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with a copy to:

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30 May 2022

Dear Messrs Caisley and Cusack

<b>Application No.</b>	1-8020079119
<b>Applicant</b>	Mr Steven Sadler
<b>Application for</b>	Removal of a packaged liquor licence
<b>Licence name</b>	Ritchies Supa IGA Plus Liquor
<b>Licence No.</b>	LIQP770010084
<b>Current &amp; proposed trading hours</b>	Monday to Saturday 9:00 AM – 9:00 PM Sunday 10:00 AM – 8:00 PM
<b>Current Premises</b>	Kingsway Plaza Shops 10 & 11, 178 Lang Street/ Barton Street KURRI KURRI NSW 2327
<b>Proposed Premises</b>	167 Lang Street KURRI KURRI NSW 2327
<b>Application No.</b>	APP-0008999236
<b>Applicant</b>	Votrant No 124 Pty Ltd
<b>Application for</b>	Packaged liquor licence
<b>Licence name</b>	Kingsway Plaza
<b>Trading hours</b>	Monday to Saturday 9:00 AM – 9:00 PM Sunday 10:00 AM – 8:00 PM
<b>Premises</b>	Kingsway Plaza, Shops 10 & 11 178 Lang Street/ Barton Street KURRI KURRI NSW 2327
<b>Application No.</b>	SR0000696603
<b>Applicant</b>	Votrant No 124 Pty Ltd
<b>Application for</b>	Amendment to a packaged liquor licence – change of boundaries
<b>Licence name</b>	Ritchies Supa IGA Plus Liquor
<b>Licence No.</b>	LIQP770010084
<b>Trading hours</b>	Monday to Saturday 9:00 AM – 9:00 PM Sunday 10:00 AM – 8:00 PM (licence in “cease to trade” status)
<b>Premises</b>	Kingsway Plaza Shops 10 & 11, 178 Lang Street/ Barton Street KURRI KURRI NSW 2327

**Legislation**

Sections 3, 11A, 12, 29-31, 40, 44, 45, 48, and 59 of the *Liquor Act 2007*

**Decision of the Independent Liquor & Gaming Authority  
Applications for the removal of a packaged liquor licence, a new packaged liquor licence,  
and the change of boundaries for a packaged liquor licence – Ritchies Supa IGA Plus  
Liquor and Kingsway Plaza**

The Independent Liquor & Gaming Authority considered the applications above, and decided on 19 January 2022 to:

- **approve** application no. 1-8020079119 for the removal of a packaged liquor licence known as Ritchies Supa IGA Plus Liquor under sections 45 and 59 of the *Liquor Act 2007 (Act)*, subject to imposing and revoking the conditions set out in Schedule 1
- **refuse** application no. APP-0008999236 for a new packaged liquor licence known as Kingsway Plaza under sections 45 and 59 of the Act, and
- find application no SR0000696603 for an amendment to the packaged liquor licence known as Ritchies Supa IGA Plus Liquor by way of a change of boundaries **invalid**.

**Trading on a Sunday that falls on 24 December**

In the case of any Sunday that falls on 24 December, the 6-hour closure period overrides the statutory provision that would otherwise allow the licence known as Ritchies Supa IGA Plus Liquor to trade from 8:00 am. In accordance with the 6-hour closure period for the current licence, the Premises must not trade earlier than 9:00 am.

**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, Leonie Jennings, at [leonie.jennings@liquorandgaming.nsw.gov.au](mailto:leonie.jennings@liquorandgaming.nsw.gov.au).

Yours faithfully



Philip Crawford

**Chairperson**

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

## STATEMENT OF REASONS

### DECISION

1. On 16 June 2021, Mr Steven Sadler through his representative AMW Lawyers (“First Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application (“Application”) for the removal of packaged liquor licence no. LIQP770010084 (“Licence”) from premises at Shops 10 & 11 Kingsway Plaza, 178 Lang Street Kurri Kurri (“Current Premises”) to premises at 167 Lang Street Kurri Kurri (“Proposed Premises”). The Licence is not currently trading. The First Applicant is the Licensee of the Licence.
2. The practical consequence of approval of the Application is that there would no longer be any liquor licence situated at the Current Premises as the Licence would move to the Proposed Premises.
3. On 28 July 2021, Votrant No 124 Pty Ltd through its representative Hatzis Cusack Lawyers (“Alternate Applicant”) lodged with L&GNSW for determination by the Authority, two applications (together, the “Alternate Application”) for:
  - a) a new packaged liquor licence at the Current Premises, and
  - b) an amendment to the Licence by way of a change to its boundaries (“Amendment Application”).
4. The practical consequence of approval of the Alternate Application is that:
  - a) the licensed area of the Licence would reduce to a nominal defined void area of 1m<sup>2</sup> at the Current Premises
  - b) the licensed area of a newly-granted licence would not overlap with the licensed area of the Licence, and
  - c) the licensed areas of the Licence and the new licence would sit side by side at the Current Premises, under a new, yet-to-be-named licensee.
5. The Authority considered the Application and the Alternate Application together at its meeting on 19 January 2022 and decided to:
  - a) grant the Application under sections 45 and 59 of the *Liquor Act 2007* (“Act”), and
  - b) refuse the Alternate Application under sections 45 and 59 of the Act, including by finding the application for amendment of the Licence invalid.
6. 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.
7. A preliminary notification of this decision was sent to the Applicant on 15 February 2022, together with the licence document for the Premises.

### BACKGROUND TO THE APPLICATIONS

8. The Licence has existed at the Current Premises since 2009.
9. The Alternate Applicant is an owner of the Current Premises, but not the Licensee of the Licence.
10. Sometime between 2015 and 2021, the First Applicant and/or parties associated with him entered into a commercial dispute with at least the Alternate Applicant and possibly other associated parties. As a result of that dispute, the First Applicant and/or parties associated with the First Applicant terminated the lease agreement for the Current Premises.
11. The First Applicant placed the Licence into a “cease to trade” status (meaning that Licence is not

currently trading) and applied for the Licence to be removed (the Application).

12. On or about 30 June 2021, the First Applicant and/or parties associated with him vacated the Current Premises.
13. Shortly after, the Alternate Applicant lodged the Alternate Application.

## **MATERIAL CONSIDERED BY THE AUTHORITY**

14. The Authority has considered the applications, the accompanying community impact statements (“CIS”), and all submissions received in relation to the applications.
15. The Authority is satisfied that procedural fairness was afforded to the First Applicant, the Alternate Applicant, and interested parties regarding this decision, as all parties required to be notified of the applications were provided with the opportunity to make submissions.
16. 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”).
17. A list of the material considered by the Authority is set out in Schedule 2.

## **LEGISLATIVE FRAMEWORK**

18. The Authority has considered the applications in the context of the following sections of the Act 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.
  - h) Section 59: Requirements for an application to remove a liquor licence to another premises and the determination of such an application.
19. An extract of these sections is set out in Schedule 3.
20. The Authority has also had regard to its Guideline 6 in considering the overall social impact of the applications pursuant to section 48 of the Act.

## **KEY FINDINGS**

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

### **Validity, procedural and trading hour requirements**

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

- a) the applications have been validly made and meet the procedural and trading period requirements under sections 11A, 12 and 40 of the Act
- b) if the applications were to be granted, liquor would be sold in accordance with the authorisation conferred by the licences as required by section 29 of the Act
- c) sections 30 and 31 of the Act do not apply to the Application or the Alternate Application as neither the businesses at Current Premises nor the Proposed Premises is intended to operate as contemplated by those sections.

23. 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**

24. Pursuant to section 45 of the Act, the Authority is also satisfied that:

- a) both the Applicant and the Alternate Applicant are fit and proper to carry on the businesses to which the applications relate, given that no concerns regarding the probity of those applicants were raised upon consultation with relevant law enforcement agencies,
- b) practices would be in place from the commencement of licensed trading at both the Proposed Premises and the Current Premises to facilitate the responsible serving of alcohol, having regard to the plan of management documentation for both the Proposed Premises in the Application as well as the Current Premises in the Alternate Application and the conditions that would be imposed on each of the licences if the applications were to be approved, and
- c) the requisite development consents are in force, based on:
  - i. the Development Application DA 8/2009/68/1 in respect of the Current Premises, issued by Cessnock City Council on 14 April 2009, and
  - ii. the Development Application DA 8/2021/21557/1 in respect of the Proposed Premises, issued by Cessnock City Council on 12 October 2021.

### **Community impact**

#### ***Local and broader communities***

25. 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 Kurri Kurri, and the relevant “broader community” comprises the Local Government Area (“LGA”) of Cessnock. The Authority is not persuaded by the Alternate Applicant’s submissions to depart from these definitions.

#### ***Licence density***

26. The Authority notes that, compared to the NSW state average:

- a) Kurri Kurri and Cessnock LGA have a **higher** saturation of packaged liquor licences
- b) Kurri Kurri and Cessnock LGA have a **higher** saturation of licences authorised to sell packaged liquor
- c) Kurri Kurri and Cessnock LGA have a **lower** clustering of packaged liquor licences, and
- d) Kurri Kurri and Cessnock LGA have a **lower** clustering of licences authorised to sell packaged liquor.

### **Crime data**

27. The relevant BOCSAR data indicates that, in the year to June 2021:

- a) the Current Premises and Proposed Premises were located in close proximity to hotspots for incidents of malicious damage to property, in areas that are likely to be serviced by the Licence.
- b) Kurri Kurri recorded **higher** rates of alcohol-related domestic assault and malicious damage to property and **lower** rates of alcohol-related non-domestic assault, late-night alcohol-related non-domestic assault, alcohol-related non-domestic serious assault, and alcohol-related offensive conduct compared to the NSW state average.
- c) Cessnock LGA recorded **higher** rates of alcohol-related domestic assault and malicious damage to property and **lower** rates of alcohol-related non-domestic assault, late-night alcohol-related non-domestic assault, alcohol-related non-domestic serious assault, and alcohol-related offensive conduct, compared to the NSW state average.

### **Alcohol-related health data**

28. The most recent HealthStats NSW data available at the time of the Authority's decision indicates that Cessnock LGA recorded a **higher** than average rate of alcohol-attributable deaths for the period 2017/2018, and a **lower** than average rate of alcohol-attributable hospitalisations for the period 2017/2018-2018/2019.

### **SEIFA**

29. The Authority notes that ABS Socio-Economic Index for Areas ("SEIFA") data as at 2016 indicates that Kurri Kurri and Cessnock LGA were relatively disadvantaged compared to other suburbs and LGAs in NSW.

### **Business models**

30. The Authority notes that the proposed business model in respect of the Application involves a standalone packaged liquor store at the Proposed Premises, some 70 metres from the Current Premises.
31. The Authority notes that the proposed business model in respect of the Alternate Application involves a standalone packaged liquor store at the Current Premises, possibly in the future to be adjacent (but not connected) to a supermarket.

### **Purported benefits**

32. The Authority has had regard to the purported benefits of the Application, including that:

- a) the floor space of the liquor sales area of the Proposed Premises is approximately 253sqm
- b) the Proposed Premises will have a modern, new fitout
- c) the operator is highly experienced, being the person and organisation, who, until June 2021, operated the Licence at the Current Premises for several years without any compliance issues
- d) relocating the Licence to the Proposed Premises accords with the Cessnock Council masterplan for Kurri Kurri to discourage off-street parking in Lang Street (the main street) and encourage an active streetscape and increased foot traffic, enhancing passive surveillance and security and assisting in the revival of the town centre.

33. The Authority has had regard to the purported benefits of the Alternate Application, including that:

- a) the floor space of the liquor sales area of the Current Premises is relatively modest, at

approximately 163sqm (being the total of the sales area and the cool room area on the plan submitted with the Alternate Application dated December 2008)

- b) a liquor store in the Current Premises would continue a tradition of the use of those premises as a liquor store, which has been the case from 2009 – 2021
  - c) the Current Premises is conveniently located near the entry of the Kingsway Plaza Shopping Centre, which has significant parking available, and customers can shop for other items when purchasing liquor
  - d) the local community is likely to grow by approximately 4000 people (from 17,000 to 21,000) by 2036, and this, combined with new releases of land for residential development in the areas surrounding Kurri Kurri, suggests that the demand for packaged liquor may possibly increase.
34. The Authority also notes the petition in support of the Alternate Application with approximately 50 signatures.

### **Stakeholder submissions**

35. In considering the three applications, the Authority has had regard to the following submissions:

- a) **NSW Police**, which through a number of submissions, notes that:
  - i. Both the Current and Proposed Premises are within an alcohol-free zone.
  - ii. Both the local and broader communities are relatively socio-economically disadvantaged, and provided a study suggesting that socioeconomic status is inversely related to negative alcohol-related consequences, including alcohol-related mortality
  - iii. Police data from August 2020 – July 2021 indicates that over 20% of all assaults and nearly 20% of all domestic violence incidents in the local community were alcohol-related, and this figure is similar for the Hunter Valley Police District, which includes at least part of the broader community
  - iv. NSW Police strongly object to the grant of both the Application and the Alternate Application, but do not offer a submission in relation to which application should be granted, if only one is approved.
- b) **L&GNSW Compliance**, which notes that there are no compliance issues in relation to either the Application or the Alternate Application.
- c) **Transport for NSW**, which does not object to either the Application or the Alternate Application.
- d) **Cessnock Council**, which does not object to either the Application or the Alternate Application.
- e) **Metcash Food & Grocery**, the owner of the “IGA” supermarket brand under which the First Applicant operated the Current Premises and its adjacent supermarket until 2021. This submission notes that there is no interest from IGA retailers to take on the lease at the Current Premises as:

*“the fitout is in need of major investment, the GP [gross profit] is low here and the competition had increased over the years such that the IGA store is no longer viable, and this information has been advised to the owner of the [Kingsway Plaza Shopping Centre]”.*
- f) The **Applicant**, which notes in relation to the Alternate Application (among other things) that:
  - i. there is no “one stop shop” or convenience advantage to the Alternate Application,

because the Alternate Applicant has been unable to thus far, and is unlikely to be able to, find a suitable supermarket tenant for the premises which, until June 2021, sat adjacent to the Current Premises for the reasons set out in the submission from Metcash

- ii. there is no confirmed operator in respect of Alternate Application, and the Authority cannot be sure of who a future operator might be.

g) The **Alternate Applicant**, which notes in relation to the Application (among other things) that:

- i. the Proposed Premises has only on-street parking options, likely to cause traffic concern, with the council likely widening Lang Street and reducing parking spaces over the next 25 years
- ii. if the Application is granted and the Alternate Application is not, customers of the Kingsway Plaza Shopping Centre will have to walk an extra 50-70 metres or drive a considerable and inconvenient distance in order to buy liquor.

36. The Authority has also had regard to the Applicant's submission in response, including that:

- a) a liquor store is a permitted use for the Proposed Premises within the development application, and the development application for the Proposed Premises includes the removal of a tree at the rear of the Proposed Premises to facilitate vehicular access for off-street loading and unloading, easing traffic congestion
- b) there will be minimal increase in liquor sales floor space with the removal of the Licence from the Current Premises to the Proposed Premises, and as such there will not be a resultant increase in the need for parking.

37. The Authority has also had regard to the Alternate Applicant's submission in response, including that:

- a) since a liquor store has been operating at the Current Premises for over a decade, there is no reason that a liquor store in the same location, operating in a similar manner and with similar hours, will have a materially different impact on the local or broader communities
- b) although the liquor sales area of the Proposed Premises is a similar size to the Current Premises, the licensed area (although not the liquor sales area) is significantly larger, which may possibly increase the risk of alcohol-related harm
- c) the Alternate Applicant is presently in discussions with a major supermarket operator regarding establishing a new supermarket at the location
- d) the Alternate Applicant consents to a condition being imposed upon the grant of the licence which provides that the licence is not to be exercised unless and until an approved manager is appointed to the licence or the licence is transferred to a suitably qualified individual licensee.

38. The Authority has also had regard to the following public submissions, including:

- a) three submissions in support of the Alternate Application by other operators and tenants of businesses in Kingsway Plaza
- b) two submissions from the Anglican Parish of Mt Vincent Kurri Kurri and Weston:
  - i. objecting to the Application in view of parking difficulties and the future possible reduction in parking spaces on Lang Street
  - ii. objecting to any net increase to liquor licences in Kurri Kurri, citing socio-economic disadvantage in the local and broader communities, litter, and anti-social behaviour



- c) a submission opposing the Alternate Application by the operator of a nearby hotel, citing anti-social behaviour on hotel property by people who have purchased alcohol at the Current Premises
- d) two public submissions opposing the Alternate Application
- e) four public submissions in support of the Application.

### ***Findings of concern***

39. Having regard to the relevant statistics and the whole of the submissions received, including from the Applicant and Alternate Applicant, the Authority finds that Kurri Kurri and Cessnock LGA have a licence density that is above state average and that these communities are subject to a relatively high level of alcohol-related domestic assault and malicious damage to property, and that there are also some alcohol-related health issues in the broader community.
40. The Authority considers that, if either or both the applications are granted, there is a risk that the liquor sold from the Current and/or 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 the local and broader communities. This position accords with the Authority's previous decisions to refuse additional packaged liquor licences in the local and broader communities in 2015 and 2017.

### ***Mitigating factors***

41. The Authority is nevertheless satisfied that these risks may be sufficiently mitigated by approving only one of either the Application or the Alternate Application. This is because:
- a) the liquor sales area of each of the Application and Alternate Application are relatively moderate
  - b) the licensed trading hours of each of the Application and Alternate Application are relatively moderate
  - c) there is lower than average liquor licence clustering in the local and broader communities
  - d) there are no objections from any agency stakeholders save for NSW Police, who object to both applications being granted but do not object to the grant of either one of the applications.

## **CONCLUSION**

42. Having considered the positive and negative social impacts that are likely to flow from approving either the Application or the Alternate Application, the Authority is satisfied that the overall social impact of granting either one (but not both) of the Application or the Alternate Application would not be detrimental to the well-being of the local and broader communities.
43. The Authority is also satisfied that the other legislative criteria have been met for the granting either one (but not both) of the Application or the Alternate Application.

### ***Differences between the Applications***

44. The Authority finds that on the whole of the material before it, both the Application and Alternate Application are similarly meritorious. However, the Applicant has spent considerable time building up the goodwill of their business and should be entitled to keep it, including by moving it a short distance away. This position facilitates the balanced development, in the public interest, of the liquor industry.
45. The Authority also finds that the Application is first in time, and the Alternate Application is second in time.

46. Accordingly, the Authority has decided under sections 45 and 59 of the Act to:

- a) approve the Application for the removal of the Licence, subject to imposing and revoking the conditions in Schedule 1
- b) find that the application to change the boundaries of the Licence is invalid, as the licence is being removed to the Proposed Premises and its boundaries cannot be changed as sought, and
- c) refuse the application for a new packaged liquor licence known as Kingsway Plaza.



Philip Crawford

**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 <https://www.liquorandgaming.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 1 – Licence conditions to be imposed & revoked**

### **Ritchies Supa IGA Plus Liquor**

#### **167 Lang Street, Kurri Kurri**

##### To be imposed

1. 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 reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of:
  - a. obtaining this licence on 30/07/2009, and
  - b. removing this licence to the premises at 167 Lang Street, Kurri Kurri.
2. The premises is to be operated at all times in accordance with the Plan of Management dated 7 July 2021 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
3. Closed-circuit television system
  - 1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises (“premises”) in accordance with the following requirements:
    - (a) the system must record continuously from opening time until one hour after the premises is required to close,
    - (b) recordings must be in digital format and at a minimum of ten (10) frames per second,
    - (c) any recorded image must specify the time and date of the recorded image,
    - (d) the system’s cameras must cover the following areas:
      - (i) all entry and exit points to the premises, and
      - (ii) all publicly accessible areas (other than toilets) within the liquor sales area.
  - 2) The licensee must also:
    - (a) keep all recordings made by the CCTV system for at least 30 days,
    - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
    - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.
4. Customers are not to have access to the basement level of the premises.

##### To be revoked

- 2010 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.

## Schedule 2 – Material considered by the Authority

### Ritchies Supa IGA Plus Liquor and Kingsway Plaza

#### Application material

1. Floor plan for the Current Premises in respect of the Alternate Application, dated December 2008.
2. Floor plan for the Proposed Premises in respect of the Application, dated March 2021.
3. Completed application form dated 21 May 2021 in respect of the Application.
4. Completed certifications of advertising in respect of the Application dated 2 June 2021.
5. Plan of Management documents for the Proposed Premises, titled *Plan of Management: Ritchies IGA Plus Liquor* and dated 7 July 2021.
6. Completed Category B Community Impact Statement dated 26 July 2021 in respect of the Alternate Application.
7. Completed application forms dated 28 July 2021 in respect of the Alternate Application.
8. Completed Category B Community Impact Statement dated 25 August 2021 in respect of the Application.
9. Plan of Management documents for the Current Premises, titled *Management Plan: Liquor Store – Shops 10 & 11, Kingsway Plaza Shopping Centre, 178 Lang Street, Kurri Kurri* and dated December 2021.
10. Completed certification of advertising in respect of the Alternate Application dated 17 December 2021.
11. ASIC business records in relation to the Alternate Applicant.

#### Development consent

12. Notice of determination issued by Cessnock City Council on 14 April 2009, approving the development application DA 8/2009/68/1 for the Current Premises.
13. Notice of determination issued by Cessnock City Council on 12 October 2021, approving the development application DA 8/2021/21557/1 for the Proposed Premises.

#### Liquor & Gaming LiveData Report

14. L&GNSW Liquor & Gaming LiveData Report for the suburb of Kurri Kurri, generated on 5 October 2021, which sets out that:

##### Outlet diversification

- a. There are eight authorised liquor licenses in Kurri Kurri. Of these, seven are authorised to sell packaged liquor. This includes four packaged liquor licences and four hotel licences.

##### Outlet density (annual rate per 100,000 residents)

- b. saturation of packaged liquor licences in Kurri Kurri (**66.2**) is **lower** compared to Cessnock LGA (**95.4**), and but **higher** compared to NSW (**30.4**)
- c. saturation of licences authorised to sell packaged liquor in Kurri Kurri (**115.8**) is **lower** compared to Cessnock LGA (**174.6**), but **higher** compared to NSW (**76**)
- d. clustering of packaged liquor licences in Kurri Kurri (**2**) is slightly **lower** compared to Cessnock LGA (**2.1**), and **lower** compared to NSW (**3**)
- e. clustering of licences authorised to sell packaged liquor in Kurri Kurri (**2**) is **higher** compared to Cessnock LGA (**1.5**), and **lower** compared to NSW (**7.2**).

##### Offence data (annual rate per 100,000 residents)

In the year to June 2021:

- f. alcohol-related domestic assault in Kurri Kurri (**138.5**) was lower compared to the Cessnock LGA (**141.7**), but higher compared to all NSW (**115.7**)
- g. alcohol-related non-domestic assault in Kurri Kurri (**61.5**) was lower compared to the Cessnock LGA (**76.7**), and lower compared to all NSW (**98.3**)
- h. late-night alcohol-related non-domestic assault in Kurri Kurri (**15.4**) was lower compared to the Cessnock LGA (**18.3**), and lower compared to all NSW (**28.6**)
- i. alcohol-related non-domestic serious assault in Kurri Kurri (**0**) was lower compared to the Cessnock LGA (**18.3**), and lower compared to all NSW (**36.2**)
- j. alcohol-related offensive conduct in Kurri Kurri (**0**) was lower compared to the Cessnock LGA (**8.3**), and lower compared to all NSW (**24.9**)
- k. malicious damage to property in Kurri Kurri (**1230.8**) was higher compared to the Cessnock LGA (**933.6**), and higher compared to all NSW (**658.3**)

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

- l. In the period 2017/2018 the alcohol-attributable death rate in Cessnock LGA (**23.4**) was higher compared to the average across all of NSW (**20**)
- m. In the period 2017/2018-2018/2019 the alcohol-attributable hospitalisation rate in Cessnock LGA (**453.5**) was lower compared to the NSW average (**542.1**).

#### SEIFA

- n. According to the SEIFA Index of Relative Economic Advantage & Disadvantage, households in Kurri Kurri and LGA are socio-economically disadvantaged (**bottom 4%** and **bottom 9%** of NSW households, in terms of household income and residents in skilled occupations, respectively).

### **Stakeholder submissions**

- 15. Submissions from Anglican Parish of Mt Vincent Kurri Kurri and Weston dated 25 May 2021 in respect of the Application, and 17 August 2021 in respect of both applications.
- 16. Submission from Transport for NSW dated 3 June 2021.
- 17. Submission from Barb Rostron dated 17 June 2021.
- 18. Submissions from L&GNSW Compliance dated 8 July 2021 in respect of the Application, and 31 August and 21 September 2021 in respect of the Alternate Application.
- 19. Submissions from Cessnock City Council dated 9 July 2021 and 8 September 2021 in respect of the Application, and 27 September 2021 in respect of the Alternate Application.
- 20. Submissions from NSW Police dated 15 July 2021 in respect of the Application, 23 and 31 August 2021 in respect of the Alternate Application, and 8 September 2021 in respect of both applications.
- 21. Submissions from Hatzis Cusack Lawyers on behalf of the Alternate Applicant dated 16 July and 14 December 2021, and received by email 7 January 2022 but undated in respect of the Application.
- 22. Submission from Metcash Food & Grocery dated 26 July 2021.
- 23. Submission from Sandie Berthold dated 1 August 2021.
- 24. Submission from James Sullivan dated 3 August 2021.
- 25. Submission from Anonymous dated 8 August 2021.
- 26. Submission from Anonymous dated 17 August 2021.
- 27. Submission from Anonymous dated 18 August 2021.
- 28. Submission from Anonymous (a different person) also dated 18 August 2021.
- 29. Submissions from AMW Lawyers on behalf of the Applicant dated 24 August 2021 in respect of the Alternate Application.
- 30. Submission from Anna Chenery dated 16 December 2021.

31. Submission from Andy Hobbs dated 16 December 2021.
32. Submission from Suzy Tierney dated 17 December 2021.
33. Petition in support of the Alternate Application with 50 signatures, undated.

### **Other relevant information**

34. Statement of Reasons dated 8 May 2015 for a decision of the Independent Liquor & Gaming Authority in an application for a packaged liquor licence to be situated at 89 Northcote St, Kurri Kurri.
35. Statement of Reasons dated 29 November 2017 for a decision of the Independent Liquor & Gaming Authority in Application no. APP-0003065368 for a packaged liquor licence to be situated at 89 Northcote St, Kurri Kurri.
36. Correspondence between L&GNSW staff and the Applicant between 31 May 2021 and 7 January 2022 in relation to the assessment of the Application.
37. Correspondence between L&GNSW Licensing staff between 9 August and 5 October 2021 in relation to assessment of the applications.
38. Correspondence between L&GNSW staff and the Alternate Applicant between 1 September 2021 and 22 December 2021 in relation to the assessment of the Alternate Application.
39. Confidential letter from a supermarket operator in respect of the Alternate Application, dated 6 December 2021.
40. Confirmation of L&GNSW Noticeboard extension for the Application until 7 January 2021, dated 17 December 2021.
41. "Five Year Crime Comparison" document produced by L&GNSW Licensing, undated.
42. Google map images extracted from the Google website (undated), showing the location and photos of the Premises in map view.
43. Licence Document for liquor licence LIQP770010084 (Cease to Trade status).

## Schedule 3 – Relevant extracts from the *Liquor Act 2007*

### Ritchies Supa IGA Plus Liquor and Kingsway Plaza

#### 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.

#### 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:
  - (a) an individual, or
  - (b) a corporation, or
  - (c) 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:
  - (a) an individual who is under the age of 18 years, or

- (b) a person who is disqualified from holding a licence or who holds a suspended licence, or
- (c) 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:
  - (a) be in the form and manner approved by the Authority, and
  - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
  - (c) be advertised in accordance with the regulations, and
  - (d) 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:
  - (a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and
  - (b) 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
  - (c) 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.

#### 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, and
  - (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.
- (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.

#### **59 Removal of licence to other premises**

(1) A licensee may apply to the Authority for approval to remove the licence to premises other than those specified in the licence.

(2) An application for approval to remove a licence to other premises must—

(a) be in the form and manner approved by the Authority, and

(b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and

(c) be advertised in accordance with the regulations, and

(d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.

(3) An application for approval to remove a licence to other 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. Accordingly, the provisions of Division 1, in particular, extend to an application for the removal of a licence to other premises as if it were an application for a licence.

(4) The Authority may refuse an application for approval to remove a hotel licence if the Authority is satisfied that the removal of the licence would adversely affect the interest of the owner or a lessee or mortgagee of the premises from which it is proposed to remove the hotel licence, or a sublessee from a lessee or sublessee of those premises.

(5) The Authority must refuse an application for approval to remove a licence unless the Authority is satisfied that—

(a) practices will, as soon as the removal of the licence takes effect, be in place at the premises to which the licence is proposed to be removed that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on those premises and that all reasonable steps are taken to prevent intoxication on those premises, and

(b) those practices will remain in place.

(6) The regulations may provide additional mandatory or discretionary grounds for refusing to approve the removal of a licence.

(7) The approval to remove a licence to other premises takes effect—

(a) on payment to the Secretary of the fee prescribed by the regulations, and

(b) when the Authority endorses the licence to the effect that those other premises are the premises to which the licence relates.

#### **94 Boundaries of licensed premises**

(1) The boundaries of licensed premises are to be specified by the Authority when the licence is granted.

(2) The specified boundaries of any licensed premises may be changed by the Authority on the Authority's own initiative or on the application of—

(a) the owner of the premises, or

(b) the licensee.

(3) Before changing the boundaries of any licensed premises (whether on application or otherwise), the Authority is—

(a) to give the licensee, the Secretary and the Commissioner of Police a reasonable opportunity to make submissions in relation to the proposed change, and

(b) to take any such submissions into consideration before deciding whether to make the change.

- (4) Any change in the specified boundaries of licensed premises under this section does not take effect until such fee as may be prescribed by the regulations has been paid.
- (5) The Authority must not specify or change the boundaries of any licensed premises unless the Authority is of the opinion that any primary purpose requirement under this Act in relation to the licensed premises is or will be complied with.