through “one stop” shopping by morning grocery customers at the supermarket.
68. As noted in Authority *Guideline 6*, the proposed licensed trading hours requested by a licence applicant will form one element of the Authority’s assessment of the overall social impact of granting the application (or removal) for the purposes of section 48(5) of the Act. Whether to grant a licence and if so upon what trading hours involves the assessment of a number of relevant factors.

The Preferable Opening Time

69. The Authority accepts the Applicant’s contention in its submission dated 10 February 2017 that no stakeholder (including Police) has provided any specific evidence of adverse incidents arising from the exercise of this licensee prior to 9:00AM on the Current Premises.
70. The Applicant has provided some evidence of early morning liquor transactions, but this evidence has not persuaded the Authority of its claim that 6:00AM trading necessarily accords with the “expectations, needs and aspirations” of the local or broader community as a whole for the purposes of the statutory object in section 3(1)(a) of the Act.
71. The Applicant’s receipts establish that during a 6-week period from 19 December 2016 to 29 January 2017 around **144** transactions were made prior to 9:00AM. That equates to around **24** transactions per week or **3.4** transactions per day involving the sale of liquor occurring before 9:00AM.
72. Of those 144 transactions, only **19** occurred between 6:00AM and 7:00AM, while **58** occurred between 7:00AM and 8:00AM and **67** between 8:00AM and 9:00AM.
73. The Applicant does not specify the proportion of its total liquor business that is transacted during those early hours, nor the number of shift workers or farm workers in the town of Kootingal who cannot conveniently acquire liquor during the balance of the proposed licensed trading hours.
74. The Applicant has also provided letters from four residents supporting the proposed early trading hours and explaining how that service is convenient to them. The Authority accepts those letters and accepts that there is some evidence of early morning liquor patronage.
75. However, the Authority finds that a liquor licence operating 7 days per week until 10:00PM in the evening will provide considerable scope for persons in the local community to make arrangements to source packaged liquor, whether they are working in a remote location or engaging in recreation.
76. While granting 6:00AM trading will logically increase the benefit of convenience for the local community, the Authority considers that the extent of that benefit has been somewhat overstated by the Applicant (given the limited transactions occurring at that time) and in any event customer convenience is not the only consideration

when assessing the overall social impact of removing a licence or the public interest in fixing licensed trading hours.

77. When assessing the preferable opening hours the Authority has given weight to the statutory consideration in section 3(2)(c) - the need to ensure that liquor contributes to and does not detract from the amenity of community life.
78. The Authority is satisfied that licensing the Proposed Premises from as early as 6:00AM will likely increase the scope for this relocated liquor business, operating on a considerably expanded scale, to adversely affect local amenity over time.
79. The Authority finds it credible for the two residents of Field Lane who live very close to the Proposed Premises to contend that 6:00AM opening will likely impact the “privacy and peace” of nearby residents in the morning. Those concerns are somewhat ameliorated by the Applicant’s proposal to not operate the drive through facility before 9:00AM, but even on the Applicant’s proposal, liquor patrons will still be able to *walk to* and *drive to* the supermarket to buy liquor very early in the morning, even if they cannot *drive through* the Proposed Premises at that time.
80. The Authority considers that there is an ongoing risk, in practical sense, for a problematic minority of patrons who abuse packaged liquor to adversely affect the amenity of nearby residents.
81. That risk is present when any packaged liquor licence is granted. Acknowledging that the Act is concerned with the *minimisation*, not elimination, of alcohol related harm, the scope for adverse impact upon local amenity nevertheless increases and becomes less reasonable as licensed hours expand. This is particularly so when a liquor business trades during sensitive times of the day, including very early or very late while other businesses are closed and the neighbourhood is likely to be relatively quiet.
82. The Authority finds that the following further factors militate against 6:00AM opening in this case:
 - the total trading hours proposed are otherwise very extensive across the week, providing considerable convenience and amenity to the local community;
 - the scale of the Proposed Premises will be substantial, considerably larger than the Current Premises and larger than many stand-alone and supermarket based liquor stores in the State. This increases the scope for this business to attract, service and contribute to adverse social impact associated with the abuse of packaged liquor in the local and broader communities;
 - the BOCSAR *Report on Crime by LGA and Alcohol Related Status* for the period between July 2014 and June 2015 for the Tamworth LGA (discussed above) indicates relative overexposure of this broader community to *alcohol related domestic violence*.
 - once operating, liquor sales from this substantial business are likely to at least *contribute*, with the incumbent licensees, to a relatively challenging

environment with respect of *alcohol related domestic violence* in *this* broader community. Alcohol related domestic violence is of particular concern when assessing a *packaged* liquor licence application given that it overwhelmingly occurs in private residences, away from the monitoring or control licensee where packaged liquor is expected to be consumed;

- the data provided by RMS indicates that rates of drink driving are of some concern in this broader community, with alcohol related road crashes occurring at rates above State-wide rates; and
- the socio-demographic data is of concern to the Authority when assessing the relative vulnerability of the population in *these* local and broader communities to adverse alcohol related social impact. This includes SEIFA data indicating that the local community of Kootingal is relatively disadvantaged with a considerably higher proportion of persons of ATSI descent by comparison to the State as a whole. There is also a moderately higher than State average rate of *alcohol related death* being recorded across the broader community, compared to NSW rates. These socio demographic factors militate in favour of *reducing* the total licensed trading footprint of this business when it operates in its new and expanded configuration.

The Accord

- 83.** The Authority gives weight to the local knowledge of Police and accepts the Police contention that the Local Liquor Accord has agreed that its members will not supply liquor before 9:00AM in the morning. The Authority also accepts Police advice that this Accord covers an area of the broader community that incorporates Kootingal.
- 84.** The Authority notes that the Accord is a voluntary arrangement. Without the benefit of any specific evidence or information about the history of the Accord, the Authority finds it credible for the Applicant to assert that these measures may have been driven in response to liquor impacts occurring in the Tamworth CBD, rather than Kootingal itself, but the Authority notes that Kootingal nevertheless forms part of a broader community to which this Accord applies.
- 85.** The fact that *numerous* licensees *across* this broader community have voluntarily entered into an arrangement not to sell liquor before 9:00AM provides, in the Authority's view, a persuasive indication as to where the "needs, expectations and aspirations" lie *at the level of that community as a whole*.
- 86.** The Authority shares Police concerns that a regulatory decision enabling pre-9:00AM sales may threaten the solidarity of the Accord, although that concern is somewhat diminished in this instance by the location of the Proposed Premises (some 20km away from the Tamworth CBD) and the licensee's evidence of recent trading from 7:00AM which, it would seem, has not yet undermined the Accord.
- 87.** Were 6:00AM licensed trading granted, this substantial liquor business would be able to sell or supply liquor to the local and broader community for an additional 15 hours per week in the morning than the Accord opening time. By comparison to other hotels and liquor stores in the broader community, this will objectively

increase the scope for *this* substantial enterprise to *contribute* to the prevailing *off premises* alcohol related social impacts in the local and broader community.

Applicant Trading History and Plan of Management

88. The Authority is satisfied on the information before it that the Applicant has a solid trading history and does not consider it likely that the licensee or staff would *knowingly* contribute to alcohol related crime or anti-social conduct nor supply liquor contrary to Responsible Service of Alcohol principles.
89. The Authority has also had regard to the numerous conditions to which the licence will be subject and the reasonably detailed harm minimisation measures set out in the Applicant's *Management Plan* dated April 2016. The Authority has also had regard to the security measures that will be in place and the passive surveillance opportunities provided by a liquor business operating within an established local supermarket.
90. Nevertheless, a packaged liquor licensee will only be able to meaningfully monitor and respond to such issues that may arise at or near the point of sale. The Applicant's liquor sales will more likely than not *contribute*, with the incumbent licensees, to adverse alcohol related social outcomes over time. Those negative impacts will occur in the context of a broader community that is already over exposed to alcohol related crime and within a local community that bears several key indicia of relative vulnerability to adverse alcohol related social impacts. Granting licensed trading from 6:00AM will expand the scope for *this* business to contribute to the adverse social impacts over time.

Conclusion

91. In conclusion, granting the Application will not result in an increase in total liquor licence density or the number of businesses authorised to sell takeaway liquor at the level of the local or broader community.
92. The public interest benefits of granting the Application of the licence are quite apparent, noting that this will be the only packaged liquor licensed business in Kootingal. Granting the removal will provide continuity of this service in the local community which is located some distance away from the Tamworth CBD.
93. Removing the licence to the new expanded premises will also serve community "expectations, needs and aspirations" of the local community for the purposes of section 3(1)(a) of the Act. In enabling the licensee to develop its business, it will also serve to advance the object of the balanced development of the liquor industry in the local and broader community for the purposes of section 3(1)(b).
94. On the material before it, the Authority is satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of removing the licence to the Proposed Premises would not be detrimental to the well-being of the local and broader community.
95. However, the Authority's satisfaction as to overall social impact has been informed by its conclusion on the preferable commencement of licensed trading hours. The Application is granted, pursuant to section 59 of the Act, on that basis.

96. On the material before it, the Authority is satisfied that the preferable balance of the statutory objects and considerations provided by section 3 of the Act (noting, in the interests of regulatory consistency, the Authority's well established practice of granting 8:00AM opening times for licensed businesses that form part of supermarkets) is to grant licensed trading hours that extend from 8:00AM to 10:00PM Monday through Saturday and from 10:00AM to 10:00PM on Sunday.
97. To accommodate these opening hours an alternative 6-hour closure period is fixed at between 2:00AM and 8:00AM for the purposes of section 11A of the Act.

Decision Date: 19 April 2017

Philip Crawford
Chairperson

Important Information:

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

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

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

SCHEDULE

Material before the Authority

1. ABS SEIFA data based on the 2011 Census for Kootingal suburb and Tamworth LGA.
2. Report on *Crime by LGA and Alcohol Related Status* obtained from published BOCSAR sources for July 2014-June 2015. This data indicates that:
 - (a) The rate of *assault police* incidents flagged by reporting Police as alcohol related across the Tamworth LGA was **24.8**, higher than the NSW rate of **18.2** per 100,000 persons.
 - (b) The rate of *non-domestic violence related assault* incidents flagged by reporting Police as *alcohol related* in the Tamworth LGA was **289.3**, significantly higher than the NSW rate of **144.0** per 100,000 persons.
 - (c) The rate of *domestic violence related assault* incidents recorded by reporting Police as *alcohol related* across the Tamworth LGA was **216.5** per 100,000 persons, significantly higher than the NSW rate of **122.6** per 100,000 persons.
 - (d) The rate of *offensive behaviour* offences flagged by reporting Police as *alcohol related* across this LGA was **185.1** per 100,000 persons, significantly higher than the NSW rate of **88.2** per 100,000 persons.
3. BOCSAR NSW Recorded Crime Statistics 2015 for the Tamworth LGA. This document records the following proportions of domestic-violence assault offences across the following time periods:
 - (a) Monday: 12:00AM to 6:00AM **2.4%**; 6:00AM to 12:00PM **4.5%**; 12:00PM to 6:00PM **3.9%**; 6:00PM to 12:00AM **4.7%**;
 - (b) Tuesday: 12:00AM to 6:00AM **0.9%**; 6:00AM to 12:00PM **3.0%**; 12:00PM to 6:00PM **6.2%**; 6:00PM to 12:00AM **5.3%**;
 - (c) Wednesday: 12:00AM to 6:00AM **1.2%**; 6:00AM to 12:00PM **3.3%**; 12:00PM to 6:00PM **3.0%**; 6:00PM to 12:00AM **2.7%**;
 - (d) Thursday: 12:00AM to 6:00AM **2.7%**; 6:00AM to 12:00PM **2.7%**; 12:00PM to 6:00PM **5.0%**; 6:00PM to 12:00AM **5.0%**;
 - (e) Friday: 12:00AM to 6:00AM **1.5%**; 6:00AM to 12:00PM **2.1%**; 12:00PM to 6:00PM **4.5%**; 6:00PM to 12:00AM **5.6%**;
 - (f) Saturday: 12:00AM to 6:00AM **2.7%**; 6:00AM to 12:00PM **3.3%**; 12:00PM to 6:00PM **3.0%**; 6:00PM to 12:00AM **3.6%**;
 - (g) Sunday: 12:00AM to 6:00AM **3.6%**; 6:00AM to 12:00PM **3.6%**; 12:00PM to 6:00PM **6.2%**; 6:00PM to 12:00AM **4.2%**.
4. BOCSAR NSW Crime Statistics for the year ending September 2016 indicate that:
 - (a) The rate of *domestic assault* incidents recorded by reporting Police as *alcohol related* across the Tamworth LGA was **191.8** per 100,000 persons, substantially higher than the NSW rate of **119.0** per 100,000 persons.
 - (b) The rate of *non-domestic assault* incidents recorded by reporting Police as *alcohol related* across the Tamworth LGA was **186.8** per 100,000 persons, substantially higher than the NSW rate of **138.5** per 100,000 persons.

- (c) The rate of *malicious damage to property* incidents recorded by reporting Police as *alcohol related* across the Tamworth LGA was **1314.2** per 100,000 persons, substantially higher than the NSW rate of **838.1** per 100,000 persons.
5. BOCSAR Crime Maps from October 2015 to September 2016 detailing hotspots for the concentration of offences near the location, indicate that the Proposed Premises:
- (a) is **not** located within any *hotspots* for incidents of *domestic assault*
- (b) is **not** located within any *hotspots* for incidents of *non-domestic assault*
- (c) Is **not** located within any *hotspots* for incidents of *malicious damage to property*.
6. The Applicant's detailed *Management Plan* dated April 2016, *House Policy* (undated) and geographical map depicting an aerial view of the locations of the Current Premises and Proposed Premises.
7. Application form lodged on 7 June 2016.
8. CIS form lodged on 7 June 2016. The following documents were attached:
- List of stakeholders and special interest groups notified of the Application.
 - Aerial geographical map depicting the radius in which notification of the Application was distributed.
 - Additional information about the Application and CIS.
 - Australian Securities and Investments Commission ("ASIC") Current Organisation Extracts created 27 May 2015 for business owner SUSOLO PTY. LIMITED and 17 May 2016 for business owner P.C. & L.E. SUMMERS PTY LIMITED.
 - Required notices to be placed on site and sent to Council and Police.
 - Additional Information about the 6-hour closure period.
9. Submission from Roads and Maritime Services ("RMS") dated 7 June 2016 advising that between 2006 and 2015 there were **91** alcohol-related casualty crashes in the Tamworth LGA and providing an analysis of the data relating to the driver/rider of the key vehicles. RMS advise that between 2006 and 2015, on average, 6.3% of casualty crashes in the Tamworth LGA were alcohol-related. This proportion is almost 3.0% below the Northern Region average of 9.0% but above the State average of 5.0%. RMS recommend that, if the Application is approved, the licensee or representative actively participates in the local liquor Accord and encourage staff to visit the RMS website. Attached to this submission is the alcohol related casualty crash data between 2006 and 2015 for the Tamworth LGA.
10. Submission from two local residents Ms M and Mr J Kuczer of Field Lane Kootingal sent directly to the Authority on 9 June 2016 objecting to the operational hours and proposed drive through exit onto Field Lane. In this four-page submission the local residents request that the drive through exit be changed to Station Street instead of Field Lane and that the operating hours be shortened for privacy considerations to residents. These key contentions are supported by discussions relating to the following: traffic; noise; exhaust fumes; loss of privacy; proximity of the drive

through exit to their house; location of loading dock and rubbish; refrigeration noise; resident street parking; the Kootingal Hotel (located within 100 metres of the local residents home). Attached to this submission is two lot maps from Council depicting the location of the Proposed Premises, its loading docks, entry/exits and liquor exit in relation to the local residents' houses.

11. Data prepared by licensing staff based on the ABS 2011 Census data and LGNSW licensing data as of 18 October 2016, indicating that the suburb of Kootingal has a rate of **46.25 packaged liquor licences** per 100,000 persons and Tamworth LGA has a rate of **39.08**, compared to the NSW state wide rate of **35.02**.
12. Submission from Compliance Operations LGNSW dated 31 October 2016 advising that the Application was assessed using the Environment and Venue Assessment Tool ("EVAT") and that LGNSW does not intend to carry out any further assessment.
13. Submission from Mr Grant Cusack, Hatzis Cusack Lawyers, on behalf of the Applicant, dated 23 November 2016. The following documents are attached to this submission:
 - Geographical map depicting an aerial view of the locations of the Current Premises and Proposed Premises;
 - Letter from Council to Mr Summers dated 4 February 2016 advising that Council has approved the modification to DA0174/2015 for supermarket, café, and drive-through bottle shop and associated parking and signage. The DA was modified to extend the opening hours of the supermarket and drive through bottle shop to 10:00PM on Sunday. The Authority notes that condition 60 of the DA (relating to trading hours) has an advisory note, which states that "the approved hours of business trading for the bottle shop may be varied in accordance with any liquor accord agreement within the approved hours of operation".
 - Additional Information about the 6-hour closure period (a copy of the same submission filed with the Application).
14. Liquor licence record for Summers IGA LIQP724003977 dated 5 December 2016.
15. Police submission from Licensing Sergeant Graeme Elms, Oxley Local Area Command ("LAC"), dated 6 December 2016. Police advise that they do not support the licensed trading hours sought by the Applicant, and that they consider that 9:00AM to 10:00PM Monday to Saturday and 10:00AM to 10:00PM would be more appropriate. Police submit that the Tamworth & District Liquor Accord members have maintained an agreed position that packaged liquor sales in the accord area not take place before 9:00AM and the Applicant is aware of this. Police note that the Authority recently granted a licence for Dan Murphy's at Tamworth (LIQP700357673) which will trade from 9:00AM. Police submit the Applicant's contention that 6:00AM opening is required to service shift workers is "nonsense and is not supported by any evidence".
16. Police request the imposition of conditions requiring participation in the local liquor Accord, prohibiting the service of packaged shots or drinks designed to be

consumed rapidly, requiring that no mixed alcoholic energy drinks be sold after 9:00PM and requiring no clothing/jewellery/accessories of outlaw motorcycle related organisations be allowed on the Proposed Premises.

17. Submission from Mr Brett Tobin, Hatzis Cusack Lawyers, on behalf of the Applicant dated 10 February 2017, attaching:
 - Four letters of support from existing customers of the Supermarket who presently attend to purchase liquor early in the morning. Letters of support were received from: Mr C Smith of New England Gully Rd Moonbi dated 26 January 2017; Mr T Kaluza of Johns Drive Kootingal dated 27 January 2016 [the Authority assumes this is an error and should read 2017]; Mr T Taggart of Ormans Lane Kootingal (undated).
 - Till receipts from the Applicant business on the Current Premises for the period between 19 December 2016 to 29 January 2017 recording liquor sales made to customers prior to 9:00AM during that period.
18. Liquor licensing records from LGNSW as of 23 February 2017.
19. Google Maps satellite map and road map indicating the location of the Proposed Premises, provided by LGNSW on 25 February 2017.
20. Floorplan or diagram of the Proposed Premises provided by the Applicant on 7 March 2017 highlighting in yellow the proposed licensed area, the entry from within the supermarket and the drive through.
21. Submission from Applicant dated 14 March 2017. This submission was made in response to advice from licensing staff dated 8 March 2017 that the Authority had decided in principle to grant the licence but final submissions were sought on the proposed licence conditions, including a condition specifying that licensed trading hours would commence at 9:00AM Monday through Saturday and 10:00AM Sunday.
22. The Applicant presses a 6:00AM licensed opening time (Monday through Saturday) as proposed in the Application on the basis that the drive through service would not commence before 9:00AM and noting that development consent is in force for this proposed use. The Applicant reiterates its contention that 6:00AM opening would serve “demand on the part of farm workers and shift workers”, submits that no evidence has been provided by Police that liquor sales from this business have caused harm as a result of early trading and contends that the Kootingal CBD has a different demographic makeup to the Tamworth CBD. The Applicant cites, inter alia, ABS data disclosing that the Kootingal CBD has no public housing, a lower percentage of unmarried persons (26%) than the Tamworth Urban Centre (34.7%) and a higher (\$1125) medium household income for persons of ATSI background than Tamworth Urban Centre (\$840). The Applicant repeats its contention that, since Kootingal is 20km away from the Tamworth CBD, it does not follow that the same social problems encountered in Tamworth apply to the Proposed Premises.