



Mr Tony Schwartz
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6 December 2016

Dear Mr Schwartz,

APPLICATION NO:

APPLICATION FOR:

Packaged Liquor Licence

PROPOSED TRADING HOURS:

Monday to Saturday 8:00AM – 10:00PM
Sunday 10:00AM – 10:00PM

APPLICANT:

Mr Anthony Charles Leybourne Smith

**PROPOSED LICENSED
PREMISES NAME:**

BWS – Beer Wine Spirits

PREMISES LOCATION:

2A Charles Street, Canterbury, NSW 2193
(Premises)

ISSUE:

Whether to grant or refuse an application
for a new packaged liquor licence.

LEGISLATION

Sections 3, 29, 30, 31, 40, 45, 48 *Liquor
Act 2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION
FOR NEW PACKAGED LIQUOR LICENCE – BWS CANTERBURY**

The Independent Liquor and Gaming Authority considered the Application at its meeting on 16 November 2016 and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **grant** the Application number APP-1-4787641743 subject to the following conditions:

1. Trading Hours

Monday to Saturday	8:00AM – 10:00PM
Sunday	10:00AM – 10:00PM

2. 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.

3. Retail Sales

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

Christmas Day
December 31st

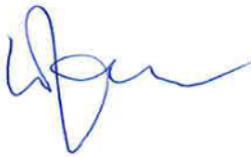
Not permitted
Normal trading.

4. The licensee or its representative must join and be an active participant in the local liquor accord.
5. 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.
6. The premises are to be operated at all times in accordance with the Woolworths Liquor Store House Policy and Woolworths' Best Practice Policy and Interventions lodged with the Independent Liquor and Gaming Authority on 12 August 2016.

The licence has been granted subject to a requirement under section 47(2) of the Act that it may not be exercised until the Authority has been provided with evidence that the premises is complete and ready to trade and that an approved manager has been appointed to the licence. Furthermore, the licence may not be exercised until the Authority has granted a transfer to a suitably qualified individual or organisation.

If you have any advice or enquiries about this letter, please contact case manager via email santina.causa@ilga.nsw.gov.au

Yours faithfully



Philip Crawford
Chairperson

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

STATEMENT OF REASONS

Material before the Authority

1. The following is a summary only of the material and submissions before the Independent Liquor and Gaming Authority (Authority) for the purposes of publication of a statement of reasons, as soon as practicable, in a high-volume jurisdiction.
2. In making this decision, the Authority has considered the packaged liquor licence application lodged on 12 August 2016 (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 and licence density data maintained by Liquor and 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. That material is listed and in some cases briefly summarised in the Schedule.

Summary of Further Submissions

3. Submission from Licensing Officer Thomas Melia from the Ashfield Local Area Command (Police) dated 16 August 2016. Police raise no objection to the Application, but request that conditions be imposed upon the licence, should the Application be granted, requiring maintenance of a CCTV system, observance of crime scene preservation procedures in the event of an act of violence occurring on the Premises and requiring the licensee to participate in the local liquor accord. .
4. Submission from the Applicant's solicitor, Mr Tony Schwartz of Back Schwartz Vaughan, dated 7 November 2016. In this five-page submission the Applicant consents to a condition requested by Police requiring participation in the local liquor accord but opposes the Police proposed conditions regarding CCTV and crime scene preservation by reason that there is no evidence provided by Police in support of imposing these conditions. The Applicant further contends that a CCTV system will be installed and maintained on the Premises and submits that there is "no precedent" to endorse a packaged liquor licence with a crime scene preservation requirement and that Canterbury is "clearly not a high-risk location that would warrant the condition in the first place".

Legislative Framework

5. The legal requirements for the making of a valid application for a new liquor licence are provided by section 40 of the *Liquor Act 2007* and the *Liquor Regulations 2008* (Liquor Regulations). The power to grant an application for a liquor licence is provided by section 45 of the Act.
6. Any person exercising functions under the Act must also have regard to the objects and considerations set out 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.*
7. Section 48(5) of the Act requires the Authority, in certain circumstances, to consider a CIS (as well as any other matter the Authority is made aware of during the application process) in order to ensure that the overall impact of the licence, authorisation or approval being considered will not be detrimental to the local or broader community.
 8. An application for a new packaged liquor licence is a “relevant application” within the meaning of section 48(2) of the Act for which a CIS is required.
 9. Section 48(5) of the Act requires that the Authority must not grant an application unless satisfied 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”.
 10. 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 Clemton Park, while the broader community comprises the relevant local government area.
 11. The Authority notes that on 12 May 2016, the new City of Canterbury-Bankstown Council was proclaimed, replacing the former Canterbury and Bankstown Councils. This proclamation occurred after notices of intention to apply for a liquor licence were issued (21 April 2016) to the former Canterbury City Council and local licensing Police but before the CIS and Application were lodged with the Authority. The Authority is satisfied that at the time of this decision, the broader community comprises the relevant local government area, which is the community within the City of Canterbury-Bankstown.

Analysis of Relevant Facts

12. The Authority is satisfied, on the basis of the Application and CIS material before it, that for the purposes of Section 40 of the Act the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
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 packaged liquor licensed venue of the kind proposed in the Application material. The Authority notes

that no probity issues were raised with regard to the Applicant following consultation with law enforcement agencies, including 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 “Woolworths Liquor Store House Policy” and “Woolworths Best Practice Policy and Interventions” policy documents lodged with the Authority on 12 August 2016.
15. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed use of the Premises falls within the scope of the development consent that is in force with respect to the Premises. This finding is made on the basis of the development approval number DA-579/2013 that was determined by the former City of Canterbury on 24 June 2014 and DA-282/2015 determined by the City of Canterbury on 28 October 2015.

Social Impact – Positive Benefits

16. The Authority is satisfied, on the basis of the Application, CIS and additional material supplied by the Applicant that granting this new licence will provide some modest additional benefit of convenience and choice to those members of the local and broader community who wish to conveniently purchase liquor products when shopping at the adjacent Woolworths supermarket within the new shopping centre.
17. The Authority accepts the Applicant’s contention that it distributed the consultation notice to stakeholders and neighbouring premises and did not receive any adverse comments or complaints. On this basis, the Authority is satisfied that granting this Application is consistent with the “expectations, needs and aspirations of the community” in respect of the local community of Canterbury, being an object of section 3(1)(a) of the Act.
18. The Authority is also satisfied, on the basis of the CIS and additional submissions provided by the Applicant, that this newly appointed packaged liquor facility will provide a wide range of exclusive brands of wines, beers and spirits, including Sail & Anchor Amber Ale, Teeling Single Malt Irish Whiskey, Meukow VSOP Cognac, Marlborough Sounds Sauvignon Blanc and Franklin Tate Estate Shiraz. In this sense the services provided will reasonably develop, in the public interest, the liquor industry serving the local and broader community, for the purposes of section 3(1)(b) of the Act. The extent of that cumulative benefit is constrained by the number of existing packaged liquor premises in the local and broader community, discussed below, but the Authority is satisfied that some additional benefit has been established on the material before the Authority.

Social Impact – Negative Impacts

19. Having reviewed all of the material before it, the Authority considers that over time there is a risk that the liquor sold from this new licensed business will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse packaged liquor.

20. The trading hours sought are extensive. The business will trade until the 10:00 pm limit of evening trading permitted by the Act and this increases the scope of the new licence to contribute to adverse social impact over time.
21. The Authority notes, on the basis of the information in the CIS that the licensed business area will occupy some 159 square metres. In relative terms is a medium scale enterprise, somewhat larger than many other stand-alone liquor stores. This is this is another factor that increases the capacity of this new licence to contribute to adverse social impacts over time.
22. However, when considering the cumulative impact of granting this Application, LGNSW liquor licence density data satisfies the Authority that the former City of Canterbury LGA recorded lower rates of *packaged liquor licences, registered club licences and full hotel licences* per 100,000 persons compared to New South Wales as a whole.
23. The Authority notes, on the basis of LGNSW liquor licensing records, that the State suburb of Canterbury currently has 4 packaged liquor licences, 1 registered club licence and 1 hotel licence. The Authority does not consider that prevailing licence density *per se* gives rise to any particular cause for concern with regard to the local community, where granting another licence is likely to have a most direct impact. Furthermore, the impact of granting another licence in this location is likely to be more diffuse across the broader community of the Canterbury Bankstown LGA, with numerous alternative licensed premises licensed to sell takeaway liquor by retail.
24. With regard to alcohol related crime in the local community, the Authority is satisfied that BOCSAR Crime Maps for the period between July 2015 and June 2016 pertaining to the location of the Premises within Canterbury indicate that the Premises:
 - (a) Is located inside a *low-density hotspot* for incidents of *domestic assault*
 - (b) Is located outside the suburb hotspots for incidents of *non-domestic assault*
 - (c) Is located outside the suburb *hotspots* for incidents of *malicious damage to property*.
25. However, the Authority derives considerable reassurance from the Report on *NSW Recorded Crime Statistics July 2010 – June 2015*, which records for the 2014/15 financial year that the Canterbury LGA was exposed to considerably lower rates per 100,000 persons of population for the occurrence of (alcohol related) *assault police, non-domestic violence related assault, domestic violence related assault and offensive behaviour* compared to the rates for New South Wales as a whole. That is, the concentrations of crime that are evident from the Crime Maps noted in the preceding paragraph are derived from relatively low rates of crime across the Canterbury LGA as a whole.
26. Noting that the new broader community will now also incorporate areas formerly located within the Bankstown LGA, the Authority has also considered the Report on *NSW Recorded Crime Statistics July 2010 – June 2015* with regard to that area, which recorded that the Bankstown LGA had considerably lower rates per 100,000 persons of population for the occurrence of (alcohol related) *assault police, non-domestic violence related assault, domestic violence related assault and offensive behaviour* compared to the rates for New South Wales as a whole.

27. The Authority notes, on the basis of the ABS SEIFA data, that the Canterbury suburb ranked in the 5th decile on the Index of Relative Socio-Economic Advantage and Disadvantage, while the City of Canterbury ranked in the 4th decile. The Authority further notes, for the sake of completeness that the City of Bankstown ranked in the 5th decile. Socio-economic disadvantage is not a compounding factor of concern in these communities.
28. The Authority notes that Police do not oppose the Application nor do they provide evidence of alcohol related crime and anti-social conduct in the local community or at the location of the Premises. They propose a condition that the licensee or its representative be required to participate in the local liquor accord, which was consented to by the Applicant. Police have also proposed licence conditions mandating the maintenance of a CCTV system and compliance with NSW Police crime scene preservation guidelines to which the Applicant did not consent.
29. The Authority notes that a condition has been imposed requiring the Premises to operate in accordance with the policies, procedures and practices contained in the Liquor Store “House Policy” and “Woolworths’ Best Practice Policy and Interventions”, lodged with the Independent Liquor and Gaming Authority on 12 August 2016.
30. The Authority had regard to the reasonably detailed harm minimisation measures set out in the Applicant’s *Statement of Impact*, dated 14 June 2016 (which accompanied the CIS) including installation of a CCTV system and implementation of *Crime Prevention through Environmental Design* principles. The Authority also had regard to the conditions to which the Applicant has consented and the location of the business within the shopping centre.
31. These conditions are likely to reduce the impact that a business of this licence type may otherwise have upon the local and broader community. The Authority does not consider it necessary to impose a condition mandating compliance with Crime Scene Preservation requirements, which (absent a specific case for mandating thus requirement at this premises) are generally more apposite to licensed businesses that supply liquor for consumption on the premises.
32. There may well be sound public interest considerations for mandating compliance with certain minimum, consistent CCTV requirements at off licensed premises, but in the absence of any supporting submissions from Police on this proposal the Authority has decided, on *this* occasion, to accept the Applicant’s undertaking that a CCTV system will be implemented voluntarily and the Police proposed condition has not been imposed.

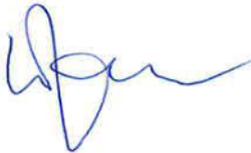
Conclusion

33. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, as all of those 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. The interested parties include NSW Police, the Applicant, Council, RMS, neighbouring occupiers, NSW Health and

Department of Community Services and all other parties required to be consulted under the legislation.

34. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the Act that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.
35. The Application is granted pursuant to section 45 of the Act.
36. 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) – including (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; and (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.

Decision Date: 16 November 2016



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/ilqa/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. Submission from Roads and Maritime Services (RMS) dated 26 April 2016 advising that during 2013 there were 2 alcohol-related crashes resulting in 15 casualties within the Canterbury LGA. RMS do not object to the Application but recommend that the licensee maintain awareness of alcohol-related issues by attending the liquor accord and that public education material be supported on the Premises.
2. Submission from Aboriginal Affairs NSW (AANSW) dated 28 April 2016 advising that AANSW raises no objection to the Application.
3. The former Canterbury City Council (Council) determined Development Application (DA) DA-579/2013 on 24 June 2014, permitting construction and use of a mixed commercial/residential development, including a supermarket and liquor store. DA DA-282/2015 was approved by Council on 28 October 2015, approving the extension of supermarket trading hours to 10:00pm on Sundays and public holidays.
4. Application Form dated 14 June 2016 and lodged with the Authority on 12 August 2016.
5. CIS document dated 14 June 2016 and supporting material lodged with the Authority on 12 August 2016. The Applicant provides information about the location of the Premises, manner of operation and facilities to be provided, suitability of the site for a packaged liquor business, responsible service of liquor, access to liquor by minors, positive benefits of granting the Application, the proposed 6-hour closure period, the location of nearby community buildings, facilities and places, operating experience of BWS stores, population growth, and notification of stakeholders, noting that no issues were raised during consultation. The Applicant also discusses (by apparent reference to the social impact factors identified in Authority Guideline 6) the type, scale, hours of the Premises, along with measures to be implemented to reduce the potential for alcohol related harms. The Applicant makes further submissions on how the impact of this new liquor business upon minors and anti-social behaviour on the communities will be managed through CCTV, Management Strategies and Responsible Service of Alcohol (RSA) procedures. The CIS contends that there are no relevant nearby sensitive facilities that are likely to be negatively impacted on by the operation of the new licensed business.
6. The CIS was accompanied by a *Statement of Impact*, in which the Applicant discusses at-risk groups, outlet density, the consultation process, alcohol-related crime and harm, together with operational, security, harm minimisation and responsible service of alcohol policies and procedures.
7. Submission from the Applicant's solicitor, Mr Tony Schwartz of the law firm Back Schwartz Vaughan, dated 28 June 2016, lodged with the Authority on 12 August 2016. This submission contained a number of documents, including the Application, CIS, Statement of Impact, photograph of location and Plan (diagram) of the proposed store and location within the shopping complex. Also enclosed were City

of Canterbury approvals on development application (DA) number DA-579/2013 determined on 24 June 2014, along with DA-282/2015 approved on 28 October 2015, together with a letter from Roads and Maritime Services and an email from NSW Aboriginal Affairs.

8. Applicant's Liquor Store "House Policy" and "Woolworths' Best Practice Policy and Interventions" lodged with the Authority on 12 August 2016.
9. Submission from Licensing Officer Thomas Melia from the Ashfield Local Area Command (Police) dated 16 August 2016.
10. Email from licensing staff to the Applicant's solicitors, dated 3 November 2016.
11. Submission from the Applicant's solicitor, Mr Schwartz, dated 7 November 2016.
12. [The Authority notes that no report was received from the Compliance Branch of the Office of LGNSW].
13. BOCSAR Crime Maps based upon data from July 2015 to June 2016 detailing hotspots for the concentration of offences near the location of the Premises which is publicly available on the BOCSAR website. This data indicates that the area around the location of the premises:
 - (a) *contains low and medium density hotspots* for incidents of *domestic assault*
 - (b) *contains no hotspots* for incidents of *non-domestic assault*
 - (c) *contains no hotspots* for incidents of *malicious damage to property*.
14. Liquor licence density data derived from licensing records that are publicly available from LGNSW indicating that the Canterbury LGA as a whole recorded:
 - (a) a rate of **7.28** *full hotel licences* per 100,000 persons, which is well below the NSW state wide rate of **30.36**.
 - (b) a rate of **9.46** *packaged liquor licences* per 100,000 persons, which is well below the NSW state wide rate of **32.85**.
 - (c) a rate of **3.64** *registered club licences* per 100,000 persons, significantly lower than the NSW state wide rate of **20.48**.
 - (d) a rate of **8.01** *on-premises licences* per 100,000 persons, significantly below the NSW state wide rate of **121.31**.
15. Report on *NSW Recorded Crime Statistics July 2010 – June 2015* obtained from published BOCSAR sources, for July 2014 – June 2015. This report provides crime data by local government area and alcohol related status and indicates that:
 - (a) the rate of *alcohol related assault Police* incidents recorded by NSW Police recorded across the Canterbury LGA was 6.6 per 100,000 persons, substantially below the State-wide rate of 18.2 per 100,000 persons.
 - (b) the rate of alcohol related *non-domestic violence related assault* incidents recorded across the Canterbury LGA was 33.2 per 100,000 persons, well below the State-wide rate of 144 per 100,000 persons;

- (c) the rate of alcohol related *domestic violence related assault* incidents recorded across the Canterbury LGA was 65.7 per 100,000 persons, substantially below the New South Wales rate of 122.6 per 100,000 persons;
 - (d) the rate of alcohol related *offensive behaviour* offences recorded across the Canterbury LGA was 4.6 per 100,000 persons, well below the State-wide rate of 88.2 per 100,000 persons;
16. Report on *NSW Recorded Crime Statistics July 2010 – June 2015* obtained from published BOCSAR sources, for July 2014 – June 2015. This data indicates that:
- (a) the rate of *assault Police* incidents recorded by NSW Police as alcohol related across the Bankstown LGA was 7 per 100,000 persons, well below the State-wide rate of 18.2 per 100,000 persons.
 - (b) the rate of *non-domestic violence related assault* incidents recorded by NSW Police as alcohol related across the Bankstown LGA was 57.4 per 100,000 persons, substantially below the State-wide rate of 144 per 100,000 persons;
 - (c) the rate of *domestic violence related assault* incidents recorded by NSW Police as alcohol related across the Bankstown LGA was 79.4 per 100,000 persons, well below the New South Wales rate of 122.6 per 100,000 persons;
 - (d) the rate of *offensive behaviour* offences recorded by NSW Police as alcohol related across the Bankstown LGA was 8 per 100,000 persons, substantially below the State-wide rate of 88.2 per 100,000 persons;
17. ABS SEIFA data sourced from the 2011 Census which indicates that:
- (a) The Canterbury LGA ranked in the 4th decile compared to other local government areas in the state on the Index of Relative Socio-Economic Advantage and Disadvantage (IRSEAD) - with a decile ranking of 10 being the most advantaged.
 - (b) The state suburb of Canterbury ranked in the 5th decile compared to other state suburbs in NSW on the IRSEAD.
 - (c) The Bankstown LGA ranked in the 5th decile compared to other local government areas in the state on the IRSEAD.