



Tony Schwartz  
Back Schwartz Vaughan Lawyers  
Level 1, 156 Edgecliff Road  
Woollahra NSW 2025  
tschwartz@bsv.com.au  
7 November 2016

Dear Mr Schwartz,

**APPLICATION NO:** 1-4183492774  
**APPLICATION FOR:** Packaged Liquor Licence Removal  
**PROPOSED TRADING HOURS:** Monday to Saturday 9:00AM – 9:00PM  
Sunday 10:00AM – 8:00PM

**APPLICANT:** Mr Anthony Charles Leybourne Smith

**PROPOSED LICENSED  
PREMISES NAME:** Dan Murphy's Rosebery

**CURRENT PREMISES  
LOCATION:** 92 McEvoy Street, ALEXANDRIA, NSW  
2015

**PROPOSED PREMISES  
LOCATION:** 767-779 Botany Road, ROSEBERY, NSW  
2018 (Premises)

**ISSUE:** Whether to grant or refuse an application  
for the removal of a packaged liquor licence

**LEGISLATION:** Sections 3, 29, 30, 31, 40, 45, 48 and 59  
*Liquor Act 2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION  
FOR PACKAGED LIQUOR LICENCE REMOVAL – DAN MURPHY'S ROSEBERY**

The Independent Liquor and Gaming Authority considered the Application at its meeting on 26 October 2016 and, pursuant to section 59 of the *Liquor Act 2007* (Act), decided to **approve** the application for the removal of the packaged liquor licence under Application number 1-4183492774 subject to the following conditions:

- Trading Hours**  
Monday to Saturday 9:00AM – 9:00PM  
Sunday 10:00AM – 8:00PM
- 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 3:00AM and 9:00AM 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.

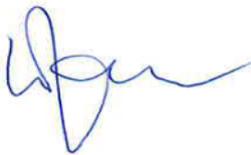
**3. Retail Sales**

Good Friday December 24 <sup>th</sup>	Not permitted Normal trading Monday to Saturday, 9:00AM – 9:00PM Sunday 10:00AM – 8:00PM
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 Group Liquor Store ‘House Policy’” and “Woolworths’ Best Practice Policies and Interventions” lodged with Liquor & Gaming NSW on 16 March 2016 as may be varied from time to time in consultation with the Local Area Commander of NSW Police.
7. The licence is not to be exercised at 767-779 Botany Road ROSEBERY NSW 2018 unless and until the Independent Liquor and Gaming Authority has been provided with evidence that the premises is complete and ready to trade.

If you have any enquiries about this letter please contact the case manager via email to the case manager via [rochelle.hurst@olgr.nsw.gov.au](mailto:rochelle.hurst@olgr.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 application for the removal of a packaged liquor licence filed 16 March 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 Ms Belinda Bourke, local resident, dated 7 March 2016. The writer opposes the Application contending that there is a lack of traffic management and that there are already several liquor shops in the area.
4. NSW Police submission from Senior Constable Philip Tucker (Redfern LAC Licensing Office) dated 21 March 2016. Briefly, the key points from this nine-page submission are as follows:
  - (a) Police submit that relevant community is the Redfern Local Area Command (LAC). Police contend that the likely sales footprint of the new store will have a large degree of overlap with the Redfern LAC.
  - (b) Police emphasize the negative impacts of alcohol and provide general submissions on the cumulative effects of alcohol consumption on the body. More specifically, Police contend that the number of incidents (1 robbery incident, 5 fraud incidents and 23 stealing incidents) that occurred at the Dan Murphy's outlet in the neighbouring suburb of Alexandria over a 14-month period leading up to 1 March 2016 indicate that the business imposed a high demand on Police resources. Police submit that 27% of all breach of Apprehended Violence Order offences recorded in the Redfern LAC were alcohol related and 50% of all street offences recorded in Redfern LAC were alcohol related during 2015.
  - (c) Police contends that, as a packaged liquor outlet, the business will have "little or no influence over responsible service of alcohol" and that Dan Murphy's "proactive" sales efforts (such as guaranteeing the lowest prices and providing exclusive member offers) "could be seen as encouraging the excessive consumption of alcohol and not in the public interest".
  - (d) Police concede that there is an undertaking by the Applicant to operate with a minimum of harm or disruption, participate in the local accord, not stock products

of concern in Rosebery, install CCTV and follow any lawful and reasonable direction of Local Police, but note that the Applicant has not proposed any limits on the quantity of alcohol that may be purchased at a reduced price. Police submit that none of the harm minimisation measures proposed by the Applicant will have any influence on consumption of alcohol once it leaves the Dan Murphy's store.

- (e) Police further submit that the LAC has a significant problem with alcohol consumption by minors and street drinking. Police submit that both minors and street drinkers are "very price sensitive", though no evidence is included to support this claim.
  - (f) Police refer to research from an article from April 2006 published by BOCSAR titled "Liquor Outlet Concentration and Alcohol-Related Neighbourhood Problems" which found that "respondents who live closer to liquor outlets were more likely to report problems in their neighbourhood with both drunkenness and property damage".
  - (g) Police submit that there is currently a "concerted effort in the City of Sydney to reduce the size of liquor outlets in favour of smaller, better managed and more intimate venues" and contend that "while this is predominately aimed at drink on site venues, the same argument is relevant to packaged liquor licences" and that "it is hard to recognise how the addition of another Dan Murphy's will be beneficial and convenient to the local community that is already well served by private liquor licences".
  - (h) Police submit that the Applicant's statement that "there was no opposition in this matter by the Council, Family & Community Services or RMS" is incorrect. Police submit that in DA/2014/505, an application for fit out and use of the same site specifically for a Dan Murphy's store, the City of Sydney Council concluded that "the Application will have an unacceptable social impact on the surrounding communities of Rosebery and Alexandria, contrary to the objects of the Environmental Planning and Assessment Act and the aims and objectives of the Sydney Local Environmental Plan 2012" and that the location of a bulk discount alcohol retailer "may exacerbate the social problems in the area".
5. Submission from Ms Justine Mihalopoulos, a local business proprietor, dated 23 March 2016. In this two-page letter the writer supports the Application contending that it would provide customers with greater convenience, increased choice through wider product range and would provide employment opportunities for residents.
  6. Submission from Mr Wayne Moody dated 13 April 2016 opposing the Application. The writer contends that there is an "oversupply of alcohol operating in the area that will impact on the amenities of Rosebery" and that there "has been no Community impact statement and Social Community impact statement, non-community consultation, been rejected by the police, the Council and over 600 signatures on a petition".
  7. Submission from Ms Lois Bilby, Rosebery resident, dated 14 April 2016 opposing the Application. The writer contends that there is an "oversupply of alcohol operating in the area that will impact on the amenities of Rosebery". The writer raises issues regarding available parking and contends that the entry and exit

location will turn the lane into a “traffic nightmare”. The writers also contend that there has been no Community Impact statement and Social Impact Statement, community consultation, the proposal has been rejected by the police, the Council and “over 600 signatures on a petition”.

8. Submission from Mr Cameron Allen, local resident, dated 15 April 2016. The writer strongly opposes the Application contending that there was no Community Impact Statement, no social impact statement and that granting the Application will create traffic congestion and increase noise and activity in the area. The writer contends that the proposal has already been rejected twice by Council, Police and residents.
9. Submission from Ms Vanessa Bourke, local resident, dated 16 April 2016. The writer opposes the Application contending that there are many bottle shops and liquor outlets in the area, that the Premises is situated close to a school and park and its operation will bring “mega traffic” to the area. The writer questions the existence of any community consultation and social impact statements, and contends that “the Application has been rejected by the council and the community at least three times”.
10. Submission from Ms Sarina and Mr John Raffo, local residents, dated 17 April 2016. The writers strongly object to the Application contending that “granting a licence at these premises will have a detrimental impact on the local community”. They note the proximity of the Premises to schools, childcare centres, sporting grounds, places of worship and shopping centres, submitting that the area already has an “adequate” number of licensed premises and a lack of infrastructure. They contend that there is minimal parking at the site and this will lead to increased traffic. The writers repeat the submissions by Mr Bilby regarding a lack of community impact statement and opposition to the proposal by Police, Council and 600 petitioners.
11. Submission from Mr James Tohl, local resident and property owner, dated 27 April 2016. The writer supports the Application contending that it would “bring more residents to the area to experience the existing businesses – in particular dining experiences”. The writer states that he is “upset” that Mr Wayne Moody was “distributing flyers under the guise of the Rosebery Residents Action Group pertaining to put a stop to the application approval” and submits that Mr Moody “does not represent all of the community”. The writer submits that he can “see no negative impact in approving the license, and the positive impacts far outweigh any misguided ideas that the increased local traffic will be a negative factor”.
12. Submission from Mr Timothy Duhigg, local resident, dated 16 September 2016. The writer opposes the Application contending that “the opening of a corporate liquor store will severely harm local small businesses”, that there is already a “distinct lack of parking in the area”. The writer contends that the new business will bring more traffic to the area and that “the Rosebery village does not suit, require or desire, a warehouse-style bottle shop to open”.
13. In a letter to LGNSW dated 23 September 2016, the Applicant addresses the issue of a Plan of Management, stating that there are 62 Dan Murphy’s stores and 329 BWS stores in NSW, and while one or two of these stores may have a Plan of Management in place, the clear majority do not. Each store has stringent policies, procedures and practices in place that extend beyond legislative requirements and

Department Guidelines to ensure each store is properly managed. The Applicant submits that it is experienced in operating a packaged liquor business and that the Applicant's House Policy and Management Policies and Strategies disclose that a comprehensive risk mitigation regime has been devised by the Applicant and will be in place at the Premises.

14. In the Applicant's "Review and Response to Submissions" document dated 23 September 2016, the Applicant provides a 19-page response to the Police submission. Briefly, the key points are as follows:
- (a) The Applicant submits that it is significant that it "does not seek to increase the density of packaged liquor licences in the broader community, as this application relates to the removal of the Licence approximately 1.53kms".
  - (b) The Applicant submits that the data provided by Police relates to the Redfern Local Area Command (LAC) which is to a very large extent "irrelevant" by reason that the LAC area does not "match" the area that is required to be considered by the Authority pursuant to the test under section 48(5) of the Act.
  - (c) The Applicant submits that less weight should be given to data pertaining to the broader community of the City of Sydney LGA, because the broader community is a substantial area that potentially contains the highest number of workers, visitors and tourist compared with any other local government area in NSW. The City of Sydney LGA contains the highest profile night life entertainment with a significant number of licensed premises to cater for the demand. The Applicant submits that it is more relevant to consider the local community of the suburb of Rosebery instead.
  - (d) The Applicant submits that the BOSCAR data for the broader community is skewed in that statistically or mathematically there is a higher probability that a crime may occur where there are large numbers of people in the area for entertainment purposes. The Applicant contends that despite the claims of Police that there are "prevalent, existing and obvious alcohol related crime in that area" that argument does not apply to the suburb of Rosebery, by reason that alcohol related crime is very low in this local community.
  - (e) The Applicant contends that the operation of a new packaged liquor outlet in this location will not introduce new drinkers to the market but provide an additional layer of competition for existing sales.
  - (f) The Applicant contends that all Dan Murphy's stores have successful and well established harm minimisation and responsible service of alcohol policies and procedures. Dan Murphy's have implemented Crime Prevention through Environmental Design (CPTED) principles. CCTV will also be installed.
  - (g) The Applicant submits that despite the views of Police, there is *insufficient evidence* demonstrating concerns with alcohol related abuse in this location. That is, the views of Police are unsupported by evidence that applies to the relevant local community.
  - (h) The Applicant submits that there is no evidence of any heightened concern with the consumption of liquor by minors and pre-loading in this local community. The

Applicant contends that minority groups that abuse alcohol (such as young persons) are not attracted to Dan Murphy's stores. The Applicant contends that Police are unable to identify any incidents of this nature at the Dan Murphy's Alexandria store (a store the Applicant notes is at a higher risk location for harm). The Applicant emphasises data that rate of liquor offences is extremely low in this local community compared to the rest of NSW.

- (i) With respect to packaged liquor products, the Applicant submits that there is no evidence that "specials" or "promotions" will have the consequence of making a customer consume more alcohol than they otherwise planned. The Applicant contends that increased consumption of a "discounted" liquor product will be offset by the decreased consumption of another liquor product line. The Applicant provides statistics from the ABS on alcohol consumption indicating there has been no increase in alcohol consumption with the increasing availability of "specials" or "promotions". The Applicant contends that "specials" or "promotions" do not lead to the customer being placed at a higher than usual social risk of alcohol related harm and that there is no correlation between the volume of alcohol purchased on a day and customer's consumption behaviour. This position is supported by the expert views of Professor Furnham and Professor Hanson who prepared expert reports submitted to the Office of Liquor Gaming and Racing (as it was then known) on 4 July 2013.
  - (j) In response to Police's submission that there has been a regulatory effort to reduce the size of licensed premises, the Applicant submits that policy changes in the City of Sydney LGA have affected *on-premises venues*, not packaged liquor licence venues, and that there is no comparison between the Sydney CBD Entertainment and Kings Cross precincts which form part of the broader community and the state suburb of Rosebery.
  - (k) While the Police believe the new business will likely cause the closure of one or more of the existing packaged liquor retailers, this is not the view of the Applicant. Woolworths is unaware of any packaged liquor retail outlet being forced to close. The new business will provide more choice and convenience to the local community.
- 15.** The Applicant's "Review and Response to Submissions" also included a response to the LGNSW submission, making the following key points:
- (a) In response to the LGNSW observation that "the proposed venue will be centrally located within 1km to Club and Hotel Licences, who can provide take-away liquor as well as numerous restaurants and packaged licensed premises", the Applicant submits that take-away sales are not generally the *focus* of hotel and club licensed businesses.
  - (b) The EVAT assessment provided by LGNSW supports this Application in that it confirms a low risk rating for the rates of alcohol related assault, alcohol related offensive behaviour, Police and Council risk assessment; and that there is a mitigating risk factor for presence of late night transport and the proportion of all liquor venues that are diversifying the industry (i.e. on premises licences without a PSA). The Applicant notes that LGNSW record a moderate risk rating for that portion of local venues that are in a high-risk category (such as hotels).

16. The Applicant notes that it has no outstanding matters with the Council regarding the proposed use of the Premises and makes the following points in response to the submission from the Rosebery Resident Action Group (RRAG).
- (a) The Applicant is aware of significant activities of individuals on behalf of the RRAG to “stimulate” and encourage negative interest. The Applicant refers to an article in the *Southern Courier* local newspaper dated 24 May 2016, which the Applicant submits is evidence that the RRAG was encouraging negative interest.
  - (b) The Applicant notes local resident Mr Tohl’s statement that Mr Moody distributed flyers to encourage negative interest.
  - (c) The Applicant submits that there were only a low number of opposing submissions received, despite the efforts of the RRAG to encourage this negative interest.
  - (d) The Applicant submits that it is highly unlikely that Mr Moody and the RRAG opposed the Application on grounds related to the potential for alcohol related problems. The Applicant submits that the primary reasons for Mr Moody and the RRAG opposition are planning, amenity and procedural type concerns. The Applicant notes that the overall development on the site comprising 88 residential units and commercial uses on the ground level was approved by the Council in full knowledge of the existing laneway and configuration of the development.
  - (e) The Applicant notes Mr Moody’s contention that “this community now has an oversupply of alcohol operating in the area that will impact on the amenities of Rosebery” and submits that this statement is incorrect and there is an under-provision of packaged liquor licences in the local community. The Applicant submits that Mr Moody failed to provide any examples to indicate how local amenity could be degraded by granting the application.
17. The Applicant’s “Review and Response to Submissions” dated 23 September 2016 responded to the submission from Mr Peter Lane as follows:
- (a) The Applicant contends that Mr Lane made numerous submissions, is an active participant in the RRAG and has a financial interest in Barny’s Fine Wines and Ales (BFW&A). While Mr Lane has not informed the Authority of his interest in BFW&A in respect of this Application, he has publicly acknowledged his interest in that venue at other times.
  - (b) The Applicant submits that Mr Lane is a trade competitor, not a local resident submitter, and his submissions do not raise any issues pertaining to the potential impact of the New Store on any issues concerning alcohol related harm.
  - (c) The Applicant submits that Mr Lane’s claim that “past applications were also rejected by the Eastern Suburbs Police Command as not appropriate for this position” is incorrect. The Applicant is not aware of any other liquor application having been lodged with the Authority to licence this site (or part of the site) of the Premises.
  - (d) The Applicant contends that Mr Lane encouraged and arranged for signatures to appear on a petition, which contained no information about the proposal other

than stating that it was a “Petition to stop Dan Murphy’s application to open in Rosebery” and that “this is their fourth attempt – they don’t listen”. The Applicant submits that Mr Lane did not provide any balanced or relevant information and provided petitioners with incorrect information insofar as stating that this Application is the fourth application pertaining to a liquor licence grant at this site. The Applicant submits that this is the first and only liquor application made by Woolworths to the Authority in respect of this site. Further, the petition contains names with no surnames, illegible addresses and some addresses with just the suburb and no street names, or no suburb at all. The Applicant notes that there are petition entries from people who live in New Zealand, Miranda, Oatley, Double Bay, Leichhardt and Erskineville. Where comments provided some specificity, they typically revolved around protecting the local packaged liquor retailer (BFW&A). The Applicant submits that it is not the Authority’s role to play favourites between incumbent businesses and new entrants.

- (e) The Applicant contends that BFW&A’s promotes products for sale that potentially fall within the LGNSW guidelines for undesirable liquor products (e.g. Brewmeister Snake Venom Barley Wine at 67.5% alcohol content). By contrast, Woolworths has a *Responsible Buying Charter* in place and aims to avoid the sale of any products that appeal to minors, encourage inappropriate drinking practices or make inappropriate associations. There are no beers stocked at any Dan Murphy’s store containing more than 14% alcohol content.

18. The Applicant’s “Review and Response to Submissions” dated 23 September 2016 makes the following points in response to submissions from the residents other than Mr Moody and Mr Lane as follows:

- (a) The number (10) of submitters opposing the Application is low considering the efforts of Mr Moody and Mr Lane.
- (b) In response to the traffic and parking concerns raised by submitters, the Applicant states that no new concerns were raised by residents since the February report. The Applicant submits that an independent expert report, prepared by consultancy firm TRAFFIX traffic and transport planners and submitted to the City of Sydney Council in respect of the planning application for the overall development on the site, concluded that “the proposed development is supportable on traffic planning grounds and will operate satisfactorily”. The Applicant submits that there is no evidence that the proposed store, which forms part of the overall development, will not operate within satisfactory parameters for traffic and parking.
- (c) The Applicant submits that “amenity type considerations”, including parking, noise and traffic, have been carefully considered and found to be satisfactory through the issue of the Development Consent for the Premises. The Applicant relies upon a valid Complying Development Certificate (CDC) issued by Vic Lilli and Partners on 19 March 2015 for the proposed use of the Premises. The Applicant submits that amenity type considerations “do not directly engage public interest concerns arising from the objects” of the Act.
- (d) In response to concerns about the character of the proposal, the Applicant submits that town planning concerns are not directly related to liquor related

impacts and that matters of this nature are not relevant to the test under section 48(5) of the Act or the objects of section 3 of the Act.

- (e) In response to the impact of the business upon potentially sensitive facilities, the Applicant contends that there are no potentially sensitive facilities near the Premises and there have been no submissions provided by any schools, child care centres or places of worship, despite the large amount of publicity regarding the Application. With respect to Turruwul Park, the Applicant submits that none of the residential submitters indicated any pre-existing issues in relation to anti-social use of the park. The Applicant submits that comments regarding the probability that alcohol related anti-social behaviour may *become* an issue, are “baseless” and unsupported by any actual evidence.
- (f) The Applicant submits that concerns regarding the density of packaged liquor licences are mistaken and there is an under provision of packaged liquor licences in Rosebery compared to the State average.
- (g) In response to concerns raised regarding the Community Impact Statement and Community consultation process, the Applicant submits that the Applicant has fully complied with the display and the service requirements of this Application. All stakeholders have had an opportunity to lodge a submission, either initially through the Applicant’s solicitor or later directly with the Authority.
- (h) Despite this criticism, the Applicant cannot control when the Department publishes details of a liquor application including the publication of the CIS on the LGNSW noticeboard. However, in this case, the Application was lodged with the Authority on 1 March 2016 and details of the Application appeared on the LGNSW public noticeboard from 17 March 2016. Therefore, there was not a significant delay between the time of Application and the point at which details were available for downloading by members of the public.
- (i) In response to concerns regarding previous applications in relation to the site, the Applicant submits that this is the first liquor application for the grant or removal of packaged liquor licence to a site in Rosebery where the proposed liquor store would trade as a *Dan Murphy’s* store.
- (j) In response to liquor signage concerns, the Applicant submits that no signage advertising product or price will be visible from either Botany Road or the rear carpark entrance. The external brand signage will be non-illuminated. The Applicant submits that the signage will be compatible with the existing and future character of Rosebery.
- (k) In response to submissions that there is “no need” in the community for the new liquor outlet the Applicant submits that consideration of “need” is no longer a relevant factor to consider as part of the liquor application process.
- (l) In response to concerns about underage liquor consumption, the Applicant submits that the rate of recorded liquor licensing offences is extremely low in this local community compared with NSW and that there is not an issue with underage consumption in this local community.

- (m) In response to concerns about domestic violence, the Applicant submits that the incidence of domestic violence is extremely low in the suburb of Rosebery when compared with NSW.
  - (n) In response to concerns about alcohol related harms, the Applicant submits that Police are not relying upon any evidence that is applicable to this local community or that indicates that there is any concern with alcohol use in this location.
  - (o) The Applicant submits that several residents support the Application based on increased convenience, a wide product range, quality customer service, competition and pricing, bulk sales and specials, employment and long term tenancy, off-street parking, location, brand loyalty, store layout and because the Applicant will support the local economy and community.
19. The Applicant has provided a report from a consultant engaged by the Applicant, Mr Patrick Paroz, a former Local Area Commander of NSW Police dated 19 September 2016. The consultant advises that he has over 30 years of experience as a Police Officer. In a 16-page report Mr Paroz submits that “if the Application was to be granted, it would result in a very low risk of negative impact upon the Rosebery local and broader community.” Mr Paroz considers that there is little or no evidence of public or underage drinking in Rosebery, notes that the outlet will close at 9:00PM to reduce risk and that crime data pertaining to alcohol related harm indicates that alcohol is being consumed responsibly in Rosebery. Mr Paroz reports that on 11 and 15 September 2016 he conducted site inspections of the Premises.
  20. Mr Paroz disagrees with Senior Constable Tucker’s statement that granting the licence would result in a detrimental effect on the well-being of the community, an increase in availability of alcohol to minors and an increase of alcohol availability. Mr Paroz submits that the suburb of Rosebery is currently under-represented in terms of the number of liquor outlets when compared to the NSW state average.

### **Legislative Framework**

21. An application for the removal of an existing packaged liquor licence from its current location to another location is made under section 59 of the Act.
22. Pursuant to section 59(3) of the Act, an application for approval to remove a licence to another premises is to be dealt with and determined by the Authority as if it were an application for the granting of a licence in respect of those other premises.
23. Accordingly, the provisions of Division 1 of the Act extend to an application for the removal of a licence to other premises as if it were an application for a licence.
24. 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:

### **3**

- (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.*
25. 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.
26. 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.
27. 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”.
28. 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 Rosebery while the “broader community” comprises the responsible Local Government Area (LGA), the Sydney LGA.

### **Analysis of Relevant Facts**

29. The Authority is satisfied, based on the Application and CIS material before it, that for the purposes of Section 59 of the Act, the Application has been validly made. The Applicant has met minimum procedural requirements for the Application, the CIS and community consultation.
30. While some opponents of the Application claimed that the Application and CIS did not satisfy minimum requirements of the legislation, those submitters have not provided persuasive submissions identifying which legislative provisions or procedural requirements were contravened and how. While it is open to submitters to question the merits of the Application or the Applicant’s claims in the CIS about social impact, the Authority is satisfied, on the material before it that the Application and CIS meet minimum procedural and content requirements for the making of a valid application.
31. 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 based on the “Woolworths Liquor Group

Liquor Store ‘House Policy’” and “Woolworths’ Best Practice Policies and Interventions” (including “Refusal of Service - Intoxication”, “School Uniform Policy”, “ID25 Policy” and “Secondary Supply Policy”).

32. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed activity that is the subject of the Application will fall within permissible use for the Premises for planning purposes, based on CDC No. J140517 issued by Vic Lilli and Partners on 19 March 2015.

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

33. The Authority is satisfied, based on the information provided by the Application and CIS, that granting the new licence will provide some modest additional benefit by way of additional convenience to members of the local community who wish to purchase packaged liquor from a large packaged liquor outlet in this part of Rosebery.
34. 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 Rosebery, being an object of section 3(1)(a) of the Act.
35. The Applicant’s contended benefits relating to product choice have been substantiated in the Application, CIS and supporting material provided by the Applicant as to the nature of the proposed new business. The considerable product range is underscored by the large scale of the new enterprise. In this respect granting the Application may also be said to serve both the “expectations, needs and aspirations of the community” regarding the sale and supply of liquor.
36. However, the degree of community support is not unequivocal, in that there have been 12 submissions made by residents and a petition issued by the RRAG against the Application signed by approximately 600 persons. The Applicant notes that only 341 signatures could be verified and only 11 commented on the potential impact of the proposed new store on crime and/or alcohol related harm. The Authority is satisfied that while some of those petitioners do not live within the local or broader community, many of them do and that a significant minority of local community residents oppose the Application.
37. The Authority is satisfied, that this large-scale style of liquor outlet with a substantial range of products will responsibly develop the liquor industry in the local community, being an object of section 3(1)(b).
38. The Authority has assessed the Applicant’s further contended community benefits as follows:
- (a) Improved amenity – this purported benefit is contentious, as many community submitters object to a big box liquor store as inconsistent with local amenity. As noted above, the Authority accepts that the business will provide some increased choice and convenience as to access by retail to liquor products, but is not satisfied that a major new liquor business will *improve* general local amenity.

- (b) Responsible retail assurance – the Authority is satisfied that Woolworths has adequate policies and procedures in place to ensure that responsible service of alcohol is taken “very seriously” by staff at the Premises. This is a factor that reduces negative impact rather than presents a discrete positive benefit.
- (c) Increase the economic viability of the precinct as a whole – while the Authority considers it generally credible for the Applicant to contend that this new business will strengthen the shopping precinct in the immediate vicinity of the outlet by attracting new patronage to the precinct where it is to be located, it is difficult to quantify this contended benefit on the material before the Authority and the Authority is unable to give great weight to this contended community benefit.
- (d) Customer service – the Authority is satisfied that Woolworths “invests heavily” in training programs to educate its staff on customer service and provides a loyalty program, which, as noted above, is likely to contribute to the object in section 3(1)(b) of the Act. The Authority accepts that this major new business will contribute to the balanced development of the liquor industry in the communities in question.
- (e) Staff career opportunities – the Authority is satisfied that staff employed at the Premises will have opportunities to “progress throughout the wider Woolworths business”, but the Applicant has not made an unequivocal commitment to sourcing staff from within the relevant communities, so little weight can be given to this contended benefit.
- (f) Safe environment and crime prevention – the Authority is satisfied that use of CCTV surveillance, security and access control may help to ensure a safe shopping environment for patrons at this liquor outlet. However, the Authority considers that this factor is more relevant to reducing negative impacts than establishing net positive benefits.
- (g) Additional choice – the Authority is satisfied that the new outlet will provide a modern, attractive, state of the art, well planned, safe and conveniently placed retail development that will provide additional choice in this location.
- (h) Contributing to local groups and organisations – while the Authority accepts that it is an “aim” of Woolworths to contribute the equivalent of at least 1% of pre-tax profits to the communities in which it operates, on the material before it the Authority does not have sufficient information to discern the nature and timing of any such support in the local or broader community and little weight is given to this potential benefit.

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

- 39.** Having reviewed all the material before it, particularly the submission from local Police, 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. The

Authority is also satisfied that a new liquor outlet of this scale carries with it a risk of alcohol related crime in the form of the theft of liquor products from the Premises.

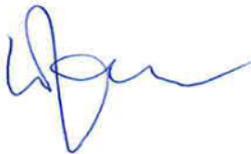
40. The Authority notes that many of the opposing submissions provided by residents have focused upon town planning issues rather than alcohol related social impacts. The Authority is unable to give significant weight to many of the community objections by reason that they have not established how their concerns fall within the scope and purpose of the Act. While the Authority accepts that these concerns are genuinely held, issues such as traffic congestion, parking, pedestrian safety, increased activity and noise, competition to independent businesses and detracting from the character of the suburb are examples of these more planning focused concerns.
41. The scale of the proposed liquor outlet is large and this factor objectively expands the potential of the new licence to contribute to any alcohol related impacts in the community that it services.
42. The licensed trading hours sought by the Applicant are reasonably extensive across the course of the week extending until 9:00PM on Mondays through Saturdays and until 8:00PM on Sundays.
43. The Authority notes that this removal application concerns the removal of a licence that has been dormant for some time to a location where it will be operative. In this sense, while granting the Application will not increase licence density, it will have the practical effect of facilitating a large new packaged liquor business in the community.
44. The Authority accepts that some residents have raised genuine concerns about the prevalence of alcohol abuse in Rosebery. The Authority acknowledges that alcohol related impacts are problematic at the level of the Sydney LGA broader community, but because of the high population and great many licensed premises providing takeaway liquor at the broader community level, the contribution to adverse alcohol related social impact made by this business will be more diffuse at the level of the broader community.
45. While Police have opposed the Application, they have not in this instance provided sufficient evidence of local alcohol related social impacts to move the Authority to refuse the Application.
46. The Authority has considered the objectors' concerns as to prevailing licence density and the proximity of the Premises to other existing licensed premises. The Authority is satisfied, based on publicly available licensed premise information maintained by LGNSW, that licence density in Rosebery is below the NSW state average.
47. The Authority notes that several opposing submitters, including Police, have raised concerns about the risk of sale of liquor to minors. The Authority accepts that this is a prevailing risk given the number of takeaway liquor outlets in the local and broader community but is satisfied, based on the moderate trading hours, the operational measures, security measures and responsible service of alcohol procedures to be adopted at Dan Murphy's that the Applicant has policies and a training regime in place to combat this problem.

48. The evidence and material before the Authority does not indicate that the local community of Rosebery is exposed to an issue or elevated risk of minors consuming liquor, either across this suburb or at this location. Similarly, while some submitters have raised concern with the proximity of the Premises to a park and a school, there is insufficient localised evidence or information to illustrate any particular concerns with regard to alcohol related misconduct at those locations that would move the Authority to refuse the Application on this basis.
49. The Authority further notes the adverse impacts raised by submitters in relation to liquor promotion and signage, but considers that these matters are primarily of a planning nature. To the extent that these matters may impact local amenity the Authority is satisfied, based on information in the Applicant's submission dated 23 September 2016, that there will be no price related signage on the exterior of the building and that brand signage will be non-illuminated. The Authority further notes that the Premises is the subject of a Complying Development Certificate.
50. The Authority accepts that some submitters have genuine concerns about the impact of a major new retailer upon local competitors, but it is not the Authority's role to play favourites between incumbent and new liquor businesses. Any potential abuse of market power is a matter for the Australian Competition and Consumer Commission.
51. The BOCSAR *Report on Crime by LGA and Alcohol Related Status* for July 2010 to June 2015 records that the City of Sydney LGA had rates of *alcohol related domestic violence assault* above the rate for New South Wales, while the *alcohol related non-domestic assault* rate was also substantially above the State-wide rate.
52. While the prevailing crime data for the broader community of the City of Sydney is problematic, this business will be situated in Rosebery, some distance away from the Sydney Entertainment Precinct and Kings Cross Precincts which provide the greatest concentration of alcohol related crime in this broader community. Given the densely populated area of the City of Sydney and the great many liquor suppliers, including packaged liquor licensed outlets and other businesses authorised to sell takeaway liquor, it is reasonable to expect that the contribution made by this large new outlet will be more diffuse at the broader community level, and will have greater impact on the local community.
53. Current BOCSAR data reveals that the Rosebery suburb has rates of relevant crimes that are below or well below corresponding NSW rates for the year ending June 2016. Although the Premises is relatively large, it will be operating in a local community that is not over exposed to liquor outlets and alcohol related crime.
54. The Authority is further satisfied, based on the ABS SEIFA data, that both the suburb of Rosebery and the City of Sydney 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 Rosebery ranked in the 7<sup>th</sup> decile on the Index and City of Sydney ranked in the 9<sup>th</sup> decile (with a decile ranking of 10 being the most advantaged).

## Conclusion

55. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether 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 and all other parties required to be consulted under the legislation.
56. 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 removing this licence would not be detrimental to the well-being of these local and broader communities.
57. Removal of the licence is approved pursuant to section 59 of the Act.
58. 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: 26 October 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. Application Form lodged on 16 March 2016.
2. Notices of the Application sent to various public agencies and other stakeholders.
3. CIS document and supporting material dated 24 February 2016.
4. A list of stakeholders and special interest groups consulted.
5. Statement of Impact dated 24 February 2016. In this 129-page document, the Applicant provides information about the Application, the location of the Premises, the manner of operation and facilities to be provided (including a site plan of the New Store), suitability of the site for a packaged liquor facility, the location of nearby community buildings, facilities and places, and details regarding operational matters (policy and procedures, and Woolworths' operating experience with Dan Murphy's stores). In this document the Applicant further considers the both the risks and positive benefits of granting the Application. 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 and submits that there will be no adverse impact to the area.
6. "Woolworths Liquor Group Liquor Store 'House Policy'" and "Woolworths' Best Practice Policies and Interventions" (including "Refusal of Service - Intoxication", "School Uniform Policy", "ID25 Policy" and "Secondary Supply Policy").
7. Report by Traffic Impact Assessment (Reference: 13 201r01v2 TRAFFIX 767-779 Botany Rd, TA Report, Issue II) approved 2 August 2013.
8. Notice of Determination – Approval No. D/2013/1174, with consent to operate from 9 December 2013.
9. Notice of Determination – Refusal No. D/2014/505, dated 25 August 2014.
10. Complying Development Certificate No. J140517 issued by Vic Lilli and Partners on 19 March 2015 for Botany Road Project Pty Ltd (Premises 767-779 Botany Road).
11. Plan indicating the proposed licensed area (Dan Murphy's Rosebery) dated 24 July 2015.
12. Notice of Intention to Apply for a Liquor Licence (removal of the existing packaged liquor licence, licence No. LIQP700350059) dated 1 October 2015.
13. Letters from Tony Schwartz, Back Schwartz Vaughan, on behalf of Applicant to the Occupiers in the local area of Rosebery dated 1 October 2015 and 1 March 2016.
14. Family & Community Services submission dated 6 October 2015.
15. Transport RMS submission dated 12 October 2015.

16. City of Sydney Council submission dated 15 October 2015.
17. Rosebery Resident Action Group submissions dated 3 October 2015, 28 October 2015 and 23 November 2015. The submission included a signed "Petition to stop Dan Murphy's application to open in Rosebery" dated October 2015. Letter from Peter Lane, Rosebery Action Group, to Office of Liquor, Gaming & Racing with carbon copy sent to Hon. Malcolm Turnbull MP, Prime Minister of Australia and the Hon. Mike Baird MP, Premier of New South Wales.
18. City of Sydney Council submission dated 9 March 2016.
19. NSW Police submission from Senior Constable Philip Tucker (Redfern LAC Licensing Office) dated 21 March 2016.
20. Certification of Advertising Application dated 23 March 2016.
21. Submission from the Hon Ron Hoenig MP, Member for Heffron, dated 14 April 2016.
22. LGNSW submission dated 26 May 2016. Submission included an EVAT Assessment Report dated 25 May 2016.
23. Request, dated 25 August 2016, for additional information and response, including consent to proposed conditions, responses to submissions received by LGNSW and report by Ex-Local Area Commander Patrick Paroz.
24. Email from Tony Schwartz (for Applicant) to LGNSW on 23 September 2016, responding to matters raised in the previous email dated 25 August 2016. This included the "Review and Response to Submissions" which contained the Applicant's response to Police, LGNSW, Council, the Rosebery Resident Action Group, Mr Peter Lane and other local residents.
25. Report by Ex-Local Area Commander Patrick Paroz dated 19 September 2016.
26. Licence document LIQP700350059 dated 17 October 2016.
27. Submissions from members of public in support of the Application:
  - (a) Submission from Johnathon at CCM Electrical dated 15 October 2015.
  - (b) Submission from South Sydney Travel Pty Limited dated 21 October 2015.
  - (c) Submission from Marisa Pruscino dated 27 October 2015.
  - (d) Submission from Jack (Precision Automotive Service, Rosebery) dated 30 October 2015.
  - (e) Submission from Andrew Campbell dated 5 November 2015.
  - (f) Submission from Raffaele Schiano dated 27 November 2015.
  - (g) Submission from Justine Mihalopoulos dated 23 March 2016.

- (h) Submission from James Tohl dated 27 April 2016.
28. Submission from Councillor Linda Scott, City of Sydney dated 28 April 2016.
29. Submissions from members of the public against the Application:
- (a) Submissions from Peter Lane (trade competitor and RRAG member) dated 3 October 2015 and 9 October 2015.
  - (b) Submission from Yenda Clifton dated 6 October 2015.
  - (c) Submission from Shawn Davis dated 9 October 2015.
  - (d) Submission from Kaye Cooper dated 13 October 2015.
  - (e) Submission from Suzanne Reed dated 17 October 2015.
  - (f) Submission from Wayne Moody dated 13 April 2016.
  - (g) Submission from Lois Bilby dated 14 April 2016.
  - (h) Submission from Cameron Allan dated 15 April 2016.
  - (i) Submission from Vanessa Bourke dated 16 April 2016.
  - (j) Submission from Sarina and John Raffo dated 17 April 2016.
  - (k) Submission from Belinda Bourke dated 7 March 2016.
  - (l) Submission from Timothy Duhigg dated 16 September 2016.
30. Crime data provided by licensing staff and sourced from published BOCSAR sources for July 2014 to June 2015. This data indicates that:
- (a) The rate of *domestic violence related assault* incidents flagged by reporting Police as *alcohol related* across the Sydney LGA was **213.3** per 100,000 persons, above the New South Wales rate of **122.6** per 100,000 persons.
  - (b) The rate of *non-domestic violence related assault* incidents flagged by reporting Police as *alcohol related* across the Sydney LGA was **796.6** per 100,000 persons, above the State-wide rate of **144.0** per 100,000 persons.
  - (c) The rate of *offensive behaviour* offences flagged by reporting Police as *alcohol related* across the Sydney LGA was **525.4** per 100,000 persons, above the State-wide rate of **88.2** per 100,000 persons.
  - (d) The rate of *assault Police* incidents flagged by reporting Police as *alcohol related* across the Sydney LGA was **85.2** per 100,000 persons, above the State-wide rate of **18.2** per 100,000 persons.

- 31.** BOCSAR Crime Maps based upon data from July 2015 to June 2016 detailing hotspots for the concentration of offences near the location indicating that the Premises in Rosebery:
- (a) Is located outside a *low density hotspot* for incidents of *domestic assault*.
  - (b) Is located outside a *low density hotspot* for incidents of *non-domestic assault*.
  - (c) Is located outside a *low density hotspot* for incidents of *malicious damage to property*.
- 32.** Liquor licensing records from LGNSW indicating that the suburb of Rosebery already has 1 club licence, 2 hotel licences, 12 on-premises licences, 3 packaged liquor licences and 4 producer wholesaler licences.
- 33.** Liquor licence density data from LGNSW indicating that the City of Sydney LGA recorded:
- (a) A rate of **7.67** *packaged liquor licences* per 100,000 persons, which is substantially below the NSW state wide rate of **32.85**.
  - (b) A rate of **2.95** *registered club licences* per 100,000 persons, which is well below the NSW state wide rate of **20.48**.
  - (c) A rate of **5.90** *full hotel licences* per 100,000 persons, which is substantially below the NSW state wide rate of **30.36**.
- 34.** ABS SEIFA data prepared based on the 2011 Census indicating that the State suburb of Rosebery ranked in the 7<sup>th</sup> decile and the City of Sydney LGA ranked in the 9<sup>th</sup> decile compared to other local government areas and state suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).