



Mr Tony Schwartz  
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9 December 2016

Dear Mr Schwartz,

**APPLICATION NO:** APP-1-4514484475  
**APPLICATION FOR:** New Packaged Liquor Licence  
**PROPOSED TRADING HOURS:** Monday to Saturday 08:30AM – 10:00PM  
Sunday 10:00AM – 10:00PM

**APPLICANT:** Mr Anthony Charles Leybourne Smith

**PROPOSED LICENSED  
PREMISES NAME:** BWS – Beer Wine Spirits

**PREMISES LOCATION:** 68-70 Hezlett Road, Kellyville NSW 2155  
(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 – BEER WINE SPIRITS, KELLYVILLE**

The Independent Liquor and Gaming Authority considered application number APP-1-4514484475 at its meeting on 16 November 2016 and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **grant** the application subject to the following conditions:

- 1. Trading Hours**  
Monday to Saturday 08:30AM – 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 02:30AM and 08:30AM 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<sup>th</sup> Normal trading Monday to Saturday, 10:00AM – 10:00PM Sunday

Christmas Day  
December 31<sup>st</sup>

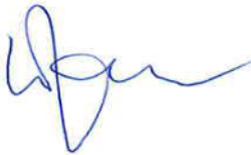
Not permitted  
Normal trading

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 Policies and Interventions" as submitted to the Authority on 18 May 2016.

The licence is granted subject to a requirement pursuant to section 47(2) of the Act that it cannot be exercised unless and until the Authority has been notified that the Premises are complete and ready to trade and that either a manager has been approved and appointed to the licence or the Authority has granted a transfer of the licence to a suitably qualified individual or organisation.

If you have any enquiries about this letter please contact the case manager, Ms Santina Causa via email to [santina.causa@justice.nsw.gov.au](mailto:santina.causa@justice.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 filed on 8 June 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. LGNSW Environment and Venue Assessment Tool (EVAT) Report for the Premises, dated 14 September 2016, indicating that the relative licencing risk associated with the Application is moderate.
4. Email submission from Mr Tony Schwartz of Back Schwartz Vaughan Lawyers, acting for the Applicant, dated 15 September 2016, in response to an email from licensing staff. The Applicant does not agree to the imposition of two conditions proposed by licensing staff.
5. In the alternative to a proposed condition requiring the business on the Premises to be conducted at all times in accordance with a dated *Plan of Management*, the Applicant proposes that the Premises be operated according to the Liquor Store's "House Policy and "Woolworths' Best Practice Policies and Interventions". The Applicant submits that Woolworths is regarded as an industry leader in its policies and procedures for the responsible sale and supply of alcohol products, with well-developed harm minimisation policies.
6. The Applicant further objects to a condition, proposed by licensing staff, requiring that the licence not operate until notification is provided to the Authority of the appointment of an approved manager, by reason that the Applicant for this licence is an individual. The Applicant proposes that the condition or requirement provide that "The licence cannot be exercised unless and until Liquor and Gaming NSW has granted a transfer of the licence to a suitably qualified person."

### Legislative Framework

7. The legal requirements for the making of a valid application for a 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 new liquor licence is provided by section 45 of the Act.

8. 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.*
9. 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.
10. 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.
11. 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”.
12. 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 Kellyville.
13. Consistent with the Authority’s long standing policy to find that the broader community comprises the relevant local government area (LGA), the Authority is satisfied that the broader community is, at the time of this decision, the area of The Hills Shire LGA.

### **Analysis of Relevant Facts**

14. 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.
15. 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 NSW Police (Police) and LGNSW.

16. 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. This finding is made on the basis of the *Woolworths Liquor Group Best Practice Policies and Interventions* annexed to the Applicant's CIS dated 18 May 2016.
17. The Authority is further satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed use of the Premises falls within the scope of development consent that is in force. This finding is made on the basis of The Hills Shire Council's (Council) decision on Development Application (DA) No 1061/2013/HA dated 3 December 2013, with additional modifications approved on 16 November 2015.

### **Social Impact – Positive Benefits**

18. The Authority is satisfied, on the basis of the Application, CIS and additional material supplied by the Applicant that granting the licence will provide some benefit to those members of the local and broader community who wish to conveniently purchase liquor products when shopping at this newly developed retail centre, providing an opportunity for customers for "one-stop shopping".
19. Noting the extensive community consultation process apparent from the Application, CIS and submissions from the Applicant, and the absence of any submissions in objection to the Application, 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 Kellyville, being an object of section 3(1)(a) of the Act.
20. The Authority is satisfied, on the basis of the CIS and additional material supplied by the Applicant, that the new packaged liquor facility, to be contained on a newly developed retail precinct will provide a range of wines, beers, ciders and spirits (with some products exclusive to Woolworths' Liquor Stores) and may increase awareness, choice and availability to shoppers. In this sense granting the Application may be expected to 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.
21. The positive community benefits of increased convenience and development of the industry are reduced by reason of the number of incumbent licensees in the local and broader community authorised to sell retail packaged liquor, but the Authority nevertheless accepts that some significant cumulative community benefit will flow to the community, particularly by way of convenience for shoppers at this supermarket.

### **Social Impact – Negative Impacts**

22. Having reviewed all of the material before it, the Authority considers that over time there is a risk that 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.

23. 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. The Authority notes that the Applicant has proposed an earlier 6-hour closure period from 02:30AM-08:30AM to align with proposed trading hours, which is supported by additional information within their Application.
24. The Authority notes, on the basis of the plan of the Premises, that the licensed area will occupy some 193 square metres. This is *larger* in size to many standard packaged liquor outlets. The scale of the proposed new business, combined with the extensive licensed trading hours, are both adverse factors that increase the scope of this new business to contribute to prevailing adverse alcohol related social impacts in the local and broader community.
25. However, when considering the cumulative impact of adding another licence, LGNSW liquor licence density data satisfies the Authority that The Hills Shire LGA has lower rates of *packaged liquor licences, on-premises licences, registered club licences* and *full hotel licences* per 100,000 persons compared to New South Wales as a whole. The suburb of Kellyville currently has 4 *on-premises licences* and 2 *packaged liquor licences*. The Authority does not consider that prevailing licence density *per se* gives rise to any particular cause for concern.
26. With regard to the contribution that this business may make to alcohol related crime, the Authority notes that the local community level BOCSAR Crime Maps between July 2015 and June 2016 indicate that the Premises:
  - (a) Is located outside the suburb hotspots 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*.
27. The Authority also 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 Hills Shire 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 in the local community that are evident from the Crime Maps are derived from relatively low rates of crime occurring across The Hills Shire LGA as a whole.
28. The Authority notes that Police do not oppose the Application. There is no evidence from Police or any other agency with a law enforcement role (such as LGNSW & Council) of prevailing localised packaged liquor related impacts in the local community or the immediate area in which the new licence will operate.
29. The Authority is further satisfied, on the basis of the ABS Socio-Economic Index For Areas (SEIFA) data, that both the suburb of Kellyville and The Hills Shire LGA are relatively advantaged compared to other local government areas and State suburbs

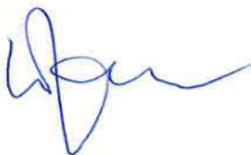
in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage, with both the suburb of Kellyville and The Hills Shire LGA ranked in the 10<sup>th</sup> decile (with a decile ranking of 10 being the most advantaged).

30. When assessing scope for negative impacts the Authority has also had regard to the reasonably detailed harm minimisation measures set out in the Woolworths Liquor Group's *Liquor Store "House Policy"* and *"Woolworths Best Practice Policies and Interventions"*, as annexed to the Applicant's CIS dated 18 May 2016. The Authority notes that the detailed measures contained within these documents, such as the "ID25 Policy" and the "School Uniform Policy", are measures that go above and beyond minimum statutory requirements.
31. The Authority has also taken into account the licence conditions to which the Applicant has consented, and the presence of additional harm minimisation measures (such as installation of CCTV) indicated within the Applicant's Statement of Impact, as attached to the CIS dated 18 May 2016.

## Conclusion

32. 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, Roads and Maritime Services (RMS), neighbouring occupiers, NSW Health and Department of Community Services and all other parties required to be consulted under the legislation.
33. 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.
34. The Application is **granted** pursuant to section 45 of the Act.
35. 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/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. Notice to the Applicant of DA 1061/2013/HA, dated 5 December 2013, issued from Council. The notice indicates an endorsed date of consent on 3 December 2013 for development for retail purposes of 68 Hezlett Rd, Kellyville. There is an additional notification of modification to the DA approved on 16 November 2015.
2. Email submission from Ms Therese Power, of Aboriginal Affairs of the Department of Education (DET) New South Wales, dated 26 March 2016, to Mr Tony Schwartz of Back Schwartz Vaughan Lawyers (acting on behalf of the Applicant), indicating no objection to the Application on the basis that the Applicant has also notified the NSW Aboriginal Land Council and the Local Aboriginal Land Council of the proposal and objection process.
3. Letter submission from Kerry Ryan, Road User Safety Officer (Sydney Region) of RMS NSW, dated 31 March 2016, to Mr Tony Schwartz of Back Schwartz Vaughan Lawyers (acting on behalf of the Applicant). RMS suggests that measures to prevent and decrease likelihood of alcohol involvement in road crashes in the Kellyville area should be discussed in the approval process, as well as public education strategies focused on drink-driving and pedestrian-alcohol issues.
4. Submission from Sergeant David Cowell from the The Hills Local Area Command of NSW Police, dated 25 April 2016, in response to the Application.
5. Public Consultation – Site Notice of Application for liquor licence or licence authorisation, signed and dated by the Applicant on 18 May 2016.
6. Police Notice of Application for liquor licence or licence authorisation, signed and dated by the Applicant on 18 May 2016.
7. Local Consent Authority Notice of Application for liquor licence or licence authorisation, signed and dated by the Applicant on 18 May 2016.
8. Application Form, signed and dated 18 May 2016, lodged 8 June 2016.
9. CIS and supporting material, signed and dated 18 May 2016 and filed with the Application, prepared and lodged by Mr Tony Schwartz of Back Schwartz Vaughan lawyers, acting on behalf of the Applicant. In the Application, it is indicated in sections 4.1-4.7 that no issues were raised by stakeholders during the consultation process.
10. The CIS annexes an extensive, 35-page Statement of Impact with the Applicant's analysis. The document includes an outline of the proposed business, contending that a number of potential positive benefits will flow from the proposal including improved amenity, improved access and convenience, meeting "one stop shopping" requirements, improved product range available to customers, delivery of a loyalty program to its customers, education of its customer service staff, improved neighbourhood safety and security, additional employment and career opportunities, and other forms of economic support for the local community.

11. The Statement of Impact also contains an assessment by the Applicant of any potential risk of contribution to anti-social behaviour within the local community. The assessment includes the layout of the proposed Premises and surrounding area, BOCSAR Crime Maps depicting crime hotspots and other crime data from BOCSAR's report on New South Wales Recorded Crime Statistics for 2015. The assessment also takes into account at-risk groups, licencing density, product ranges and pricing, SEIFA data for the communities, sensitive facilities near the Premises, neighbourhood amenity and the community consultation process.
12. The Statement of Impact annexes 51 pages of supporting information, including BWS' operational, security and harm minimisation and responsible service of alcohol policies and procedures, NSW Department of Health statistics, publicly available licencing information concerning the local and broader community, further maps illustrating the Premises in relation to the local and broader community, the operating experience of BWS stores in relation to alcohol-related crime, product ranges exclusive to Woolworths' liquor retail stores, and comparisons of the development of the area of Kellyville between 2010 and 2016.
13. The CIS also annexes Woolworths Liquor Group's "Best Practice Policies and Interventions". This 8-page document includes a one page introduction to Woolworths alcohol service and supply policies; a one page statement of licensee responsibilities regarding regulatory compliance, compliance with internal procedures, staff training, addressing community concerns, engaging with the local liquor accord and notification of Woolworths head office of any risks of incidents of prosecution and/or reputational damage; a one page school uniform policy; a one page refusal of service guideline for patrons showing signs of intoxication; a one page "secondary supply policy" and a one page Woolworths House Policy.
14. Response to the Applicant's Local Consent Authority Notice, provided on 31 May 2016, from Council to the Applicant. The notice advises that development consent for the proposed use of the Premises is required and is in force, with the relevant DA 1061/2013/HA, endorsed originally on 3 December 2013, with further modifications to the DA approved by Council on 15 November 2015.
15. EVAT Report for the Premises, with Liquor and Gaming NSW (LGNSW) Reference LA16/07424, dated 14 September 2016, indicating that the relative licencing risk associated with the Application is moderate.
16. Email submission from Mr Tony Schwartz, of Back Schwartz Vaughan Lawyers, acting for the Applicant, dated 15 September 2016, in response to email notification from LGNSW that the Application is currently under assessment. The Applicant indicates that they do not agree to two of the conditions as proposed by LGNSW, with suggested conditions for replacement.
17. 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.
18. LGNSW liquor licensing records indicating that within the suburb of Kellyville, there are currently 4 registered on-premises licences, and 2 packaged liquor licences.

19. Map prepared by licensing staff illustrating the locations of existing licenced premises in relation to the proposed Premises.
20. Crime data sourced by licensing staff from BOCSAR statistics for 2010-2013 on the seasonality of offences.
21. LGNSW liquor licence density data indicating that The Hills Shire LGA as a whole recorded:
  - (a) a rate of 7.66 packaged liquor licences per 100,000 persons, which is below the NSW state wide rate of 32.85.
  - (b) a rate of 2.94 registered club licences per 100,000 persons, which is substantially below the NSW state wide rate of 20.48.
  - (c) a rate of 5.89 full hotel licences per 100,000 persons, which is well below the NSW state wide rate of 30.36.
  - (d) a rate of 6.48 on-premises licences per 100,000 persons, which is significantly lower than the NSW state wide rate of 121.31.
22. BOCSAR Incident Counts and Trends 2010-2013, comparing the suburb of Kellyville with NSW overall.
23. BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015. This report indicates that for July 2014 – June 2015:
  - (a) the rate of *alcohol related assault Police* incidents recorded by NSW Police recorded across The Hills Shire LGA was 3.7 per 100,000 persons, well below the State-wide rate of 18.2 per 100,000 persons.
  - (b) the rate of *alcohol related non-domestic violence* assault incidents recorded across The Hills Shire LGA was 38.9 per 100,000 persons, substantially below the State-wide rate of 144 per 100,000 persons;
  - (c) the rate of *alcohol related domestic violence* assault incidents recorded across The Hills Shire LGA was 21.8 per 100,000 persons, well 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 Hills Shire LGA was 8.5 per 100,000 persons, well below the State-wide rate of 88.2 per 100,000 persons;
24. ABS SEIFA data prepared based on the 2011 Census for the State suburb of Kellyville and The Hills Shire LGA.
25. Risk rating report on the Application generated by LGNSW, noting a moderate degree of potential negative community impact, but also indicating that no public submissions were received in the process of the Application, and that there are no liquor licences situated within 2km of the proposed Premises.
26. Google geographical maps depicting an aerial view of the proposed Premises and area.