



Mr Michael Kirwan
The Woodville Store
by email only: accounts@thewoodvillestore.com

8 March 2022

Dear Mr Kirwan

Application No.	APP-0008835093
Applicant	Michael Douglas Kirwan
Application for	packaged liquor licence
Licence name	The Woodville Store
Trading hours	Monday to Friday 9:00 AM – 7:00 PM Saturday & Sunday 9:00 AM – 6:00 PM
Premises	229 Clarence Town Rd Woodville NSW 2321
Legislation	Sections 3, 11A, 12, 29 – 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 – The Woodville Store**

The Independent Liquor & Gaming Authority considered the application above and decided on 15 December 2021 to **refuse** the application under sections 31 and 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 Jason.Owston@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 26 July 2021, Mr Kirwan (“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 229 Clarence Town Road, Woodville (“Premises”).
2. The Authority considered the Application at its meeting on 15 December 2021. The Authority finds that the Premises comprise a “service station” as that word is defined in section 31 of the *Liquor Act 2007* (“Act”). As a result, the Authority has decided to refuse to grant the Licence under sections 31 and 45 of the Act.

MATERIAL CONSIDERED BY THE AUTHORITY

3. In reaching this decision, the Authority has had regard to material and submissions provided by the Applicant in support of the Application.
4. For the purpose of this decision, it is not necessary to consider, and the Authority has not considered, material relevant to the determination of whether the other criteria for granting the Licence, including tests under section 48 of the Act, have been met.
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. A list of the material considered by the Authority is set out in Schedule 1.

LEGISLATIVE FRAMEWORK

7. The Authority has considered the application 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 29-31: Specific provisions in respect of a packaged liquor licence, including restrictions on granting a packaged liquor licence to premises comprising a service station, take-away food shop or general store.
 - c) Section 44: Submissions to the Authority in relation to licence applications.
 - d) Section 45: Criteria for granting a liquor licence.
8. An extract of these sections is set out in Schedule 2.

KEY FINDINGS

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

Section 31 of the Act

10. The Authority is satisfied on the material before it that section 31 of the Act applies to the Application and the Premises, and operates to prohibit the Authority from granting the Application.
11. The Authority finds that the Premises fit the definition of a “service station” in section 31 of the Act. “Service Station” is defined in the Act as “premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products”.

12. The Authority notes that there is no relevant case law or other extraneous material directly on the point of making a factual determination as to whether the Premises is or is not “used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.”
13. In making this factual determination, the Authority assumes the ordinary meaning of the word “primarily.”
14. The Authority notes the Applicant’s submission that:
 - a) the Premises “is a true country” general store, offering a range of products including meat, fruit and vegetables, groceries, wholefood, farm and pet supplies
 - b) the Premises has a long history dating back to the mid-1800s, and throughout this history it has always been a general store, despite fuel being offered for sale from the 1950s
 - c) the Premises is 267sqm, and so is not prohibited or restricted from selling liquor by retail in accordance with section 31(1) of the Act
 - d) the financial information provided for the year ending 30 June 2021 and the financial year to date at the time of submission shows a significant increase in sales of non-fuel related items and a decrease in fuel related sales, demonstrating the Applicant’s “focus on transforming the store into a grocery store,” and
 - e) the Premises is not a “service station” or “take-away food shop” as those words are defined in section 31(3) of the Act.
15. The Authority also notes data and material submitted on behalf of the Applicant that indicates that:
 - a) approximately 70% of total sales for the Premises for the year ending 30 June 2021, and 65% for the year to date (at the time of submission), relate to petrol and related products
 - b) approximately 46% of profits for the Premises for the year ending 30 June 2021, and 43% for the year to date (at the time of submission), relate to petrol and related products
 - c) there is one fuel bowser at the Premises with two pumps, positioned prominently in front of the main entrance to the Premises
 - d) the Premises offers a large range of food, farm supply, newspaper and other miscellaneous products for sale in addition to fuel, and
 - e) the number of customers who purchase food or grocery items or other products from the Premises outweighs the number of customers who purchase fuel products (on average, 80 out of 228 customers each day purchase fuel, although the Applicant only submitted two weeks of sales data to support this claim)
16. The Authority finds that, on balance, it is more likely than not that the Premises currently fits within the definition of a “service station” in the Act.
17. The Authority is assured of this view by considering the many service stations across the State which stock a significant number and variety of other products. Some are branded as supermarkets bearing the branding of large supermarket chains, others have been branded as speciality food halls bearing branding of large department stores. Despite the significant range of other products sold at those businesses, they remain service stations.
18. The Authority makes this finding whilst also acknowledging the Applicant’s submission that a service station is not his ultimate goal for the business type of the Premises. Nevertheless, the Authority must make findings on the material available before it. It is open to the Applicant to re-apply for a liquor licence once the Premises is not primarily used as a service station.

CONCLUSION

19. Having considered the Application, the Authority is not satisfied that the legislative criteria for the granting of the Licence have been met.
20. Accordingly, the Authority has decided to refuse the Licence under sections 31 and 45 of the Act.



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 – Material considered by the Authority Woodville Store

Application material

1. Completed application dated 26 July 2021.
2. Completed certification of advertising dated 22 August 2021.
3. Plan of Management documents for the Premises, titled “The Woodville Takeaway Liquor Store – Plan of Management” and dated 19 November 2021.
4. ASIC business records in relation to Wine Country Retreat Pty Ltd and Maitland Real Estate Pty Ltd.
5. Floor plan for the Premises (undated), indicating the proposed licensed area and liquor sales area.

Development consent

6. Notice of determination issued by Port Stephens Council on 27 February 2019, approving the development application 16-2018-657-1 for the Premises.

Stakeholder submissions

7. Emails and Submissions from Port Stephens Council, dated between 4 August and 18 November 2021.

Other relevant information

8. Correspondence between L&GNSW staff and the Applicant between 9 August and 24 November 2021 in relation to the assessment of the Application.
9. Google map images extracted from the Google website on 3 September 2021, showing the location and photos of the Premises in map view and existing liquor licences in the area.
10. Sales data provided by the Applicant, including:
 - a. a profit and loss statement for the financial year ending 30 June 2021
 - b. a profit and loss statement for the 2021 – 2022 financial year to date as at the time of submission in September 2021
 - c. a report categorising transactions by product type from 1 – 7 November 2021
 - d. seven daily reports categorising transactions by product type dated 3 – 9 September 2021.

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

Woodville Store

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.

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).

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.