



Ms Angela Frost
Solicitor
By email to: angelamfrost@bigpond.com

9 September 2022

Dear Ms Frost

Application No.	APP-0009159631
Applicant	Neighbourhood Cellars Maroubra Pty Ltd
Application for	Packaged Liquor Licence
Licence name	Neighbourhood Cellars Maroubra
Proposed trading hours	Monday to Saturday 10:00 AM – 09:00 PM Sunday 10:00 AM – 08:00 PM
Proposed Premises	28-32 McKeon Street MAROUBRA NSW 2035
Legislation	Sections 3, 11A, 12, 29, 30, 31, 40, 44, 45 and 48 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority
Application for a packaged liquor licence – Neighbourhood Cellars Maroubra**

The Independent Liquor & Gaming Authority considered the application above, and decided on 15 July 2022 to **refuse** the application under section 45 of the *Liquor Act 2007*.

Statement of reasons

A statement of reasons for this decision is attached at the end of this letter.

If you have any questions, please contact the case manager, Wendy Yeung, at wendy.yeung.kye.kong@liquorandgaming.nsw.gov.au.

Yours faithfully

Murray Smith
Deputy Chairperson
For and on behalf of the **Independent Liquor & Gaming Authority**

STATEMENT OF REASONS

DECISION

1. On 15 July 2022, Neighbourhood Cellars Maroubra Pty Ltd (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application (“Application”) for a packaged liquor licence (“Licence”) for the premises at 28-32 McKeon Street, MAROUBRA NSW 2035 (“Proposed Premises”).
2. The Authority considered the Application at its meeting on 15 July 2022 and decided to refuse to grant the Licence under section 45 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the Act and the Liquor Regulation 2018.

MATERIAL CONSIDERED BY THE AUTHORITY

4. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. In accordance with its *Guideline 6*, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
7. A list of the material considered by the Authority is set out in Schedule 1.

LEGISLATIVE FRAMEWORK

8. The Authority has considered the application in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018:
 - a) Section 3: Statutory objects of the Act and relevant considerations.
 - b) Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.
 - c) Sections 29-31: Specific provisions in respect of a packaged liquor licence.
 - d) Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
 - e) Section 44: Submissions to Authority in relation to licence applications.
 - f) Section 45: Criteria for granting a liquor licence.
 - g) Section 48: Requirements in respect of a CIS, including a requirement that the Authority must not approve the application unless it is satisfied, having regard to the CIS and other available information, that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community.
9. An extract of these sections is set out in Schedule 2.
10. The Authority has also had regard to its Guideline 6 in considering the overall social impact of approving the application pursuant to section 48 of the Act.

KEY FINDINGS

11. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

Validity, procedural and trading hour requirements

12. The Authority is satisfied on the material before it that:

- a) the Application has been validly made and meets the procedural and trading period requirements under sections 11A, 12 and 40 of the Act,
 - b) if the Licence were to be granted, liquor would be sold in accordance with the authorisation conferred by the Licence as required by section 29 of the Act, and
 - c) Sections 30 and 31 of the Act do not apply to the Application, as the Premises is not intended to operate as is contemplated by the sections.
13. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements.

Fit and proper person, responsible service of alcohol, and development consent requirements

14. Pursuant to section 45 of the Act, the Authority is also satisfied that:
- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
 - b) practices would be in place from the commencement of licensed trading at the Premises to facilitate the responsible serving of alcohol, having regard to the plan of management documentation for the Premises and the conditions to be imposed on the licence, and
 - c) the requisite development consent is in force, based on the Complying Development Certificate in respect of the Premises, issued by Consult Code Solutions on 20 May 2022.
15. The Authority notes that Development Application DA/563/2021 was refused by Randwick City Council on 26 November 2021.

Community impact

Local and broader communities

16. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Maroubra, and the relevant "broader community" comprises the Local Government Area ("LGA") of Randwick.

Licence density

17. The Authority notes that, compared to the NSW state average, Maroubra and Randwick LGA have a **lower** saturation of packaged liquor licences

Crime data

18. The relevant BOCSAR data indicates that, in the year to March 2022:
- a) the Premises was located within hotspots for incidents of domestic assault and malicious damage to property
 - b) the Premises was located in close proximity to hotspots for incidents of non-domestic assault and alcohol-related assault
 - c) Maroubra recorded **higher** rates of alcohol-related offensive conduct and **lower** rates of alcohol-related domestic and non-domestic assault, and malicious damage to property, compared to the NSW state average.
 - d) Randwick LGA recorded **lower** rates of all offence types normally considered by the Authority, compared to the NSW state average.

Alcohol-related health data

19. The most recent HealthStats NSW data available at the time of the Authority's decision indicates that Randwick LGA recorded a **lower** than average level of alcohol-attributable deaths for the period 2018/19-2019/20, and a **higher** than average level of alcohol-attributable hospitalisations for the period 2018/19-2019/20.

SEIFA

20. The Authority notes that ABS Socio-Economic Index for Areas (“SEIFA”) data as at 2016 indicates that Maroubra and Randwick LGA were relatively advantaged and advantaged compared to other suburbs and LGAs in NSW.

Business model

21. The Authority has had regard to the Applicant’s intention that the proposed business model will involve the sale of packaged liquor away from the Proposed Premises, including a large range of local and international wines, along with a wide range of beers, cider and spirits.

Purported benefits

22. The Authority has had regard to the Applicant’s purported benefits, including that:

- a) the Proposed Premises will provide increased convenience and choice to customers
- b) the Proposed Premises will offer the local community a range of interesting wines, beer and spirits, including the offering of over 107 exclusive wines sourced from all over the world
- c) the Proposed Premises will engage in wine tastings, dinners and masterclasses conducted off site at neighbouring restaurants
- d) the Proposed Premises will offer employment opportunities to the local and broader community
- e) the Applicant is an experienced operator and is responsible for the current operation of five other licensed venues, which have not received any breaches or complaints.

The Authority considers the proposed benefits above to be limited by the absence of any substantive evidence of community support for the Application.

Stakeholder submissions

23. The Authority has had regard to the submissions from:

- a) **NSW Police Force**, which objects to the Application, noting concerns about the saturation of packaged liquor licences in local community, retail theft within the area, the constant issue of minors accessing and consuming alcohol, and the Proposed Premises’ close proximity to alcohol-free and alcohol prohibited zones.
- b) **L&GNSW Compliance**, which notes that there are no adverse findings on the proposed licensee or director and that the Applicant is responsible for five other licensed premises which have no adverse compliance or complaint history. Additionally, L&GNSW Compliance notes the plan of management provides broad information regarding controls with RSA and surveillance of patrons but not does not address how it will prevent consumption of its liquor products in the nearby alcohol-free zones and public beach area.
- c) **Randwick City Council**, which objects to the Application, noting:
 - i. On 23 August 2021, Council advised the Applicant that the Application should not progress until development consent had been obtained for the use of the Proposed Premises as a retail packaged liquor outlet
 - ii. a DA lodged on 13 September 2021 was assessed and refused on 26 November 2021 (and was objected to by Police on 18 October 2021)
 - iii. on 20 May 2022, the CDC was approved, relying on the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*

- iv. little to no weight should be given by the Authority to the consent granted to operate the Proposed Premises by the CDC beyond forming the requisite satisfaction prescribed by section 45(3) of the Act
 - v. the grant of the CDC is not preceded by any merit assessment in respect to amenity impacts or any social impact assessments particular to this or any other proposal
 - vi. significant weight should be given to Council's refusal of the DA, which was made following the required public and stakeholder consultation, the proper assessment of all relevant planning aspects including social impacts, concerns raised by Police, impacts to the local amenity and broader public interest
 - vii. the grant of the Application will result in a significant detrimental increase in the availability of liquor where there is already more than an adequate amount of similar liquor services in Maroubra and in the Randwick LGA
 - viii. the grant of the Application will result in an overall social impact that will be detrimental to the wellbeing of the communities in Maroubra and Randwick LGA.
- d) **Transport for NSW**, which notes concerns regarding alcohol-related car crashes and recommends the licensee maintain awareness of alcohol-related issues impacting the community, attend the local liquor accord and provide access to educational material within the Proposed Premises.
- e) **One member of the public**, who objects to the Application noting the Proposed Premises is unnecessary and erodes the social wellbeing of the area, there are already many liquor outlets in the area and the addition of another liquor outlet will be challenging for residents on the lower end of the socioeconomic spectrum as it may encourage them to drink on the beach and around the shopping strip.

24. The Authority has also had regard to the Applicant's submissions in response, and notes the Applicant's claims that:

- a) outlet saturation and clustering are lower compared to the NSW state average
- b) nearby licensed premises do not contain the same range of products the Proposed Premises intends to sell
- c) the Applicant will ensure no alcohol is sold to minors, and the point of sale will be located near the entrance to reduce the possibility of secondary sales to minors
- d) the Proposed Premises is 92sqm and staff will closely monitor the store, with the assistance of CCTV cameras, to prevent theft
- e) the Applicant will not make same day deliveries from the Proposed Premises
- f) Council advised the Applicant of its intention to refuse the DA and suggested the Applicant withdraw it, and that Council ultimately ignored the withdrawal and instead refused the DA
- g) the CDC application process involved multiple inspections and significant expense
- h) the CDC is a valid approval despite Council's refusal of the DA, and the acceptance by the Authority of a CDC is an established and proper practice
- i) the Applicant was given no opportunity to address the Police report upon which Council based its refusal
- j) the nearest similar packaged liquor outlet is about 1.8km away and it is not reasonable to expect residents to travel this distance

- k) the Applicant has previously addressed the issues raised by Police in response to its submission to L&GNSW
- l) the Applicant cannot prevent the consumption of any liquor product outside of the licensed area, but the Applicant can ensure alcohol is not sold to a minor and can notify Police if alcohol is taken to a minor or groups of minors after leaving the Proposed Premises
- m) the Applicant's five other stores are situated in, or around alcohol-free zones and the stores work successfully with Police to ensure all activities are within the best interests of the community and ensure a safe environment
- n) the house policy attached to the plan of management refers to the sale and supply of alcohol to minors as well as making customers aware of the alcohol-free and alcohol-prohibited zones
- o) the Applicant is not seeking to contribute to crime in the area and has shown that he can operate a packaged liquor outlet successfully without incident and has the intention to maintain his exceptional record.

Findings of concern

25. Having regard to the relevant statistics and the submissions received, including the Applicant's reply to submissions, the Authority finds that:

- a) there are strong objections from Police, Council and a member of the public
- b) the DA application was refused by Council
- c) there is a higher rate of hospitalisations within Randwick LGA compared to NSW rates
- d) there is a higher level of alcohol-related offensive conduct in Maroubra compared to the NSW state average
- e) there are medium density hotspots in the suburb for alcohol-related domestic assault, and high-density hotspots in Maroubra for alcohol-related non-domestic assault, alcohol-related assault and malicious damage to property
- f) the Proposed Premises is located near alcohol-free zones, alcohol-prohibited zones and a public beach
- g) minors' accessibility to alcohol within Maroubra is a constant issue for Police.

26. The Authority considered that, if the Licence were granted, there is a risk that the liquor sold from the Proposed Premises would exacerbate the existing alcohol-related problems in the community and, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues in Maroubra and the Randwick LGA.

Mitigating factors

27. The Authority is satisfied that the factors below go some way towards mitigating these risks:

- a) the Applicant is linked to five successfully operated liquor outlets with no compliance issues
- b) a CDC was provided for the fit-out of the Proposed Premises
- c) a plan of management and house policy is in place to address the concerns raised and to help minimise alcohol-related crimes
- d) lower rate of alcohol-related domestic and non-domestic assault and malicious damage to property in Maroubra compared to the NSW state average

- e) there is a lower licence saturation of packaged liquor stores in both Maroubra and Randwick LGA, compared to the NSW state average.

CONCLUSION

28. However, having considered the positive and negative social impacts that are likely to flow from granting the Licence, concerns in relation to matters raised in the DA process leading to its refusal, the crime statistics regarding alcohol-related offensive conduct, and the social impact of approving the Application remain, particularly in light of the objections received.
29. The Authority is not satisfied that the above matters mitigate the risks sufficiently such that the overall social impact of granting the Licence would not be detrimental to the wellbeing of the local and broader communities. Rather, the Authority is satisfied that the additional liquor licence would not facilitate the balanced development, in the public interest, of the liquor industry.
30. Accordingly, the Authority has decided to refuse to grant the Licence under section 45 of the Act.



Murray Smith
Deputy Chairperson
For and on behalf of the **Independent Liquor & Gaming Authority**

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 & Gaming NSW website](#) 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](#).

Schedule 1 – Material considered by the Authority Neighbourhood Cellars Maroubra

Application material

1. Floor plan for the Premises, dated 25 August 2021, indicating the proposed licensed area apply.
2. ASIC business records in relation to the Applicant dated 2 September 2021.
3. Completed Category B Community Impact Statement dated 20 September 2021.
4. Completed application dated 21 September 2021.
5. Plan of Management documents for the Premises, titled PLAN of MANAGEMENT and dated May 2022.
6. Completed certification of advertising dated 23 May 2022.

Development consent

7. Notice of determination issued by Randwick City Council on 26 November 2021, refusing the development application DA/563/2021 for the Proposed Premises.
8. Complying Development Certificate Determination issued by Consult Code Solutions on 20 May 2022, approving the complying development certificate 2021-0051/CDC for the Proposed Premises.

Harm minimisation and community impact data

9. Harm minimisation and community impact data for the suburb of Maroubra, generated on 20 June 2022, which sets out that:

Outlet density (annual rate per 100,000 residents)

- a. saturation of packaged liquor licences in Maroubra (**32.30**) is **lower** compared to Randwick LGA (**33.41**), and **lower** compared to NSW (**41.35**)

Offence data (annual rate per 100,000 residents)

In the year to March 2022:

- b. alcohol-related domestic assault in Maroubra (**56.6**) was lower compared to the Randwick LGA (**67**), and lower compared to all NSW (**112.6**)
- c. alcohol-related non-domestic assault in Maroubra (**68.5**) was lower compared to the Randwick LGA (**83**), and lower compared to all NSW (**85.7**)
- d. alcohol-related offensive conduct in Maroubra (**53.6**) was higher compared to the Randwick LGA (**35.8**), and higher compared to all NSW (**44**)
- e. malicious damage to property in Maroubra (**464.4**) was higher compared to the Randwick LGA (**363.3**), and lower compared to all NSW (**590.8**)

Alcohol-attributable hospitalisations & deaths (per 100,000 residents)

- f. In the period 2018/19 – 2019/20 the alcohol-attributable death rate in Randwick LGA (**17.9**) was lower compared to the average across all of NSW (**19.7**)
- g. In the period 2018/19 – 2019/20 the alcohol-attributable hospitalisation rate in Randwick LGA (**691.1**) was higher compared to the NSW average (**513.2**)

SEIFA

- h. According to the SEIFA Index of Relative Economic Advantage & Disadvantage, households in Maroubra (**9**) and Randwick LGA (**9**) are socio-economically advantaged and advantaged respectively.

Stakeholder submissions

10. Submission from Transport for NSW, dated 23 August 2021.
11. Submission from Randwick City Council, dated 23 August 2021.

12. Submission from NSW Police, dated 30 August 2021.
13. Submission from a member of the public, dated 14 October 2021.
14. Submission from NSW Police, dated 18 October 2021.
15. Submission from L&GNSW Compliance, dated 19 October 2021.
16. Submission from Randwick City Council, dated 14 June 2022.

Other relevant information

17. Correspondence between L&GNSW staff and the Applicant between 15 October 2021 and 17 June 2022 in relation to the assessment of the Application.
18. Documentation relating to a prior matter - George's Cellar, Woollahra.

Schedule 2 – Relevant extracts from the *Liquor Act 2007*

Neighbourhood Cellars Maroubra

3 Objects of Act

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

11A Special licence condition—6-hour closure period for licensed premises

- (1) This section applies in relation to:
 - (a) any licence granted on or after 30 October 2008, and
 - (b) any licence in force before that date, but only if an extended trading authorisation granted on or after that date is in force in relation to the licensed premises concerned.
- (2) A licence to which this section applies is subject to the condition that liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours (as determined in accordance with this section) during each consecutive period of 24 hours (the 6-hour closure period).
- (3) Except as provided by subsection (4), the 6-hour closure period for any particular licensed premises is the period that is approved for the time being by the Authority.
- (4) In the case of a licence:
 - (a) granted on or after 30 October 2008 but before the date on which this section (as inserted by the Liquor Legislation Amendment Act 2008) commenced, or
 - (b) granted by the Local Court (as provided by clause 25 of Schedule 1) at any time after the date on which this section commenced,the 6-hour closure period for the licensed premises is, subject to subsection (5), the period from 4 am to 10 am.
- (5) The Authority may at any time, on application by the licensee or by the Secretary or the Commissioner of Police, or on its own initiative, approve of licensed premises having a different 6-hour closure period than:
 - (a) the period as last approved by the Authority, or
 - (b) the period specified in subsection (4).
- (6) Any such application by the licensee must be accompanied by the fee prescribed by the regulations.
- (7) To avoid doubt, during the 6-hour closure period for any licensed premises:
 - (a) the licensed premises are not authorised to stay open for the retail sale of liquor on the premises, and
 - (b) the licensee is not authorised to sell liquor by retail for consumption away from the licensed premises.
- (8) This section has effect despite any other provision of this Act (in particular, those provisions relating to the standard trading period for licensed premises).
- (9) This section does not, however, apply to the sale or supply of liquor to a resident of licensed premises if the liquor is sold or supplied for consumption in the room in which the resident is residing or staying.
- (10) The regulations may also create exceptions to this section.

12 Standard trading period for certain licensed premises

- (1) For the purposes of this Act, the **standard trading period** means—
 - (a) for any day of the week other than a Sunday—
 - (i) the period from 5 am to midnight, or
 - (ii) if the regulations prescribe a shorter period—the period as so prescribed, and
 - (b) for a Sunday—

- (i) the period from 10 am to 10 pm, or
 - (ii) if the regulations prescribe a shorter period—the period as so prescribed.
- (1A) Despite subsection (1), the **standard trading period** for a small bar is the period from noon to midnight on any day of the week.

Note—

Small bars are subject to the 6-hour closure period under section 11A.

- (1B) Despite subsection (1)(b), the **standard trading period** for premises to which this subsection applies ends at midnight on a Sunday that falls on 24 or 31 December.
- (1C) Subsection (1B) applies to the following premises or part of premises—
- (a) if the primary purpose of the business carried on licensed premises to which a packaged liquor licence relates is the sale or supply of liquor for consumption away from the licensed premises—the licensed premises,
 - (b) if the primary purpose of the business carried on licensed premises to which a packaged liquor licence relates is not the sale or supply of liquor for consumption away from the licensed premises—the part of the premises that is a liquor sales area (within the meaning of section 30) of the licensed premises,
 - (c) if a hotel licence, club licence, on-premises licence or producer/wholesaler licence authorises the licensee to sell liquor for consumption away from the licensed premises—any part of the licensed premises to the extent that it is used for that purpose.
- (2) Any regulation that prescribes a shorter period for the purposes of subsection (1) may—
- (a) apply to a specified class of licensed premises, and
 - (b) apply in relation to a specified day or days, and
 - (c) in the case of licensed premises on which liquor may be sold or supplied for consumption on the premises as well as for consumption away from the premises—specify different periods for the sale or supply of liquor for consumption on the premises and for the sale or supply of liquor for consumption away from the premises.
- (3) Without limiting subsection (2)(a), a class of licensed premises may be specified by reference to licensed premises that are located in a particular area (however described).

29 Authorisation conferred by packaged liquor licence

- (1) **Retail sales** A packaged liquor licence authorises the licensee to sell liquor by retail in sealed containers on the licensed premises, for consumption away from the licensed premises only—
- (a) during the standard trading period or such other period as may be authorised by an extended trading authorisation, or
 - (b) in the case of any Sunday that falls on 24 December—from 8 am (or such earlier time as may be authorised by an extended trading authorisation) to midnight on that day.
- (2) **No retail trading on restricted trading days** Despite subsection (1), a packaged liquor licence does not authorise the licensee to sell liquor by retail on a restricted trading day.
- (3) **Selling liquor by wholesale or to employees** A packaged liquor licence also authorises the licensee—
- (a) to sell liquor by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and
 - (b) to sell or supply liquor, at any time on the licensed premises, to the employees of the licensee or of a related corporation of the licensee.
- (3A) An extended trading authorisation must not authorise the sale of liquor for consumption away from the licensed premises—
- (a) on a Sunday that does not fall on 24 or 31 December—after 11 pm, and
 - (b) on any other day—after midnight.
- (4) **Tastings** A packaged liquor licence also authorises the licensee to sell or supply liquor, on the licensed premises and during the trading hours permitted by subsection (1), otherwise than in sealed containers to customers and intending customers for consumption while on the licensed premises, but only for the purposes of tasting.

30 Liquor sales area required if bottle shop is part of another business activity

- (1) If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises (**the liquor sales area**) that is adequately separated from those parts of the premises in which other activities are carried out.
- (2) The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.

31 Restrictions on granting packaged liquor licences

- (1) A packaged liquor licence must not be granted for premises that comprise a general store unless the Authority is satisfied that—
- (a) in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and

- (b) the grant of the licence would not encourage drink-driving or other liquor-related harm.
- (2) A packaged liquor licence must not be granted for premises comprising a service station or take-away food shop.
- (3) In this section—

general store means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.

service station means premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.

take-away food shop means premises that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises).

40 Licence applications

- (1) Licence applications are to be made to the Authority.
- (2) An application for a licence may be made by:
- an individual, or
 - a corporation, or
 - in the case of a club licence—a club (or a person on behalf of a club) that meets the requirements specified in section 10 (1) of the Registered Clubs Act 1976.
- (3) An application for a licence may not be made by:
- an individual who is under the age of 18 years, or
 - a person who is disqualified from holding a licence or who holds a suspended licence, or
 - an individual who is a controlled member of a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012.

Note. Controlled members are prohibited from applying for licences—see section 27 of the Crimes (Criminal Organisations Control) Act 2012.

- (4) An application for a licence must:
- be in the form and manner approved by the Authority, and
 - be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
 - be advertised in accordance with the regulations, and
 - comply with such other requirements as may be approved by the Authority or prescribed by the regulations.

Note. See also section 48 which requires a community impact statement to be provided with certain licence applications.

- (5) If, before an application for a licence is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including any information provided in accordance with this subsection), the applicant must immediately notify the Authority of the particulars of the change.

44 Submissions to Authority in relation to licence applications

- (1) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application for a licence.
- (2) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to grant the licence.

45 Decision of Authority in relation to licence applications

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

Note. Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.

- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.

- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
- (a) that the person:
 - (i) is a member of, or
 - (ii) is a close associate of, or
 - (iii) regularly associates with one or more members of,
 - a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and
 - (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.
- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
- (a) is of good repute, having regard to character, honesty and integrity, and
 - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.
- (7) In deciding whether or not to grant a licence, the Authority must consider whether, if the licence were granted, it would provide employment in, or other opportunities for, any of the following—
- (a) the live music industry,
 - (b) the arts sector,
 - (c) the tourism sector,
 - (d) the community or cultural sector.

48 Community impact

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
- (a) the views of the local community
 - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application, and
 - (c) whether the granting of the application would provide employment in, or other opportunities for, any of the following—
 - (i) the live music industry,
 - (ii) the arts sector,
 - (iii) the tourism sector,
 - (iv) community or cultural sector.
- (2) In this section:
- relevant application** means any of the following:
- (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
 - (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
 - (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,
 - (d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),
 - (e) an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),
 - (f) any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,
 - (g) any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,
- but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).
- (3) A relevant application must be accompanied by a community impact statement.
- (3A) However, a small bar application is not required to be accompanied by a community impact statement if:
- (a) development consent is required under the Environmental Planning and Assessment Act 1979 to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and

- (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.
- (3B) For the purposes of subsection (3A), a **small bar application** means any of the following:
- (a) an application for a small bar licence,
 - (b) an application for approval to remove a small bar licence to other premises,
 - (c) an application for an extended trading authorisation for a small bar,
 - (d) an application to vary an extended trading authorisation for a small bar.
- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:
- (a) the application relates to the same premises as the premises to which a general bar licence relates, and
 - (b) development consent has been obtained under the Environmental Planning and Assessment Act 1979 to sell liquor during the times to which the application relates and those times are specified in the development consent.
- (3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:
- (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
 - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the Registered Clubs Act 1976.
- (4) The community impact statement must:
- (a) be prepared in accordance with the regulations and any requirements of the Authority, and
 - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
- (a) the community impact statement provided with the application, and
 - (a1) any published cumulative impact assessment that applies to the area in which the premises the subject of the application are located, and
 - (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),
- that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.
- (6) The regulations may make provision for or with respect to the following:
- (a) the requirements that must be satisfied in relation to the preparation of a community impact statement (including consultation requirements),
 - (b) the matters to be addressed by a community impact statement,
 - (c) the information to be provided in a community impact statement,
 - (d) the criteria for determining the local and broader community for the purposes of a relevant application,
 - (e) any other matter relating to the preparation and content of a community impact statement.
- (7) Without limiting subsection (6), the regulations may provide that the matters to be addressed by a community impact statement are, in the case of an application for an extended trading authorisation in relation to a hotel licence, to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.