

NSW Independent Liquor & Gaming Authority

Our ref: DF24/021595

Mr Tony Schwartz
BSV Liquor & Gaming Lawyers

30 October 2024

Dear Mr Schwartz

Application No.	APP-0012941009
Applicant	Mr Anthony Charles Leybourne Smith
Application for	Packaged liquor licence
Application date	22 May 2024
Decision date	18 September 2024
Proposed licence name	BWS - Beer Wine Spirits
Proposed trading hours	Monday to Saturday 09:00 AM – 07:00 PM Sunday 10:00 AM – 07:00 PM
Proposed premises	Unit 5, 11-13 Pearl Street Kingscliff NSW 2487
Legislation	Sections 3, 11A, 12, 29, 40, 44, 45, 48, 114 and 123 of the <i>Liquor Act 2007</i>

Decision of the Independent Liquor & Gaming Authority Application for a packaged liquor licence – BWS – Beer Wine Spirits

We **refuse** the application above under section 45 of the *Liquor Act 2007*.

Statement of reasons

We are concerned that the overall impact of approving the application may be detrimental to the well-being of the local or broader community.

Our main findings

Procedural and trading hour requirements

We are satisfied that:

- the application has been validly made and meets the Act's procedural and trading period requirements

- the sale of liquor would comply with the licence's authorisation.

'Fit and proper person'

The applicant is a 'fit and proper person' to operate the business to which the proposed licence relates, as law enforcement agencies raised no concerns about their integrity.

Responsible service of alcohol

Procedures for the responsible service of alcohol will be in place at the premises from the start of licensed trading, under the plan of management and the conditions on the licence.

Development consent requirements

The necessary development consent is in force. Tweed Shire Council approved the development application DA06/0348 on 28 April 2009.

Community impact

Local and broader communities

The local community for the purposes of this decision is Kingscliff. The broader community is the Local Government Area (LGA) of Tweed.

Diversity and density of licensed outlets

L&GNSW Liquor & Gaming Harm Minimisation and Community Impact Data Report for Kingscliff shows:

- there are 32 authorised liquor licenses, of which 9 are authorised to sell packaged liquor. This includes 4 packaged liquor licences, 3 registered club licences and 2 hotel licences.
- saturation of packaged liquor licences in Kingscliff is lower than in the Tweed LGA, but higher than the average in NSW as a whole.

Crime data (annual rate per 100,000 residents)

BOCSAR data shows that:

- in the year to December 2023, the proposed premises is located within close proximity to high-density hotspots for malicious damage to property and alcohol-related assault; in a medium-density hotspot for alcohol-related non-domestic assault; and a low density hotspot for alcohol-related domestic assault
- in the year to March 2024, the rate of alcohol-related domestic assault in Kingscliff was lower than in the Tweed LGA and in all of NSW
- in the year to March 2024, the rate of alcohol-related non-domestic assault in Kingscliff was higher than in both, the Tweed LGA and in all of NSW
- in the year to March 2024, the rate of alcohol-related offensive conduct and malicious damage to property in Kingscliff was lower than in the Tweed LGA and in all of NSW.

Alcohol-related health data (per 100,000 residents)

HealthStats NSW data showed that the rate of:

- alcohol-related deaths in the Tweed LGA were higher than the NSW average.
- alcohol-related hospitalisations in Tweed LGA were lower than the NSW average.

ABS Socio-Economic Index for Areas (SEIFA)

Kingscliff and the Tweed LGA were ranked as relatively advantaged in terms of household income and residents in skilled occupations compared to other suburbs and LGAs in NSW.

Business model

We note that the proposed business model involves a standalone bottle shop. The primary purpose of the proposed licence is the retail sale of packaged liquor on the licensed premises for consumption away from the licensed premises.

Benefits proposed by applicant

The applicant proposes that the proposed store would have positive social and economic effects for current and future residents of this local and broader community by meeting consumer demand from a growing community for an enhanced shopping experience, reducing travel time and distances to other shopping locations, and generating permanent employment and temporary construction jobs in the fit-out of the proposed store.

Stakeholder submissions

We considered the submissions from:

- NSW Police Force, dated 16 June 2024, objecting to the application and expressed concerns in relation to:
 - the high saturation of packaged liquor outlets in the suburb
 - the proposed premises' location near a primary school and church
 - increased alcohol-related anti-social behaviour, violence and crime in Kingscliff and the surrounding area, and
 - domestic and non-domestic violence related assault rates.
- NSW Health, dated 20 June 2024, objecting to the application raising concerns in relation to increased health and social harms, including:
 - higher assault rates linked to alcohol outlet density
 - the proposed premises' location near a primary school, church and a bus stop frequented by homeless people (which could exacerbate issues with public drinking, anti-social behaviour, and litter)
 - high saturation of packaged liquor outlets in the suburb.

It was further noted that the suburb's socio-economic disadvantage rating could lead to increased anti-social behaviours, homelessness and crime with more alcohol availability.

- Aboriginal Affairs NSW, 31 January 2024, provided an email stating no objection to the application, so long as the applicant had notified the relevant Aboriginal Land Councils.
- Tweed Byron Local Aboriginal Land Council (LALC), dated 8 February 2024 objecting to the application citing its responsibilities under the NSW Aboriginal Land Rights Act 1983, which mandates the Council to improve, protect, and foster the best interests of Aboriginal persons within its area, and to alleviate poverty and distress among them.
- The Aboriginal Advisory Committee (Tweed Shire Council), dated 12 March 2024, which raised concerns in relation to the negative impact of an additional liquor licence near a primary school, church, two existing bottle shops, and an area frequented by homeless and vulnerable communities. It was further noted that the proximity to a bus stop may exacerbate issues, potentially becoming a gathering point for harmful alcohol-related activities.
- Tweed Shire Council, dated 21 June 2024, which notes no concerns.
- 73 members of the public objecting to the application, raising concerns in relation to the proposed premises' close proximity to a primary school and church, elevated rates of alcohol-related assaults and health issues compared to the NSW average, and other alcohol related anti-social behaviour.
- 3 members of the public in support of the application noting that the proposed premises would offer more competitive prices and convenience.

We also considered the applicant's submission in response, to these submissions, which contends that:

- recent research commissioned by the Authority¹ found no link between the density of packaged liquor licences and domestic or non-domestic assault
- the application has faced an unprecedented campaign by a few groups to generate as much negative interest as possible which is not evidence based
- observations from site inspections undertaken by the applicant are supported by BOCSAR data, indicating that rates of malicious damage to property in Kingscliff have been low compared to NSW over the past five years
- a report prepared on behalf of the applicant by Patrick Paroz (ex-NSW Police Force, 1983 to 2016; Commander, Alcohol and Licensing Enforcement Command) in response to the NSW Police submission, asserting that approval of the application is unlikely to lead to an increase in alcohol-related crime or anti-social behaviour in Kingscliff or the broader LGA. The report cites BOCSAR data for Kingscliff that shows:
 - the number of incidents in each crime category to March 2024 remains very low
 - an increase of 6.2% for Tweed LGA in non-domestic assaults over the five years leading up to March, but no mention of similar statistics for the suburb of Kingscliff.
 - a decrease in the rate of non-domestic assaults per 100,000 population, dropping from 355.1 to 298.5 (to March 2024). Additionally, this rate has consistently been lower than the NSW average for past five years.
 - the rate of non-domestic assault in Kingscliff being lower than the NSW rate, but higher than NSW in relation to alcohol-related non-domestic assault – leading to the assertion that most alcohol related non-domestic assaults occurred on licensed premises, primarily on Friday or Saturday nights, and concluding that packaged liquor is not a major contributing factor.
- Mr Paroz's report further asserts that Kingscliff is not significantly affected by alcohol-related incidents in the broader Tweed LGA; and the Alcohol-Free Zone in Kingscliff helps prevent public drinking and is a protective factor
- the outlet will follow the (ILGA-approved) Endeavour Group Plan of Management providing well-established policies and procedures.
- the submission from NSW Health reliance on the LALC submission to support their objection only highlights the general vulnerability of Aboriginal people to harm, however no evidence or reasons for opposition have been provided
- the suburb has a slightly higher percentage of Aboriginal and Torres Strait Islander people compared to NSW; however, academic literature does not link packaged liquor availability and alcohol-related harm for disadvantaged areas or Indigenous groups
- restricting liquor licences based on broad research is less effective in well-off areas like Kingscliff, which have higher SEIFA rankings, compared to remote communities with higher alcohol availability and lower SEIFA rankings
- site inspections undertaken by the applicant on 8 occasions between February and June 2024, and by Mr Paroz on 2 occasions during July 2024 found no evidence of

¹ Jiang H, Riordan B, Laslett A-M, Livingston M, Lee K, James D, Stearne A, Room R, (2023). Association of liquor outlet density with domestic and non-domestic assault in New South Wales. NSW Government Independent Liquor & Gaming Authority, Sydney, NSW.

homelessness in Kingscliff; and there is no indication that Kingscliff has a higher number of homeless individuals than other coastal towns

- there is no evidence to suggest that children are harmed by walking past a well-managed liquor store (as noted by NCAT) and children are likely to be supervised in public areas like streets or shopping centres, reducing any potential risk from the presence of a liquor store
- bottle-shops operate near schools without issues, citing eight retail liquor stores operated by Endeavour in NSW, approved by ILGA, situated between 100 and 210 meters from schools
- objections related to planning issues (traffic, parking, litter, lighting, noise) are matters for council, who have raised no objections to the application
- the store will in fact reduce travel time and distances to nearby supermarkets, potentially decreasing traffic and highlights a significant need of convenience
- petitions should not carry significant weight due to potential bias and lack of balanced information.

Findings of concern

We note the high density of liquor outlets in the suburb and adjacent villages and considered the proposed location a relevant factor, being situated very close to a primary school and church. It is a tourist destination with a mixture of social factors and high rates of alcohol related crime.

Local concerns suggest there is a risk that if the licence was granted, liquor sold at the premises will contribute to an increase in alcohol-related crime, including domestic and non-domestic assault, health and other social and amenity issues in the local and broader communities. We have taken into account submissions received from NSW Police, NSW Health, the Local Aboriginal Land Council, and 73 submissions from the public who objected to the proposal.

Negative social impacts

The proposal could contribute to an increase in alcohol-related harm in the local and broader communities because of the:

- higher indigenous population in the suburb and the LGA compared to the NSW average
- high-density crime hotspots in the suburb for malicious damage to property and alcohol-related assault; medium-density crime hotspots in the suburb for domestic and non-domestic assault
- higher crime rates in the suburb for alcohol-related non-domestic assault compared to NSW
- higher saturation rate of packaged liquor licences in both the suburb and LGA
- proximity of the proposed premises to a local primary school and church
- higher rate of alcohol-attributable deaths in the LGA than in NSW.

We have also considered the following relevant factor:

- lower crime rates in both the suburb and LGA for alcohol-related domestic assault, malicious damage to property and alcohol-related disorderly conduct than in NSW
- lower rate of alcohol-attributable hospitalisations in the LGA than in NSW
- reduced trading hours.

However, on balance, we are concerned that approving the application would be detrimental to the wellbeing of the local or broader community and accordingly, approval of the application is not in the public interest.

The material we considered

We considered the following material when making our decision:

- the application material — including evidence that stakeholders and the community were notified about the application
- a community impact statement (CIS)
- the plan of the licensed premises and any authorisations
- a plan of management for the licensed business
- a development consent for the premises
- statistics from Liquor & Gaming NSW, Bureau of Crime Statistics and Research, NSW Health and Australian Bureau of Statistics on the socio-economic status, liquor licence density, alcohol-related crimes rates and health issues in the local and broader communities
- stakeholder submissions and the applicant's response to them.

We also considered Guideline 6 to assess the likely social impact to the local and broader community.

This decision will be published in accordance with section 36C of the *Gaming and Liquor Administration Act 2007*.

Opportunity for review

The applicant and anyone who was notified of the application and made a submission, may apply to NCAT for a review of the decision.

An application for review must be made no later 28 days after the decision is published on the website. There is a fee to lodge the application.

For more information, please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney or visit the NCAT website.

If you have any questions

Please contact the case manager, Max Costa, at Liquor & gaming NSW, if you have any questions.

Yours sincerely



Chris Honey

Deputy Chairperson

Independent Liquor & Gaming Authority