



Mr Thomas Croft
Danandtom Pty Limited
The Welder's Dog Craft Beer Bar
120 Marsh Street
ARMIDALE NSW 2350

tomgcroft@gmail.com

Dear Mr Croft

**Decision on Application for Hotel Licence under section 45 of the *Liquor Act 2007*
The Welder's Dog Craft Beer Bar, Armidale**

I am writing to you regarding an application made by Danandtom Pty Limited which was received by the Independent Liquor and Gaming Authority on 27 November 2015.

The application seeks the grant of a "full" hotel licence within the meaning of section 14 of the *Liquor Act 2007* (Act) in respect of premises located at 120 Marsh Street, Armidale NSW 2350. The premises has traded since 2014 as "The Welder's Dog Craft Beer Bar" pursuant to a hotel (general bar subcategory) licence. The applicant seeks to replace that licence with a "full" hotel licence to enable the limited supply of liquor for consumption off the premises.

The Authority considered the Application at its meeting on 13 April 2016 and decided to **grant** the Application pursuant to section 45 of the Act. Licensing staff informally notified the Authority's decision via email dated 15 April 2016.

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

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

Documentation of the new licence and the conditions to which the licence is subject has been forwarded to you separately by licensing staff.

If you have any enquiries about this letter please contact the case manager, Ms Santina Causa via email at santina.causa@ilga.nsw.gov.au.

Yours faithfully

DB Armati
Deputy Chairperson
for and on behalf of the **Independent Liquor and Gaming Authority**

31 May 2016

STATEMENT OF REASONS

INTRODUCTION

1. On 27 November 2015, the Independent Liquor and Gaming Authority (Authority) received an application (Application) made by Danandtom Pty Limited (Applicant).
2. The Application seeks the grant of a "full" hotel licence within the meaning of section 14 of the *Liquor Act 2007* (Act) in respect of premises located at 120 Marsh Street, Armidale NSW 2350 (Premises).
3. The Applicant presently holds a hotel (general bar subcategory) licence in respect of the Premises, which was granted by the Authority on 29 October 2014. The Applicant has made this Application for the express purpose of enabling the licensed business known as "The Welder's Dog Craft Beer Bar" currently operating on the Premises to also sell or supply a limited range of packaged liquor products that are produced by this business, for consumption away from the Premises.
4. If the Application is granted, the Applicant proposes to surrender the existing general bar licence and instead operate with the new full hotel licence.
5. The Application seeks licensed trading hours for the proposed new business to be conducted on the Premises between 10:00am and 12:00 midnight on Monday to Saturday and from 10:00am to 10:00pm on Sunday.
6. The Application also seeks that the 6-hour daily closure period required by section 11A of the Act be fixed at between 4:00am and 10:00am.
7. Authority staff informally notified the Authority's decision to *grant* this Application via email dated 15 April 2016. This letter serves to provide a formal record of the reasons for the decision.
8. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008.

MATERIAL BEFORE THE AUTHORITY

9. Application Form, Community Impact Statement (CIS) and Statement of Impact (SOI) dated 2 June 2015. The Application seeks to exercise licensed trading hours between 10:00am and 12:00 midnight on Monday to Saturday and from 10:00am to 10:00pm on Sunday.
10. The Application also seeks that the 6-hour daily closure period required by section 11A of the Act be fixed at between 4:00am and 10:00am.
11. The key contentions and submissions made by the Applicant in the CIS document include the following:

The current premises, The Welder's Dog Craft Beer Bar currently operates under a NSW Hotel (General Bar) Liquor Licence.

The proposed liquor-related activity is to apply for a Hotel Licence to allow the same activity but with the addition of take-away alcohol sales. The intention is to sell small amounts of craft beer, wine and spirits as over-the-bar sales. No discount alcohol will be for sale and no floor stockpiling or

dedicated shopfront is proposed for take-away sales, more so the ability to sell current stock such as local wines, spirits and boutique craft beer as takeaway sales. Due to customer demand, a majority of such sales would likely be to customers dining at surrounding BYO restaurants.

No other changes to the current activity are proposed. Specifically:

- *no gaming/poker machine activities are proposed;*
- *no change in trading hours are proposed (currently approved Mon-Sat 10am-12:30am, Sunday 10am-10:30pm);*
- *no ticketed entertainment or performances;*
- *no change in patron numbers/capacity (currently approved for 100 person capacity);*
- *no increase in floor space.*
- *no change to any other existing liquor licence condition.*

The intention is to sell small amounts of boutique products that are unavailable elsewhere in town, during normal trading hours until 9pm (i.e. 9pm closure of takeaway sales is earlier than generally permitted under a hotel licence). The applicant will advise the Office of Liquor, Gaming and Racing they are willing to have the above restriction formally applied as conditions of a liquor licence, in an effort to reduce any potential impact of the additional liquor activity, being takeaway liquor sales.

To further reduce potential impact of increased access to packaged liquor, the applicant is willing to limit the volume of alcohol available for sale for consumption off site. This has been discussed in detail with local Police and we believe the limitations would provide an appropriate outcome to balance community expectations, police concerns and the operation of the business.

We acknowledge the liquor licence would allow a minor increase to access to alcohol for consumption off-premises, however, we strongly believe that with the inclusion of the above restrictions, and the actual small nature of the premises and relatively small trading capacity, the risk of negative alcohol impacts is significantly limited.

It has been agreed by Local Police that the current premises has "little to no effect on the local community" and we believe the minor additional activity on site will not result in any detrimental effect to the local community.

12. Submission from the Applicant to Authority staff dated 4 April 2015. This submission is made in response to a request from the then Office of Liquor, Gaming and Racing (now Liquor and Gaming NSW) to provide commentary on the operation of take-away sales for the Premises. Within this submission, the Applicant contends that there has been "strong demand" from local wine, beer and cider producers for a retail outlet to sell their craft liquor products, along with strong local demand from consumers to purchase these local products.
13. In discussions with Police about this proposal, the Applicant has agreed to limit packaged liquor sales from the Premises to the following, for any one customer during any 24-hour period:
 - a) 1 x 6-pack of beer/cider not exceeding 375mL bottles
 - b) or 1 x bottle of wine not exceeding 750mL
 - c) or 1 x 2 litre "Growler" [the Applicant has identified a growler as a glass container of 1.94 litre capacity]
 - d) or 2 x 1 litre "Squealers" [the Applicant has identified a squealer as a glass container of 1 litre capacity]
 - e) or 1 x bottle of spirits not exceeding 750mL not commercially available other than from the producer's cellar door.
14. The Applicant contends that in granting this Application there will be "no change to any other operation of the licensed premises" other than to allow for take-away liquor sales.
15. The Applicant is "neither concerned nor interested in" the sale of "discounted or large volumes of alcohol" such as full cartons of beer or cask wine.
16. The Applicant contends that should the licence be granted there will not be a dedicated shop front for takeaway liquor products on the Premises and there will be "minimal" sales displays.

17. The Applicant contends that "Growlers" and "Squealers" will be "expensive products" with the average price of a 1 litre Squealer being \$14 and the average price of a Growler being \$28. The Applicant submits that this is considerably more expensive than other "mass produced" liquor products.
18. The Applicant intends to sell "predominantly local" and "regional" beer and cider products. Spirits sales would generally be limited to "local distillery producers" including *Dobson's Distillery* in Kentucky (35km from Armidale) and *Red Dirt Distillery* in Dorrigo (125km from Armidale).
19. The Applicant states that the business is "not interested" in retailing established and readily available products; rather it will be supporting local and regional produce.
20. Plan of the Premises. The Applicant has provided a diagram indicating the boundaries of the proposed licensed area on the Premises.
21. Armidale Dumaresq Council (Council) Development Application (DA) No. 173-2014/B dated 23 September 2014. The DA records the grant of consent for the "Change of Use to Licensed Café and Bar". The DA notes that the hours of operation of the Premises are limited to between the hours of 10:00am and 12:30am on Monday to Saturday and from 10:00am to 10:30pm on Sunday. This DA records a number of conditions on use of the Premises as a licensed venue (for the purposes of planning legislation) including, *inter alia*:
 - a) consumption of alcohol outside of the Premises is prohibited
 - b) patrons cannot bring alcohol onto the Premises
 - c) patrons cannot remove alcohol in open containers from the venue
 - d) single nips and shots are prohibited
 - e) alcohol must be opened by staff
 - f) beverage stockpiling is not to be permitted
 - g) no more than two (2) drinks per patron to be sold after 11:00pm
 - h) patrons must be subject to entry requirements including but not limited to dress standards, intoxication, and behaviour
 - i) the licensee must employ one (1) fully licensed and uniformed dedicated security guard and one (1) dedicated Responsible Service of Alcohol (RSA) Marshal when the number of patrons reaches 85
 - j) staff training is to be provided in RSA, policies and procedures regarding employment within licensed premises, and the associated liquor licence legislation.
 - k) the Premises must maintain a *Security Management Plan* and an *Incident Register*
 - l) chilled water stations are to be provided for patrons.
22. The DA also addresses, *inter alia*, requirements with regard to the regulation of construction, fire safety, maintenance and amenity.
23. Email from Council staff to the Applicant dated 3 June 2015. This email states that under the *Armidale Dumaresq Local Environmental Plan 2012* the current permitted use of the Premises would be best defined as a "small bar" and it is considered that the current development consent would extend to the retail sale of alcohol for consumption either on or off the Premises.
24. Plan of Management (POM) and *House Policy* for "*The Welder's Dog*" prepared by the Applicant, dated March 2016. This internal business planning document sets out "performance criteria and guidelines for the operational management" of the business operating on the Premises. The POM states the following:
 - a) *Hours of Operation and Patron Capacity/Control*. The POM states that the maximum capacity of *The Welder's Dog* is 100 people; the hours of operation will

- be limited to between 10:00am and 12:00 midnight on Monday to Saturday and from 10:00am to 10:00pm on Sunday.
- b) *Legislation and Policy.* The POM states that the Premises will operate under development consent No. 173/2014 issued by Council, the general bar licence issued by the Authority, the *Environmental Planning and Assessment Act 1979* (NSW), the *Liquor Act 2007* and the Armidale Liquor Accord.
 - c) *Development Consent Operational Conditions.* The POM states that the development consent requires that the hours of operation for the Premises be limited to between 10:00am and 12:00 midnight on Monday to Saturday and between 10:00am and 10:00pm on Sunday; all loading and unloading for the Premises is to be carried out within the adjacent designated loading zone in Marsh Street; an annual fire safety statement shall be provided to Armidale Dumaresq Council and to NSW Fire Brigades; the number of patrons on the Premises is not to exceed 100 persons; the Applicant must install a CCTV system on the Premises; and consumption of alcohol outside of the Premises is prohibited.
 - d) *Development Consent Consumption of Alcohol Conditions.* The POM states that the development consent records that patrons bringing alcohol onto the Premises is prohibited; patrons are prohibited from removing alcohol from the Premises in open containers; single nips and shots are prohibited; alcohol must be opened by staff; alcoholic beverage stockpiling is prohibited; and that no more than two (2) drinks per person are to be sold after 11:00pm.
 - e) *Development Consent Conditions on Entry to the Premises.* The POM states that the development consent requires that patrons waiting to enter the Premises must form a queue that does not impede the flow of pedestrians; patrons must not smoke within 4mtrs of the entry point to the Premises or any other building; patrons must be subject to entry requirements including dress standards, intoxication and behaviour; patrons must be assessed and monitored for disorderly/anti-social/offensive behaviour and intoxication prior to and upon entry to the Premises; and that patrons must be refused entry or asked to leave the Premises should they behave in a disorderly/anti-social manner/offensive manner and/or are intoxicated.
 - f) *Development Consent Conditions for Lighting.* The POM states that the development consent requires that appropriate lighting be installed throughout the venue including out the front of the Premises and the footpath.
 - g) *Development Consent Conditions for Security.* The POM states that the development consent requires that the licensee must employ one (1) security operative and one (1) RSA Marshal dedicated to specifically perform security and RSA duties when the number of patrons on the Premises reaches or exceeds 75.
 - h) *Development Consent Conditions for Signage.* The POM states that the development consent requires that signage regarding smoking offences must be displayed.
 - i) *Development Consent Conditions for Management.* The POM states that the development consent requires that training for staff in RSA, policies and procedures regarding employment within licensed premises, and liquor licence legislation is to be provided; the *Security Management Plan* shall be maintained and provided to Police on request; crime scenes are to be preserved and all violent crimes causing injury are to be immediately reported to Police; trading is to cease at 11:30pm to allow for all patrons to be cleared by 12.00 midnight; and that chilled water stations are to be provided for patrons.
 - j) *General Management.* The POM states that management staff of the business are to comply with the conditions on the development consent and liquor licence, and to implement RSA practices on the Premises.
 - k) *Specific Premises Conditions.* The POM states that management staff of the Premises must comply with approved trading hours; comply with restrictions on the number of patrons in the Premises; maintain CCTV systems to the satisfaction of Police; and maintain security measures.

- l) *Patron Code of Conduct*. The POM states that patrons of the business must wear enclosed footwear after 6:00pm; not wear singlets or swimwear; not wear clothing with obscene messages, images or content; conduct themselves in a presentable and respectful manner to staff, patrons, and members of the public; enjoy themselves responsibly and safely; not use obscene language; not be intoxicated or behave in a disorderly fashion; and adhere to RSA principles.
 - m) *RSA*. The POM states that the manager of the Premises is to be an "approved manager" pursuant to Office of Liquor, Gaming and Racing [sic] requirements; all staff are to hold current RSA competency cards; an *Incident Register* must be maintained for the Premises; all staff will be trained and supervised by an approved manager or shift manager; and that all staff are to promote RSA practices, including requirements of the Armidale Liquor Accord standard that a maximum of four (4) drinks per patron and no more than two (2) drinks per patron will be served after 11:00pm.
 - n) *Promotions*. The POM states that no promotions offering free or highly discounted alcohol will be offered by the business.
 - o) *Supply of Food*. The POM states that a "broad menu" including snacks and meals will be available at all times and patrons may bring in take-away food from other businesses.
 - p) *Public and Workplace Health and Safety (WHS)*. The POM states that all staff are to be trained in safe work methods; all staff are to comply with WHS standards; company and public liability insurance will be held for employees; staff are to be aware of reportable incidents and the process of reporting; and that safe work methods statements are to be prepared by management staff prior to the commencement of operation.
 - q) *Food Safety*. The POM states that the Premises will maintain safe food practices and all staff will hold Food Safety Training Certificates; the manager will be an approved Food Safety Supervisor under NSW Food Authority Guidelines; the business will comply with Council inspection requirements; and the business will be registered with the NSW Food Authority.
 - r) *Security Management Plan*. The POM states that the Premises will include a front hinged door with dead lock; four (4) safety glass windows with dead locks; a CCTV system; an *Incident Book*; a single point of staff operated lighting; a telephone with emergency numbers displayed; cleaning equipment and approved signage.
25. Submission from Mr Adam Marshall MP, Member for Northern Tablelands dated 11 September 2015 in support of the Application. Mr Marshall contends that since opening 10 months ago, *The Welder's Dog* has had no liquor related incidents and continues to maintain a "friendly and safe" alternative venue. Mr Marshall believes that the Applicant understands the associated risk with the consumption of alcohol and that if the Application is successful, the business model will be able to significantly militate against potential impacts through, *inter alia*, premium pricing for premium products and ensuring that no discount or large packaged liquor items are on sale or on display.
26. Submission from NSW Police, New England Local Area Command (LAC) dated 24 November 2015 objecting to the Application. Police make the following contentions in support of this objection:
- a) The introduction of another full hotel licence which would [potentially] allow gaming and packaged liquor sales would be detrimental to the community of Armidale.
 - b) Armidale is above the state average for number of liquor outlets per person and also overrepresented in alcohol related crime.
 - c) Police hold concerns that the granting of this full hotel licence application could see future applications to expand the boundaries of this operation into a "much larger premises".

27. Police note that the Applicant has agreed *not* to request a gaming authorisation in the future, but submit that the following conditions be imposed upon the licence should the Application be granted:
- a) Packaged liquor sales will be limited to 1 x 6-pack of beer/cider not exceeding 375mL bottles or 1 x bottle of wine not exceeding 750mL or 1 x 2 litre "Growler" or 2 x 1 litre "Squealers" or 1 x bottle of spirits not exceeding 750mL that is not commercially available other than from a cellar door, for any one customer during each 24-hour period.
 - b) 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 obtaining this licence.
 - c) Consumption on premises: Good Friday – 12:00 midday to 10:00pm, Christmas Day – 12:00 midday to 10:00pm (liquor can only be served with or ancillary to a meal in a dining area), 31 December – normal opening time until normal closing time or 2:00am on New Year's Day, whichever is the later.
 - d) The licensee must employ one (1) security operative and (1) RSA Marshal dedicated to specifically perform RSA duties alone when the number of patrons on the Premises reaches 85.
 - e) The licensee or its representative must join and be an active participant in the Local Liquor Accord.
 - f) 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 six hours between 4:00am and 10:00am 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 the licence.
 - g) The licensee shall maintain a CCTV system on the Premises.
 - h) All minors are to be removed from the Premises by 10:00pm.
 - i) The area within the boundary of the minor's area authorisation is that depicted in the Plan for the minor's area authorisation that was granted on 16 April 2015.
 - j) No gaming machines are to be permitted on the Premises.
 - k) No future application is to be made to increase the boundaries of the licensed area or to change the above conditions restricting packaged liquor sales.
 - l) Takeaway sales are not to be permitted after 9:00pm.
28. Submission from the Office of Liquor, Gaming and Racing, now Liquor and Gaming NSW (LGNSW) dated 23 December 2015. In this submission LGNSW states that granting this Application is "unlikely to result in a significant increase in alcohol related issues" but requests that the conditions proposed by NSW Police be imposed on the liquor licence and that the Applicant must be required to surrender the existing Hotel (general bar) licence number LIQH440018959 should the Application be granted.
29. LGNSW has also included an Environment and Venue Assessment Tool (EVAT) Assessment Report for the Premises with this submission. The EVAT Report records that location risk factors are assessed as "moderate" and venue risk factors are assessed as "low" with the exception of the number of patrons to be accommodated on the Premises (which is recorded as "moderate" risk). The licence type is assessed to be "high risk".
30. Submission from *Dobson's Distillery*, Eastview Estate, New England dated 1 April 2016 in support of the Application. The writer contends that *The Welder's Dog* has had a positive effect on the viability of *Dobson's Distillery* by introducing locals and visitors to the region and to products produced by *Dobson's Distillery*. The writer contends that

without the support of the Applicant, *Dobson's Distillery* would not have been able to grow to the point where they now export nationally and employ eight people.

31. The writer further contends that approving the Application would allow visitors to Armidale to buy bottles to take home and "show others what amazing products come from the New England Highlands".
32. The writer contends that *The Welder's Dog* is a "well run" business that is managed by "responsible and capable" staff who have had a positive impact on the drinking culture in Armidale by engendering a culture of drinking that emphasises the "subtleties and nuance of the product", rather than a desire to drink to excess.
33. Submission from *Gara River Brewery*, Armidale dated 1 April 2016 in support of the Application. The writer contends that *The Welder's Dog* is the only craft beer outlet in Armidale and that it provides residents of Armidale and surrounding districts with choices of beer that would otherwise be unavailable.
34. The writer contends that the beers supplied by the Applicant are from "genuine independent brewers" and not breweries owned by major breweries and supermarkets. The writer provides a list of these brewers, as follows:
 - a) Young Henry's
 - b) Six String Brewing
 - c) Two Birds Brewery
 - d) Killer Sprocket
 - e) Brew Cult
 - f) Byron Bay Brewing Company
 - g) Bridge Rod Brewery
 - h) Bright Brewery
 - i) Feral Brewing
 - j) Deepwater Brewing
 - k) Holgate Brewhouse
 - l) Fortitude Brewing Company
 - m) La Sirene Brewing
 - n) Mornington Peninsula Brewery
 - o) Pirate Life Brewery
 - p) Black Hop Brewery
 - q) Modus Operandi
 - r) Kooinda Brewery
 - s) Burleigh Brewing
 - t) Nomad Brewing Company
 - u) Vale Brewing
 - v) Gara River Brewery.
35. The writer contends that beer sold from these breweries is not available elsewhere in Armidale or the surrounding region and that many patrons have expressed an interest in taking these beers home to share with friends or to have with a special meal.
36. The writer contends that *Gara River Brewery*, as a brewer without a "cellar door" licence, is only able to sell to retailers. As a small brewer, *Gara River Brewery* cannot sell to any supermarket chains and as such "needs" the support of retailers such as *The Welder's Dog*.
37. Submission from *Deepwater Brewing*, Deepwater (undated) in support of the Application. The writer of this submission contends that *The Welder's Dog* is the largest outlet for products produced by *Deepwater Brewing* and that granting the Application would allow

for the growth of *Deepwater Brewing*. The writer also contends that the management of *The Welder's Dog* live by a creed of "drink less, taste more" which is helping to change the "atrocious" drinking culture in Australia.

38. Submission from *WhyWorryWines*, Uralla dated 3 April 2016 in support of the Application. The writer of this submission states the following:

WhyWorryWines is a boutique winery situated near Uralla, NSW. We are very selective in the venues we supply to.

We have found The Welder's Dog to be excellent clients and great ambassadors for our wines.

Without venues like the Welder's Dog we would not be able to survive as the big players (Dan Murphy's etc.) are not interested in small operations.

39. Publicly available BOCSAR crime mapping data for October 2014 to September 2015. These crime maps indicate that the Premises is located:
- Within a high density hotspot for the concentration of incidents of malicious damage to property.*
 - Within a high density hotspot for the concentration of incidents of non-domestic assault.*
 - Within a low density hotspot and near medium and high density hotspots for the concentration of incidents of domestic assault.*
40. Crime data sourced from BOCSAR for calendar year 2013 detailing rates of offences for Armidale Dumaresq Local Government Area (LGA) compared to NSW as a whole. This data indicates that for calendar year 2013:
- The rate of *alcohol-related assault Police* was 33 per 100,000 persons of population compared to the rate for NSW as a whole of 24 per 100,000 persons of population.
 - The rate of *alcohol related domestic assault* was 286 per 100,000 persons of population compared to the rate for NSW as a whole of 145 per 100,000 persons of population.
 - The rate of *alcohol related malicious damage to property* was 278 per 100,000 persons of population compared to the rate for NSW as a whole of 122 per 100,000 persons of population.
 - The rate of *alcohol related non-domestic assault* was 431 per 100,000 persons of population compared to the rate for NSW as a whole of 191 per 100,000 persons of population.
41. Authority licensing records. These records, which are updated regularly and available for purchase from LGNSW, indicate that in the State suburb of Armidale there are currently:
- 4 club licensed premises
 - 9 full hotel licensed premises
 - 5 packaged liquor licensed premises.
42. Liquor licence density data recording the density of liquor licences in the Armidale Dumaresq LGA compared to the State of NSW as a whole. It indicates that within the Armidale Dumaresq LGA there are currently:
- 20.73 club licences per 100,000 persons of population compared to 20.48 per 100,000 persons of population for NSW as a whole
 - 41.46 full hotel licences per 100,000 persons of population compared to 30.36 per 100,000 persons of population for NSW as a whole
 - 53.89 packaged liquor licences per 100,000 persons of population compared to 32.85 per 100,000 persons of population for NSW as a whole.

43. Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS) in 2011 indicating that the state suburb of Armidale falls within the 5th decile on the Index of Relative Socio-economic Advantage and Disadvantage (IRSAD) for all suburbs in NSW. The Armidale Dumaresq LGA falls within the 7th decile on the IRSAD for all LGAs in NSW (with a ranking of 10 being the most advantaged).

STATUTORY OBJECTS AND CONSIDERATIONS

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

45 Decision of Authority in relation to licence applications

- (1) *The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.*
- (2) ...
- (3) *The Authority must not grant a licence unless the Authority is satisfied that:*
- (a) *the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and*
 - (b) *practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and*
 - (c) *if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates – that development consent or approval is in force.*

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

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

48 Community impact

- (5) *The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*
- (a) *the community impact statement provided with the application, and*
 - (b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions), that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.*

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

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

3 Objects of Act

- (1) *The objects of this Act are as follows:*
- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*

- (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

REASONS

49. The Authority is satisfied, for the purposes of section 40 of the Act that the Application and CIS material establishes that the Application has been validly made and that the relevant consultation and advertising requirements of the legislation have been observed.
50. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant company is a fit and proper corporate person from a probity perspective and that no probity concerns have been raised in submissions from the other stakeholders, particularly NSW Police or LGNSW, in this regard.
51. The Authority is satisfied that the Applicant has provided a *Plan of Management* that will be in place at the Premises that will also govern the sale of liquor from the Premises. The licensed business has an existing trading history on the Premises and there is no adverse information before the Authority as to the Applicant Company's fitness or the fitness of its proposed approved manager in response to consultation on this Application with relevant law enforcement agencies, including Police and LGNSW.
52. The Authority is 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, on the basis of the *Plan of Management* provided by the Applicant and noting an absence of adverse submissions from LGNSW or NSW Police in relation to the Applicant or the Premises in this regard.
53. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent for the proposed business or activity that is the subject of this Application is in place for conduct of a hotel business on the Premises, on the basis of DA No. 173-2014/B dated 23 September 2014 issued by Armidale Dumaresq Council.

Local and Broader Community

54. The Authority is satisfied that for the purposes of assessing the overall social impact test prescribed by section 48(5) of the Act, the relevant local community comprises the State suburb of Armidale, while the broader community comprises the Armidale Dumaresq LGA.

Overall Social Impact

55. Determining the overall social impact of granting a liquor application in respect of a proposed new licensed business requires a degree of speculation about what is likely to occur in the event that the Application is granted – albeit speculation that is informed by

what is known about the proposed business and the prevailing circumstances in the relevant local and broader communities.

Positive Benefits

56. The Authority accepts the Applicant's contention that granting the Application will provide some significant increased measure of choice and diversity for the residents of the local and broader communities, by providing the sale of boutique products from small businesses that would not otherwise be readily available in the local or broader community, including some products from producers in the local or broader community.
57. The Authority is satisfied that granting the Application will advance the object of section 3(1)(a) of the Act in that it will 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.
58. No submissions have been made in opposition to the Application, save for the submission from local Police, which is dealt with below. Some positive support for the proposal has been expressed by a representative of the local and broader community, Mr Adam Marshall, the State Member for the Northern Tablelands.
59. The Authority accepts the Applicant's contention that there will be some economic benefits for the local and broader communities given that the proposed business will source products from local producers. The Applicant has identified to the Authority's satisfaction that it will stock products sourced from the local and broader community, in addition to a limited range of products from outside those communities.
60. Many liquor applications make broad assertions to the effect that they will stock boutique or specialist products without substantiating those purported community benefits. In this case, the Applicant has made a specific and well substantiated case, supported by letters from four brewers confirming that the Applicant will utilise the packaged liquor facility of the hotel licence to sell locally and regionally produced boutique products.
61. The Authority is satisfied that the ability of this hotel to sell takeaway liquor will not be utilised as simply another outlet to sell the same mainstream brands as most other liquor stores in the State. In this respect, the Authority is satisfied that granting the Application will develop the liquor industry in the local and broader communities for the purposes of section 3(1)(b) of the Act.

Negative Impacts

62. The Authority accepts that over time there will likely be some contribution made from the packaged liquor sold on the Premises to alcohol related crime, disturbance or impact on amenity from a minority of customers who abuse packaged liquor, noting that the Premises already has the ability to sell liquor for consumption on the Premises.
63. In this case the Authority is not contemplating issuing a *new* hotel licence into the community, but the replacement of an established hotel (general bar) licence with a full hotel licence. The purpose and effect of replacing the licence will be to facilitate the sale of a limited range of specialist liquor products for consumption away from the Premises.
64. The density of licences in the Armidale Dumaresq LGA is of some concern to the Authority in that there is a prevailing higher rate of licences in categories that are capable of selling liquor for consumption off licensed premises (that is, registered clubs, full hotels, and packaged liquor licenced premises) per 100,000 persons in the Armidale

Dumaresq LGA compared with NSW as a whole. Authority licensing records indicate that within the Armidale Dumaresq LGA there are:

- a) 20.73 club licences per 100,000 persons of population compared to 20.48 per 100,000 persons of population for NSW as a whole
 - b) 41.46 full hotel licences per 100,000 persons of population compared to 30.36 per 100,000 persons of population for NSW as a whole
 - c) 53.89 packaged liquor licences per 100,000 persons of population compared to 32.85 per 100,000 persons of population for NSW as a whole.
65. Granting this licence, accompanied by surrender of the existing licence, will mean that there will be no net increase in the density of licensed premises. It will create one further outlet that may sell liquor for consumption off the premises – but, as noted above, the nature of the proposed packaged liquor business is quite constrained in terms of the limited range and quantities that may be sold.
66. The Authority also considers that there is cause for concern arising from the prevailing rates of crime within the local and broader community. BOCSAR crime data for the Armidale Dumaresq LGA recorded in the calendar year of 2013 indicates that the rate of *alcohol related non-domestic assault* in that LGA (431 per 100,000 persons) was significantly higher than the rate for NSW as a whole (191 per 100,000 persons).
67. The rate of *alcohol related domestic assault* for the Armidale Dumaresq LGA (286 per 100,000 persons) is also significantly higher than the rate for NSW as a whole (145 per 100,000 persons).
68. The rate of *alcohol related assault Police* (a type of offence that is commonly associated with on-premises venues when Police intervention is required) is high in the broader community, with a rate of 33 per 100,000 persons compared to NSW as a whole with a rate of 24 per 100,000 persons.
69. The Authority also notes that the Premises are located within hotspots for the concentration of *domestic assault* and *non-domestic assault* as well as *malicious damage to property*.
70. Domestic violence mostly occurs in private residences and will include both alcohol and non-alcohol related incidents. The Authority is concerned that the Premises is located in a hotspot for the concentration of incidents of *domestic violence*, and that the packaged liquor supplied by this business to the local and broader community will contribute, along with the incumbent licensees, to the relatively challenging domestic violence rates to which the broader community is exposed and which, according to crime mapping data, is concentrated within areas located in close proximity to the Premises.
71. Another cause for concern arises from the submission by NSW Police dated 24 November 2015. Police have objected to the Application on the basis of the prevailing crime rates and the high density of liquor outlets generally in Armidale.
72. The Authority accepts that the crime data and prevailing licence density data provides a substantial basis for regulatory concern. However, Police have not in their submissions focused upon how replacing the existing general bar licence with a full hotel licence (having regard to both the positive and negative impacts) will result in an overall social impact that is detrimental to the local or broader community.
73. The Authority notes the Police concern that granting this Application may provide a "gateway" to further expansion of business operations on the Premises, causing greater levels of social impact from the operation of this business over time.

74. That is a credible concern, particularly given the sensitivities in the local and broader community.
75. However, no evidence has been provided to suggest that the Applicant's proposal is not genuine or that the constraints consented to by the Applicant would be weakened to enable an expansion of takeaway operations.
76. Importantly, following consultation with Police, the Applicant has accepted the imposition of a number of enforceable conditions on the full hotel licence should it be granted.
77. The Applicant has consented to prescriptive conditions confining the sale or supply of packaged liquor from the Premises, per customer per day, which will objectively constrain the scope for this licensed business to generate negative social impact over time from this aspect of its operations.
78. The Authority accepts, on the basis of the submissions provided by the Applicant as to the nature of the proposed takeaway liquor business, supported by submissions from specialist distillers, that the Applicant will sell primarily premium liquor products with higher than average prices. The packaged liquor will be constrained in that the packaged liquor facility will not take the form of a "bottle shop" but an over the counter facility that forms a part of the bar's operation.
79. On the material provided by the Applicant in the Application, CIS and submissions, the Authority is satisfied that the business will be conducted pursuant to the constraints advised by the Applicant to the Authority.
80. The Authority further notes the Applicant's consent to conditions constraining the operation of the Premises within the terms of the CIS document and that the Applicant does not propose to operate gaming machines on the Premises, further reducing adverse social impact from the operation of a full hotel licence on the Premises.
81. For the avoidance of doubt, the limitations embodied in the Applicant's proposal and the enforceable conditions to be imposed upon the licence are decisive factors in securing the grant of this Application - which may otherwise have been declined by reason of the concerns noted above.
82. Notably, the comprehensive harm minimisation measures outlined in the *House Policy* and *Plan of Management* provided by the Applicant as part of the Application, including installation of a CCTV surveillance system have been raised above a voluntary business planning document and will be enforceable as a licence condition. This provides another regulatory control, over and above the requirements of the legislation that will assist in minimising the social impact that the operation of this packaged liquor business may otherwise have over time in the local or broader community.
83. Finally, the Authority is further reassured that the Applicant has been operating a hotel (general bar) business on the Premises since 29 October 2014 and has not been the subject of any disciplinary action, nor have any adverse submissions regarding the conduct of the business been brought to the attention of the Authority by LGNSW, Police, or Council.

CONCLUSION

84. Having regard to the demonstrated positive community benefits found in this case and the factors which objectively constrain or reduce the extent of likely negative impacts arising from packaged liquor sold from this proposed business, the Authority is satisfied

that the overall social impact of granting this Application will *not* be detrimental to the wellbeing of the local or broader community.

85. In making this decision, the Authority has had regard to all of the statutory objects of section 3(1) of the Act and has taken into account all of the considerations prescribed by section 3(2) of the Act.
86. The Authority has had particular regard to the need to minimise harm associated with the misuse and abuse of liquor within the meaning of section 3(2)(a) of the Act 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 within the meaning of section 3(2)(c) of the Act.
87. The Application is granted pursuant to section 45 of the Act.
88. The Authority has determined the daily 6-hour closure period under section 11A(3) of the Act as the usual period from 4:00am to 10:00am.



DB Armati
Deputy Chairperson

DATED: 31 May 2016