



Our ref: 1-1245465660

Your ref:

Mr Tony Schwartz  
Back Schwartz Vaughan  
156 Edgecliff Road  
WOOLLAHRA 2025

By email: [tschwartz@bsv.com.au](mailto:tschwartz@bsv.com.au)

3 October 2012

Dear Sir

**Application for Removal of a Packaged Liquor Licence LIQP700351330 to 108 Jonson Street, Byron Bay ("the Premises") for the Proposed Licensed Business to be known as "Dan Murphys"**

**Introduction**

1. I refer to the above mentioned application made under section 59 of the *Liquor Act 2007* ("**Act**") by your client Woolworths Ltd ("the **Applicant**") that was received by the Authority on 30 September 2011. I also refer to the conference convened by the Authority in Byron Bay on 4 September 2012 to discuss the Application ("**Conference**") and the numerous submissions provided to the Authority before, during and after the Conference.
2. Liquor applications provide a high volume aspect of the Authority's jurisdiction. In light of the significant degree of community interest in this matter and with a view to expediting notification of the Authority's decision, what follows is the Authority's rationale for its refusal of the Application. Although the rationale is briefly stated, the Authority will not be providing further reasons for its decision. To avoid doubt, the Authority has considered all of the material provided by the Applicant but for the purposes of this decision letter refers only to several key points.

**Legislation**

3. Under section 59(3) of the Act, an application for the removal of a liquor licence is to be dealt with as if it were an application for a new licence at the proposed premises. Pursuant to subsection 48(2)(a) of the Act, an application for a packaged liquor licence is one which requires consideration of community impact and must satisfy all the requirements of that section. Relevantly to this decision, section 48 (5) states that:
  - (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
    - (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.

4. The objects of the Act are set out under section 3(1) of the Act, and section 3(2) prescribes those statutory considerations to which the Authority must have regard when exercising its functions under the Act:

### 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.

### Decision

5. When applying the overall social impact test that is prescribed by section 48(5), the Authority:
- (i) considers the relevant evidence, the submissions of the Applicant and interested stakeholders and other material before it;
  - (ii) makes findings on what it considers to be the likely positive benefits and negative impacts that will flow to the relevant local or broader community, should the licence or authorisation be granted; and
  - (iii) makes an overall assessment as to whether the Authority is satisfied that those positive and negative impacts, considered together, will or will not be detrimental to the well-being of either the local or broader community.
6. Determining positive and negative impacts involves a degree of speculation, albeit speculation that is informed, to the extent practicable, by relevant information about the proposed licensed business and the local and broader communities in question.
7. As noted in the Authority's *Guideline 6 on Consideration of Social Impact*, each licence application is considered on its merits. While the issues arising from an application will vary from community to community, the Authority will usually consider, as it has done in this instance, such factors as:
- (i) the *type* of licensed business that is proposed
  - (ii) the *scale* of the proposed licensed premises
  - (iii) the *trading hours* of the proposed licensed premises
  - (iv) the *location* of the proposed licensed premises, and
  - (v) any *specific measures* proposed by the applicant, above and beyond the minimum requirements of the legislation, that may tend to ameliorate the social detriment that may otherwise be expected to flow from the operation of this licensed business.

8. The Authority has considered all of the material before it relating to the Application, which amounts to hundreds of pages of documentation. The Authority is **not** satisfied that the overall social impact of the licence removal being granted for the Premises will not be detrimental to the well-being of the local and broader communities, and accordingly, the Application is refused.

### **Communities**

9. The Authority is satisfied, for the purposes of this decision, that the relevant “local” community is the town of Byron Bay and the relevant “broader” community is the Byron Shire Local Government Area (“**Byron LGA**”).

### **Positive benefits**

10. The Authority is satisfied that were the licence removal to be granted, the proposed licensed Premises is likely to confer the following positive benefits upon the local and broader communities:

11. **Consumer benefits** - the Authority is satisfied, on the basis of the material provided by the Applicant, that the proposed new licensed business will provide the local and broader communities with a large, attractive, well appointed, well lit, modern liquor store with an extensive range of beer, wine and spirits and an international range of wines. It is likely to broaden the range of liquor products that are currently available for purchase across the packaged liquor outlets located within Byron Bay. The new business is likely to provide liquor at a range of price points, from premium products to discount liquor lines, at competitive prices. The Authority notes, however, that there are other packaged liquor licensees in Byron Bay who are already providing these services to the communities and so the additional consumer benefits are limited.

12. **Improvements to the site** - the Authority is also satisfied, on the basis of the material provided by the Applicant, that the new licensed business will serve as an “anchor” tenant for the redevelopment of this commercial site, which is a neglected strip of shops in the western part of the Byron Bay CBD that is presently in a state of disrepair. The redevelopment of the site that would be facilitated by the operation of this new business is the most significant benefit that is offered to the local community by the Applicant’s proposal. The streetscape will also be improved through the presence of a modern store in what has been a large vacant commercial space for some time.

**Some improved security in the immediate vicinity of the Premises** - the Authority is satisfied, on the basis of the material provided by the Applicant and the submissions of the “Eagle Boys” pizza franchisee who operates his business from the site, that there will be some benefit by way of improved security for those who work at the site or pass through the immediate vicinity of the Premises, thanks to the improved lighting, exterior CCTV and the presence of the Applicant’s staff throughout the proposed trading hours, including a proposed uniformed security guard on Friday and Saturday evenings. Although several submitters raised concerns about the proximity of the Premises to the local (licensed) cinema, this aspect of Application was not of concern to the Authority.

## Crime data for the Byron LGA

13. The Authority is satisfied, based upon the available NSW Bureau of Crime Statistics and Research (“**BOCSAR**”) crime data for the Byron LGA that the broader community is currently exposed to unacceptably high rates of crime and disturbance, much of which is recorded by the reporting Police officers as “alcohol related”. Furthermore, a high concentration of alcohol related assault incidents is occurring in the very location of the Premises.
14. While the rate of domestic violence incidents occurring in the Byron LGA is well below the state-wide rate, the following troubling crime rates are apparent from BOCSAR’s *NSW Recorded Crime Statistics – Byron Local Government Area 2011*; *New South Wales Recorded Crime Statistics 2011*; and *Alcohol Related Crime for Each NSW Local Government Area: Numbers, proportions, rates, trends and ratios (2011)*:
- (i) Non domestic violence assault: The Byron LGA recorded a rate of **1068.6** incidents per 100,000 persons of the resident population, compared to a state-wide rate of **512.5**. The Byron LGA ranks 6<sup>th</sup> highest for the rate of occurrence of this offence category of the 141 New South Wales Local Government Areas that are noted in this report. **73.7%** of those events were flagged by reporting Police officers as “alcohol related”.
  - (ii) Non domestic violence assault “hot spot”: The proposed Premises will be located within a high density hot spot where a concentration of non-domestic violence assaults occur within the Byron LGA. This hotspot centres upon the Byron Bay CBD.
  - (iii) Alcohol related non domestic violence assault: The Byron LGA recorded a rate of **787.6** incidents per 100,000 persons compared to a state-wide alcohol related assault rate of **209.5**. The worst months of the year for the occurrence of these events are from September to January followed by March through May. These events are most likely to occur between 12 midnight and 6:00am on Thursday, Friday, Saturday and Sunday mornings and there is an elevated risk between 6:00pm and 12 midnight on Thursday, Friday and Saturday nights.
  - (iv) Alcohol related assault “hot spot”: The proposed Premises will be located within a high density hot spot identified by BOCSAR for the concentration of all alcohol related assaults in the Byron LGA. This hotspot is focussed in and around the Byron Bay CBD.
  - (v) Alcohol related assault police: The Byron LGA recorded a rate of **61.8** incidents per 100,000 persons, compared to a state-wide rate of **22.7**.
  - (vi) Alcohol related offensive behaviour: The Byron LGA recorded a rate of **830.1** incidents per 100,000 persons, compared to a state-wide rate of **148.1**.
15. The Applicant has made submissions to the effect that the addition of the proposed Premises is not likely to increase the total volume of liquor consumed across the local or broader communities, nor will it increase the rates of crime experienced by those communities. In support, the Applicant has provided sales data from other LGAs in Northern NSW indicating that Woolworths-owned incumbent liquor stores recorded a drop in their sales following the arrival of a new licenced premises into those LGAs.

16. The Applicant submits that there is a pre-existing level of demand for liquor within a given community and that the introduction of one more liquor licence into an already competitive market for retail packaged liquor is not likely to increase the total volume of liquor sold or consumed across that community. Rather, the increased number of licensed outlets will compete for the available dollars that the community is prepared to expend upon packaged liquor.
17. While the Authority accepts the general proposition that substitution effects are likely to occur at the expense of incumbent liquor businesses when a new outlet commences servicing a given community, neither the Applicant's submissions nor the other material before the Authority enable the Authority to find whether the total alcohol sales within Byron Bay or the Byron LGA are likely to increase, remain stable or decrease should this Application be granted.
18. To make an informed assessment on whether increasing licence numbers is likely to increase the total volume of liquor sales or total crime in the broader community, the Authority would require the kind of information that was the subject of recent research by Liang and Chikritzhs: "Revealing the link between licensed outlets and violence: counting venues versus measuring alcohol availability" (*Drug and Alcohol Review*, 2011) who were able to track the total volumes of wholesale liquor sold across individual LGAs, as reported to the Western Australian Government and then compare the volume of liquor sold with the number of recorded assaults within each LGA. That type of wholesale sales data is not required to be reported in New South Wales and is not otherwise available to the Authority for the purposes of this decision.
19. Nevertheless, the test prescribed by section 48(5) does not require the Authority to find whether the total volume of liquor sold or consumed is likely to increase in the relevant communities following the introduction of another packaged liquor outlet. The question is what positive and negative impacts are likely to flow from the operation of *this* Premises in *these particular communities*, and whether, after assessing those impacts the Authority is satisfied that the "overall" social impact *will not* be detrimental to those communities.
20. The Authority is satisfied, based upon the Application material provided by the Applicant that if the licence removal is granted the proposed maximum trading hours of the Premises would be from 9:00am to 9:00pm on Monday to Saturday and 10:00am to 8:00pm on Sunday. The Authority is satisfied that the proposed licensed Premises will be quite large by the standards of the local and broader communities. At around 1093 square metres, the Premises will dwarf any of the incumbent stand-alone liquor stores or Hotel bottle shops that presently trade in Byron Bay. In fact it will rival the combined floor space of all the other (incumbent) packaged liquor stores in Byron Bay.

### **Negative Impacts**

21. The Authority notes that Council has granted development consent for the proposed use of the Premises and that the Director General of the Department of Trade and Investment, Regional Infrastructure and Services does not object to the Application. Nevertheless, the Authority is satisfied that the following negative impacts are likely to occur:
22. **Contribution to under-age drinking:** The Authority is satisfied that if the licence removal is granted, despite the best efforts of the Applicant and its staff, the operation of a new packaged liquor business of this scale, with these trading hours and in this location is likely to make a significant contribution, along with the other packaged liquor outlets in Byron Bay, to the

prevailing problem of under-age drinking within Byron Bay that bedevils the local and broader communities.

23. **Contribution to public drinking:** The Authority is satisfied that if the licence removal is granted, despite the best efforts of the Applicant and its staff, the operation of a new packaged liquor business of this scale, with these trading hours and in this location is more likely than not to facilitate supply of packaged liquor to persons who will chose to drink within the nearby Alcohol Free Zone, or in other public places in the town.
24. **Contribution to pre-fuelling:** The Authority is satisfied that if the licence removal is granted, despite the best efforts of the Applicant and its staff, the operation of a new packaged liquor business of this scale, with these trading hours and in this location is more likely than not to facilitate the supply of packaged liquor to those persons who will pre-fuel and cause related adverse alcohol related impacts in or around licensed venues in the town, including intoxication and involvement in acts of alcohol related violence
25. In its detailed submissions the Applicant has called into question the extent to which the use of *off premises* liquor, as distinct from *on premises* liquor, contributes to the alcohol related crime problems that are evident from the crime data.
26. Local Police have attempted to address the supply side of the alcohol situation in Byron Bay by, for example, consistently and strongly opposing applications made to the Authority for extended trading authorisations. (Comments made to the contrary by the Chairperson of the Authority during the Conference were mistaken.)
27. While the Authority has no doubt that the on-premises venues, particularly late trading premises, are a source of alcohol related assaults occurring in Byron Bay, "last place consumed" data provided by the NSW Police Local Area Command indicates that during the period from January 2011 to July 2012, of the alcohol related Computerised Operational Policing System incident reports ("**COPS Reports**") prepared by Police officers in relation to various events occurring within the Byron Bay Sector of the Command:
  - **2320** incidents reported that the person in question last consumed alcohol on "licensed premises"
  - **1371** reports noted that alcohol was last consumed in a "home/private residence"
  - **2981** reports noted that alcohol was last consumed in a "public place" and
  - **61** reports noted that alcohol was last consumed in some "other" place.

In **864** incidents the place where alcohol was last consumed was recorded as "unknown". Police have provided the Authority with a sample of COPS Reports illustrating the types of alcohol related incidents that occur in public places and private residences in Byron Bay. This local Police data, considered alongside the BOCSAR data and the submissions made by Police regarding their experience with pre-fuelling and under age drinking satisfies the Authority that there is an objective basis for community concerns regarding the extent to which the abuse of *packaged* liquor is impacting upon the local and broader community.

28. There are two issues pertaining to the abuse of packaged liquor that are of particular concern to the Authority. First - the Authority accepts, based upon submissions from members of the community, and giving weight to the knowledge and experience of Mr Bill Mackay (a serving school counsellor at Byron Bay High School) and Mr Richard Heazelwood-Ross (a recently retired

Deputy Headmaster of Mullumbimby High School) that there is a serious problem arising from a culture of under-age drinking among young people in Byron Bay. Under-age drinking may primarily be attributed to the secondary supply of packaged liquor to minors, who cannot usually access liquor directly either on premises or off premises. The Authority further notes and accepts information given to the Authority that minors in Byron Bay are offered secondary supply of alcohol on the streets and in public places for a fee.

29. Whatever factors have given rise to the apparent severity of this problem, the Authority accepts that these adverse social impacts are occurring and are likely to be exacerbated by the town's status as an international tourist location and a destination to which many young people travel, from elsewhere in New South Wales and interstate, during weekends in summer, in holiday periods and for the annual end of high school celebrations known colloquially as "schoolies".
30. The Authority notes and gives weight to the local knowledge and experience of Police who have advised the Authority how, in a practical sense, it is difficult for Police to detect and respond to under-age drinking given the extent to which minors will go to concealing their use of packaged liquor.
31. Second, the Authority is satisfied (based upon the submissions made to the Authority by local residents that were endorsed by Police during the Conference) that there is a serious problem in Byron Bay arising from "pre-fuelling" – the practice of adults, particularly young adults, consuming packaged liquor before heading into town to attend licensed venues of an evening, including the hotels, bars, licensed restaurants and nightclubs that have on-premises licences. The extent of pre-fuelling is also exacerbated by Byron Bay's status as a tourist destination and a "party town".
32. The Authority accepts as credible submissions made during the Conference to the effect that the town is one in which people may be observed walking the streets with a "slab" of beer on each shoulder, or (especially during schoolies) pushing overflowing shopping trolleys of liquor down the street to their holiday accommodation.
33. The Authority accepts as credible Police accounts of how young men who pre-fuel get involved in violent exchanges with venue security staff while unsuccessfully attempting to gain access to licensed premises venues, or if successful, quickly reach a state of intoxication which either requires their removal from, or contributes to fights on, licensed premises.
34. The Authority accepts as credible the accounts provided by several local residents of the kinds of alcohol related disturbance observed of persons consuming packaged liquor in places of accommodation or in public areas located in and around the town. The Authority accepts that this conduct is a regular cause of intimidation, disturbance and alcohol related litter confronting the local community, in addition to the more serious demands placed by alcohol abuse upon the police, health and emergency services agencies and the staff of licensed premises who work in these communities.
35. The Authority gives weight to the local knowledge and experience of Police who advise that the maintenance of public order in Byron Bay is made more difficult by virtue of the transient nature of the many people who pass through the town and the "anonymity" that can be enjoyed in an international tourist destination with relatively little CCTV in public places. This too contributes to a steady secondary supply of packaged liquor to minors.

36. The Authority has taken into account the Applicant's proposed countermeasures to deal with the abuse of packaged liquor, including its very well developed Responsible Service of Alcohol Policies and Practices, its good regulatory record, its Plan of Management, its proposed lighting of the site and its planned 32 CCTV cameras for the Premises. The Authority has also taken into account the proposed Special Licence Conditions which include the provision of a uniformed security guard on Friday and Saturday evenings and on other days during the holiday period or schoolies that are identified as peak risk evenings. Nevertheless, as a matter of practical reality, the Applicant's business will only have the means to control and respond to issues that are apparent at the point of sale or incidents occurring in the immediate vicinity of its premises. It will not be able, in a practical sense, to deal with secondary supply or pre-fuelling that occurs elsewhere in the town. While a degree of secondary supply or refuelling may be inevitable from the operation of any packaged liquor business, those issues become of particular concern to the Authority when, as in this case, the proposed Premises will operate in an area that is already over exposed to such problems and to high rates of alcohol related crime.
37. The Authority readily accepts the Applicant's contention that the BOCSAR crime rates pertaining to the local and broader communities are elevated by reason of the great many domestic and international visitors to the town, by comparison to the resident population.
38. Nevertheless, these communities are undoubtedly exposed to high numbers of alcohol related crime incidents and there is a high concentration of those incidents occurring in and around the Byron Bay CBD. This prevailing exposure of the relevant communities to alcohol related harm and disturbance cannot be ignored when the Authority considers what social impact the proposed Premises is likely to have upon *these* communities.
39. In making this decision the Authority has had regard to the objects and statutory considerations prescribed by section 3 of the Act, and has given weight to section 3(2)(a) of the Act - the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour and section 3(2)(c) of the Act - the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Yours faithfully



Chris Sidoti  
**Chairperson**  
**Independent Liquor and Gaming Authority**