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7 June 2019

Dear Mr Tobin,

<b>Application No.</b>	1-7091866174
<b>Applicant</b>	Red Bottle Mona Vale Pty Limited
<b>Application for</b>	Packaged Liquor Licence
<b>Licence name</b>	Red Bottle
<b>Trading hours</b>	Monday to Sunday 10:00 AM – 09:00 PM
<b>Premises</b>	Shop 6 Pittwater Place 10 Park Street Mona Vale NSW 2103
<b>Legislation</b>	Sections 3, 11A, 12, 29, 30, 31, 40, 45 and 48 of the <i>Liquor Act 2007</i> (NSW)

**Decision of the Independent Liquor and Gaming Authority  
Application for a new Packaged Liquor Licence – Red Bottle Mona Vale**

The Independent Liquor and Gaming Authority considered the above application at its meeting on 17 April 2019 and decided, pursuant to section 45 of the *Liquor Act 2007* (NSW), to **refuse** the application.

If you have any questions about this letter, please email the case manager via [danielle.hatton@liquorandgaming.nsw.gov.au](mailto:danielle.hatton@liquorandgaming.nsw.gov.au).

Yours faithfully

David Armati  
Deputy Chairperson  
For and on behalf of the Independent Liquor and Gaming Authority

## Statement of reasons

### Decision

1. On 18 December 2018 the Independent Liquor and Gaming Authority (“the Authority”) received from Red Bottle Mona Vale Pty Limited (“the Applicant”), through Liquor and Gaming NSW (“LGNSW”), an application for a new packaged liquor licence (“Application”) in respect of premises located at Shop 6 Pittwater Place, 10 Park Street, Mona Vale NSW 2103 (“Premises”) to be known as Red Bottle.
2. The Authority considered the Application at its meeting on 17 April 2019 and pursuant to section 45(1) of the *Liquor Act 2007* (NSW) (“Act”) has decided to **refuse** the Application.
3. In reaching this decision, the Authority has had regard to the material before it, legislative requirements under sections 3, 11A, 12, 29, 30, 31, 40, 45 and 48 of the Act and relevant provisions of the *Liquor Regulation 2018* (NSW) (“Regulation”).

### Material considered by the Authority

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

### Legislative framework

8. The Authority has considered the Application in accordance with the following provisions of the Act:
  - (a) Section 3: Statutory objects of the Act and relevant considerations.
  - (b) Section 11A: 6-hour closure period.
  - (c) Section 12: Standard trading period.
  - (d) Section 29: Authorisation conferred by packaged liquor licence.
  - (e) Section 30: Liquor sales area required if bottle shop is part of another business activity.
  - (f) Section 31: Restrictions on granting packaged liquor licences.
  - (g) Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
  - (h) Section 45: Criteria for granting a liquor licence.
  - (i) Section 48: Requirements in respect of a CIS.
9. An extract of these sections is set out in Schedule 2.

## **Key findings**

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

### Validity, procedural and trading hour requirements

11. The Authority finds that the Application and accompanying CIS have been validly made in that they meet the minimum procedural requirements under sections 40 and 48(4) of the Act and clauses 20 through 29 of the Regulation. This finding is made on the basis of the Application, CIS material and the Certificate of Advertising signed by Mr Scott Towers on behalf of the corporate Applicant dated 8 February 2019 and Mr Brett Tobin of Hatzis Cusack Lawyers dated 4 February 2019.
12. The Authority is satisfied that the proposed trading hours specified in the Application meet the requirements of sections 11A, 12 and 29 of the Act in respect of a daily 6 - hour liquor sales cessation period and the standard trading hours available for a packaged liquor licensed premises.

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

13. The Authority is satisfied that:
  - (a) For the purpose of section 45(3)(a) of the Act, the corporate Applicant is a fit and proper person to carry on the business to which the proposed licence relates, on the basis that no issues of concern were raised regarding the probity of the Applicant following consultation with relevant law enforcement agencies including NSW Police ("Police") and the compliance section of LGNSW.
  - (b) For the purpose of section 45(3)(b) of the Act, practices will be in place from the commencement of licensed trading on the Premises to ensure the responsible service of alcohol and to prevent intoxication. This finding is made on the basis of the Applicant's Plan of Management dated December 2018.
  - (c) For the purpose of section 45(3)(c) of the Act, the requisite development consent permitting use of the Premises as a packaged liquor licensed business is in force. This finding is made on the basis of a determination by Pittwater Council for development application ("DA") N0007/14 permitting "Shop fitout within existing shopping centre". This planning consent restricts trading to between 10:00 am to 10:00 pm Monday to Sunday. The Authority further notes the Complying Development Certificate 14/2799-1 issued by Private Building Certifiers on 12 September 2014 for a "retail shop fitout".

### Community impact statement

14. Consistent with Authority *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the State suburb of Mona Vale, and the relevant "broader community" comprises the local government area ("LGA") of Northern Beaches Council ("Northern Beaches LGA").

### Positive social impacts

#### *Expectations needs and aspirations of the community – section 3(1)(a)*

15. The information provided in the CIS material and submission dated 20 March 2019 establishes that this new licensed business will be located within the Pittwater Place Shopping Centre in Park Street, Mona Vale. The information about the proposal

satisfies the Authority that a new packaged liquor licensed store in this location would provide some increase in convenience for those shopping at this Shopping Centre. This can be said to provide a modest advancement of the statutory object of serving community needs, aspirations and expectations for the purposes of section 3(1)(a) of the Act.

16. However, the extent of that benefit is diminished by the fact that there is little or no community support for the Application apparent from the material before the Authority, with strong opposition from local public agencies with local knowledge of prevailing alcohol related social impacts in those communities.
17. The scope for increased convenience benefits for the community are reduced by the location of the incumbent liquor businesses in the suburb of Mona Vale, with numerous packaged liquor outlets servicing the broader community. LGNSW licensed premises information as at 12 March 2019 indicate that there is a “big box” liquor retailer at *Dan Murphy’s* Mona Vale, an average scale liquor store in *Pittwater Cellars* and a smaller supermarket-based liquor business within *Aldi Mona Vale*. Notably, there is a *Liquor Stax* drive through outlet very close to the proposed Premises, at 2 Park Street Mona Vale. The suburb is also serviced by one licence limited to online sales, *Andre’s Cellars* Pty Ltd.
18. The Authority does not give significant weight to the Applicant’s contention, in its submission dated 20 March 2019 that there are “difficulties” in accessing the existing facilities. The Applicant refers to a report dated February 2017 from Mr Adam Purcell, a liquor and gaming compliance consultant, previously engaged by the Applicant’s solicitors. This report described relative patron accessibility by foot and by car from the Premises to the then Mona Vale Hotel, which has entry points in Park and Harkeith Streets (offering a “Cellarbrations” drive through liquor store); Dan Murphys (250 -300 metres away); Pittwater Cellars (a similar distance away) and Aldi Mona Vale (more than 1 kilometre away). The Authority finds that while a liquor store operating within the same Pittwater Place Shopping Centre will provide some modest increase in convenience, that convenience is constrained by the Liquor Stax store (formerly Cellarbrations), located quite close to this Centre.

*Balanced development, in the public interest, of the liquor industry – section 3(1)(b)*

19. The Authority is not satisfied, on the limited information provided, that the proposed business model will offer anything substantially different to the range of products and style of business provided by the incumbent licensees that would develop the liquor industry serving the local and broader communities, for the purposes of section 3(1)(b) of the Act.
20. The CIS states the Applicant’s intention to operate as a “traditional bottle store” providing the “usual range” of beers, wines, ciders and spirits that are “usually found in other bottle shops throughout NSW”. There is little information before the Authority as to pricing, product range or other liquor industry goods and services indicating *how* this business will develop the industry serving the local or broader communities to any significant extent.
21. The Authority notes, by way of background, that during August 2017 the Authority granted a packaged liquor licence for this same Premises, to be known as “Top Cellars Mona Vale” (LIQP770017072). That licence was granted subject to a condition,

imposed by the Authority in response to submissions from the then applicant, that the business would sell boutique and craft liquor products. The Applicant advises that this licence was never exercised and this dormant licence will be surrendered should this Application be granted.

22. The positive benefit of specialisation is not apparent from the present proposal. The Applicant has made clear that it proposes an ordinary liquor store that will sell a broad range of mainstream liquor products.
23. The Authority has considered the other social benefits advanced in the CIS and 20 March 2019 submission that granting the licence will facilitate social/recreational opportunities, provide economic spin-offs and reduce traffic. The benefits of facilitating social or recreational opportunities are somewhat amorphous. While takeaway liquor will no doubt play a role in social interactions, it is difficult to give this general contention any significant weight, given the broad availability of retail liquor to service those interactions (both on premises and off premises) across the local and broader community.
24. Benefits by way of economic spin-offs and reduced traffic from the grant of a new liquor licence involve complex multi factorial contentions that are not readily inferred from the material before the Authority. In the absence of any independent expert advice and analysis supporting these claims the Authority is unable to give those submissions any significant weight as positive community benefits.

#### Negative social impacts

##### *Need to minimise harm associated with the misuse and abuse of liquor – section 3(2)(a)*

25. The Authority has assessed the Application and submissions on the overall social impact of granting this new liquor licence having regard to the risk-based approach set out in Authority Guideline 6. This includes consideration of the type of liquor licence, scale of the proposed liquor business, proposed trading hours and the location of the new liquor business.
26. The *licence type* is a packaged liquor licence. Aside from product tastings, it authorises the sale of liquor for consumption *away* from the Premises only. It follows that the Authority's focus will be the scope for social impact, positive or negative, likely to occur in locations off the Premises. Relevant impacts pertaining to takeaway liquor may include the public consumption of liquor, secondary supply to minors or the abuse of packaged liquor and alcohol related violence in the home, where most packaged liquor is consumed. These matters are discussed further below.
27. The *scale* of the Premises, at 130 square metres, is around the average size of stand-alone suburban liquor stores across NSW. It is neither a small liquor store nor a larger retailer.
28. The proposed *licensed trading hours* are reasonably extensive across the course of the week, from 10:00 am to 9:00 pm Monday to Sunday. This poses another risk factor when considering the scope for liquor sold from this location to contribute to adverse social impacts. This is particularly the case on the weekend in particular the evening trade, which, according to BOCSAR crime data for NSW typically poses a higher risk time of day and week for alcohol related crime and anti-social conduct.

29. As for the suitability of this *location* in respect of any prevailing sensitivities in the local or broader community, the Authority is satisfied that Mona Vale is exposed to some localised concentrations of relevant crime. BOCSAR hotspot maps for the suburb for January 2018 to December 2018 indicate that the Premises is situated within a low/medium density hotspot for incidents of alcohol related assault, a medium density hotspot for incidents of non-domestic assault and a high-density hotspot for incidents of malicious damage to property. There are no crime hotspots within the suburb for incidents of domestic assault. However, domestic assault overwhelmingly occurs in private residences. A liquor store in a local shopping centre is likely to sell liquor to residents and workers within Mona Vale and nearby suburbs in the LGA.
30. BOCSAR crime rates for the year to December 2018 do not indicate any elevated rates of crime for the local or broader communities on the whole, with an exception of alcohol-related disorderly conduct (offensive conduct) at the level of the LGA. This data records the following:
- A rate of **26.9** for incidents of *alcohol related domestic assault* per 100,000 persons for the suburb, a rate of **72.8** for the LGA and a rate of **116.5** for NSW.
  - A rate of **116.6** for incidents of *alcohol related non-domestic assault* per 100,000 persons for the suburb, a rate **96.9** for the LGA and a rate of **123.9** for NSW.
  - A rate of **681.7** for incidents of *malicious damage to property* per 100,000 persons for the suburb, a rate of **447.9** for the LGA and a rate of **755.1** for NSW.
  - A rate of **26.9** for incidents of *alcohol related disorderly conduct (offensive conduct)* per 100,000 persons for the suburb, a rate of **45.4** for the LGA and a rate of **37.9** for NSW.
31. Notwithstanding the lower than State-wide crime rates, some cause for concern arises from BOCSAR data indicating that, for the period from January 2017 to December 2018, the number of alcohol related domestic violence events recorded across the LGA rose from 160 during 2017 to 194 during 2018, while the number of malicious damage events for the LGA rose from 1138 in 2017 to 1193 in 2018 noting that some 26 of those additional events occurred within the suburb of Mona Vale.
32. Socio economic index for areas data provided by the Applicant in the CIS establishes that the local and broader communities are relatively very advantaged with the suburb and LGA ranking in the highest 10<sup>th</sup> decile on the Index of Relative Socio-Economic Advantage and Disadvantage compared to other suburbs and LGAs within the State. That is, social disadvantage does not pose an additional risk factor when assessing these communities on the whole.
33. Although alcohol attributable deaths in the LGA are not concerning with a spatially adjusted rate per 100,000 population of 15.0 compared to the NSW rate of 18.1 (2015 to 2016), the LGA recorded substantially higher rates of alcohol attributable hospitalisations of 769.6 compared to the NSW rate of 580.6 (2015 to 2017). Moreover, the Authority gives weight to the Northern Sydney Local Health District (“Local Health”) submission dated 20 November 2018 that adverse health impacts attributable to alcohol consumption remain of concern in the suburb of Mona Vale, with late night alcohol-related visits to the Mona Vale Hospital at 23% higher than the NSW rate.
34. The Authority further notes and gives weight to the submission from the Northern Beaches Community Drug Action Team (“CDAT”) and two community members.

35. The Police submission dated 31 January 2019 contends that there is a saturation of similar licences in the Mona Vale Central Business District (“CBD”) and ongoing issues relating to alcohol related crime and street drinking.
36. While the Authority does not accept that there is necessarily a “saturation” of packaged liquor licences, the four local packaged liquor businesses, together with local hotels and clubs (all of which are authorised to sell takeaway liquor) establish that packaged liquor is quite accessible and convenient to the local and broader community.
37. The Authority has given particular weight to the local knowledge of Police, who take issue with the suitability of the *location* of the new licence. Police contend and the Authority accepts that Village Park and Mona Vale Skate Park are sensitive sites nearby the Premises, exposed to historical and on-going issues with anti-social behaviour and street offences, particularly youth crime.
38. The Authority accepts the following Police contentions for Mona Vale:
  - Between 1 February 2018 and the 28 January 2019 there were **375** alcohol related incidents. Of these **105** resulted in a legal action which amounts to 28% of all incidents.
  - During that year there were **12** alcohol related street offences with **10** resulting in legal action.
  - During that year there were **76** prescribed concentration of alcohol (“PCA”) offences.
39. The Authority accepts the Police contention that granting another licence within the Mona Vale CBD will provide another source of takeaway alcohol that can be consumed in public places - especially the Village Park and Skate Park. One more packaged liquor outlet in this location will not only increase convenience and accessibility but also provide more *opportunity* for minors and those seeking to drink in nearby public areas to source liquor.
40. Police contend that granting this licence will be “detrimental to the quiet and good order of the neighbourhood” and that “anti-social behaviour will continue and may increase”. The Authority accepts that there is a localised issue with alcohol related anti-social conduct in this part of the suburb and that providing one more opportunity for liquor to be conveniently sourced by this problematic minority of persons will have adverse amenity impacts upon the local community.
41. The Applicant submission dated 20 March 2019 characterises Police information on anti-social behaviour to be “*anecdotal*”. The Authority does not accept this to be the case. Police have access to localised crime records maintained at the level of the Police command.
42. The Applicant submits that similar concerns were raised by Police in response to the 2017 application for a packaged liquor licence on the Premises and those concerns were addressed by compliance consultant Mr Adam Purcell in a report dated 1 May 2017. Purcell found no adverse activity in Village Park or any signs of anti-social behaviour and that youth activity at Kitchener Park (where the skate park is located) ceased at 10:30 pm when the lights are turned off. The Applicant also notes that Mr Purcell identified two liquor outlets closer to Kitchener Park. The Applicant submits that Mr Purcell concluded that the round trip journey (1.2 kilometres) coupled with the fact that the proposed liquor outlet is situated within a shopping centre make it unlikely, in

Mr Purcell's view, that youth utilising Kitchener Park would seek to purchase liquor from this site.

43. The Authority has considered Mr Purcell's report. The Authority notes that Mr Purcell conducted his inspection in April of 2017, just over two years ago, with Police providing information for a more recent period between February 2018 and January 2019. The Authority has given greater weight to the local knowledge and *continuous presence* of local Police, who have an ongoing responsibility for monitoring and responding to alcohol related crime and anti-social conduct in this locality. The Authority does not accept that the location of the liquor business within a shopping centre will discourage those seeking to drink in public or engage in secondary supply to minors from purchasing liquor at this location.
44. The Police concerns regarding localised crime and anti-social conduct are reinforced in a submission from CDAT dated 14 January 2019, who contend that between August 2017 and July 2018, **96** people were pulled up by Police for being in possession for alcohol in a public space and referred to the "Your Choice" program.
45. CDAT submit that:

*There is local qualitative data showing existing alcohol problems in the region. This data includes 96 young people between August 2017 and July 2018 who were pulled up by police for being in possession for alcohol in a public space and were referred to the Your Choice program. The biggest crimes reported between August 2017 and July 2018 were related to drugs and alcohol, stealing from retail stores and street offences. With this data in mind producing another liquor store could open up further crimes or risky behaviors with more access to supply to alcohol.*
46. The Authority takes the Applicant's point in their letter dated 20 March 2019 that CDAT make no reference to the "region" to which their figures relate nor the proportion of events that specifically concern Kitchener Park. Nevertheless, CDAT are plainly concerned with this area of the Northern Beaches and their submission adds weight to Police contentions that there are noticeable concerns with the prevalence of local alcohol related crime and anti-social conduct, particularly among local youth. The Authority accepts that these concerns are impacting the amenity of the Mona Vale CBD.
47. CDAT contend that in Mona Vale alone there has been an increase in public alcohol drinking by young people, which has been seen to be linked to mental health concerns in some cases. CDAT cite an event held at Mona Vale during August 2018, in response to a local suicide, which attracted approximately 500 people. CDAT contend that this event found that a proportion of those attending stayed at the skate park and were drinking large amounts of alcohol. CDAT contend that this is further evidence of the amount of alcohol consumed in Mona Vale in a public space. They contend that the addition of another liquor store would support the temptation of purchasing and consuming alcohol parallel to other issues such as mental health. The Authority accepts those contentions.
48. CDAT also expresses concerns that the location of the new store near Mona Vale Public School poses a further social risk through exposure of alcohol sales to younger people walking through the area. The Authority accepts that exposure of school children to alcohol promotion is undesirable, but the location of liquor stores within shopping centres is now commonplace and the Authority must balance the competing objects

and considerations in the Act. This concern cannot be given decisive weight on the information before the Authority. There is no submission from the school that the liquor store will unduly impact the school's affairs or the affairs of students.

49. The Authority does accept the CDAT contention, considered alongside the Police submission, that another liquor store in this location will increase accessibility and opportunity for liquor sales and secondary supply to minors. The location of this store makes it well placed to exacerbate the already problematic amenity impacts. It is more likely than not to frustrate attempts to manage public and underage drinking in this area, providing more outlets to be targeted by those who abuse takeaway liquor.
50. In response to this in the 20 March 2019 submission, the Applicant contends that Mona Vale already has a competitive packaged liquor market and it is "highly unlikely" that granting the licence would drive down prices in the local marketplace. The Applicant contends that this is not a situation where an aggressive price discounter is introduced to a marketplace, instead this is a situation where a population cannot conveniently access the usual range of liquors within a shopping centre.
51. The Applicant makes these assertions without providing any meaningful information or analysis as to pricing at the new business or the extent to which its products may or may not be attractive to persons engaged in public drinking, or minors.
52. The Authority is not in a position to make a determination on the extent of impact that this additional licence will have upon liquor prices, or the overall volume of liquor consumed in the communities. Nor is the Authority in a position to make an assessment of the marketing tactics or competitive pressure brought to bear by the arrival of this new liquor store in this location.
53. The Authority is satisfied that the proposal for a mainstream liquor store, with a broad range of products at a range of price points is well placed, by virtue of its location, to exacerbate localised amenity problems. A new liquor store in this location is more likely to frustrate attempts to monitor, manage and respond to alcohol related amenity impacts than a store situated in a less vulnerable location. The proximity of the Premises to areas of known exposure to the abuse of packaged liquor has been given considerable weight by the Authority.
54. In considering overall social impact, the Authority has also considered a submission from Local Health dated 20 November 2018 raising concerns regarding licensed premises saturation, the potential for increased alcohol consumption, the potential for aggressive price discounting and that Kitchener Park is known for alcohol related crimes such as assaults, malicious damage and secondary supply of alcohol. Local Health is also concerned about pre-fuelling (the practice of young adults drinking packaged liquor before attending licensed premises), alcohol related harm impacting young people and the potential for this licence to provide an extra source of alcohol for local minors, either through attempts to purchase directly or secondary supply avenues.
55. While the Local Health submission has been pitched at a higher level, they lend further credence to the social impact submissions from Police and CDAT, from the perspective of an agency tasked with responsibility for public health in these communities. Local Health advice on late-night alcohol related hospital admissions at Mona Vale Hospital is a further cause for concern. While the Hospital will service persons from beyond the

Mona Vale suburb, alcohol hospitalisation data provides a further indication of problematic alcohol abuse in the local and broader community.

56. In the CIS the Applicant submits that whilst there is a risk of pre-fuelling associated with the grant of *any* packaged liquor licence, the risk in the present case appears to be lower because of the nature of the suburb population. The Applicant also notes that Red Bottle stores operate in compliance with the ID 25 plus policy.
57. The Authority accepts that the Applicant has provided evidence of harm minimisation policies and procedures in the Applicant's Plan of Management and its ID25 policy. The Authority does not consider it likely that the licensee or staff will knowingly serve intoxicated persons, those who drink in public, pre-fuel, or engage in secondary supply to minors. The location in the shopping centre also provides for a degree of passive surveillance for persons engaging in anti-social conduct close by. Nevertheless, the location of the Premises is objectively problematic with respect to its proximity to sensitive areas away from the Premises. The licensee and staff will have little or no ability to monitor what happens to the liquor sold beyond the point of sale.
58. Two brief submissions were received from local residents, although their actual addresses are not clear. These submitters oppose the Application on the basis of a contended saturation of licensed premises, with one submitter expressing concern about existing anti-social problems. The brevity of these submissions, and the information provided by the Applicant in the CIS that they are employees of a commercial competitor (Mona Vale Hotel) diminish the weight that the Authority can give to these submissions. The social impact concerns raised by the submitters are independently established by Police, Local Health and CDAT.
59. Finally, the Authority has considered the Applicant's submission dated 20 March 2019 on how this Application is different to a 2015 application seeking removal of a packaged liquor licence that was refused by the Authority. The Applicant further submits that, as a matter of consistency with the 2017 application to *grant* a licence for Top Cellars Mona Vale, the Authority should grant this Application.
60. The Authority has considered this Application on its merits, on the evidence and material now before it. The Top Cellars licence was granted subject to a condition restricting the scope of liquor products that may be sold on the Premises. This measure both increased the positive social benefits (by ensuring the degree of specialisation represented by that previous applicant) and reduced the scope for adverse social impacts by reducing the scope of the business. The Applicant has made clear that it does not seek a licence with such restrictions in this instance.

#### Overall social impact

61. Having considered the positive benefits and negative impacts that are likely to flow from granting the Application, the Authority is *not satisfied*, for the purposes of section 48(5) of the Act, that the overall social impact of granting this new packaged liquor licence would not be detrimental to the well-being of the local community.
62. The Application is refused pursuant to section 45(1) of the Act.



David Armati  
Deputy Chairperson

**Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* (NSW) 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 the New South Wales Civil and Administrative Tribunal ("NCAT") for an administrative review under the *Administrative Decisions Review Act 1997* (NSW).

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions> 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 before the Authority

1. Application Form for a new packaged liquor licence (“Application”) lodged by Red Bottle Mona Vale Pty Limited (“Applicant”) on 18 December 2018 accompanied by the following documents:
  - (a) Public consultation site notice, police notice and local consent authority notice all signed and dated 18 December 2018.
  - (b) Development Approval N0007/14 issued by Pittwater Council (undated) for shop fitout within existing shopping centre.
  - (c) Plan of Management dated December 2018.
2. Category B Community Impact Statement lodged with the Application on 18 December 2018 accompanied by the following documents:
  - (a) List of stakeholders consulted by the Applicant.
  - (b) A map depicting the alcohol free zones in Mona Vale between 2013 and 2017.
  - (c) An aerial view geographical map depicting the 100-metre notification zone.
  - (d) A nine-page document discussing the assessment of this proposal prepared by the Applicant’s legal representative.
  - (e) Four-sentence email from Mr T Carson (address not specified) dated 19 November 2018 objecting to the Application.
  - (f) Four-sentence email from Shane (address not specified) dated 18 November 2018 raising concerns about the Application.
  - (g) Two-page letter from Northern Sydney Local Health District (“Local Health”) dated 20 November 2018 raising general concerns regarding the proposal and discussing a previous application for a packaged liquor licence at the same retail location.
  - (h) One-page letter from Northern Beaches Council (“Council”) dated 21 November 2018 advising that Council has no objections.
  - (i) One-page email from Aboriginal Affairs advising no objection provided the New South Wales Aboriginal Land Council and the Local Aboriginal Land Council has been notified.
  - (j) One-page letter from NSW Roads and Maritime Services dated 6 December 2018 making a number of recommendations relating to the installation of physical barriers, improved lighting, elimination of potential trip points, participation in the local liquor accord and the provision of access to local public transport information and taxi services.
3. One-page letter from Council dated 2 January 2019 advising no objection.
4. Email from the Ms Michelle Comito, Coordinator, Family & Youth Support Services Naremburn & Northern Beaches Family Centre dated 14 January 2019 submitting a one-page submission from the Northern Beaches Community Drug Action Team objecting to the Application.
5. Seven-page letter from Senior Constable Holly Carter of the Northern Beaches Police Area Command of NSW Police dated 31 January 2019 objecting to the Application.
6. Email from Liquor and Gaming New South Wales (“LGNSW”) dated 14 February 2019 advising that they are unable to provide a submission on behalf of the Compliance Operations Unit.
7. Email correspondence between the Applicant’s legal representative and licensing staff dated 7 March 2019 and 25 January 2019 regarding administrative matters.
8. Complying Development Certificate 14/2799-1 issued by Private Building Certifiers on 12 September 2014 for retail shop fitout, sent via email from the Applicant’s legal representative dated 12 March 2019.

9. Licence density data calculated by licensing staff using the 2016 Australian Bureau of Statistics (“ABS”) population data and LGNSW licensed premises information as at 12 March 2019.
10. LGNSW list of licensed premises in the State suburb of Mona Vale at 12 March 2019, as sourced by licensing staff.
11. Twenty-six page letter from the Applicant’s legal representative dated 20 March 2019 responding to an email from licensing staff dated 8 March 2019 regarding the assessment report for the Application, proposed conditions and submissions received. The following documents accompanied this submission:
  - (a) Certificate of Advertising signed by Mr Scott Towers on behalf of the corporate Applicant dated 8 February 2019 and Mr Brett Tobin of Hatzis Cusack Lawyers dated 4 February 2019.
  - (b) Plan/diagram of the premises highlighting the licensed area in red.
  - (c) Australian Securities and Investments Commission (“ASIC”) Current Organisation Extract for Red Bottle Mona Vale Pty Ltd as at 20 March 2019.
  - (d) ASIC Record of Registration for Business Name Red Bottle Mona Vale dated 14 March 2019 with the next renewal date recorded as 14 March 2022.
  - (e) An eight-page report prepared by Mr Adam Purcell of A & M Consultants dated 1 May 2017 providing his independent observations in regards to a previous application at the same site. This document is accompanied by the curriculum vitae of Mr Purcell.
  - (f) Statement of reasons, issued by the Independent Liquor and Gaming Authority dated 17 February 2015, refusing an application for the removal of a packaged liquor licence to be known as Liquorland in Mona Vale.
12. ASIC Current Organisation Extract for QIC Limited as at 7 March 2019, sent via email from the Applicant’s legal representative dated 25 March 2019.
13. OneGov licence record for Top Cellars Mona Vale, LIQP770017072, sourced by licensing staff as at 25 March 2019.
14. NSW *Healthstats* data on alcohol attributable deaths in NSW between 1997 to 2016, alcohol attributable deaths in Northern Beaches Local Government Area (“LGA”) and NSW between 2001 and 2016, alcohol attributable hospitalisations in NSW between 2001 and 2017, alcohol attributable hospitalisations in the LGA and NSW between 2001 and 2017, sourced by licensing staff on 25 March 2019.
15. Bureau of Crime Statistics and Research (“BOCSAR”) hotspot maps regarding Mona Vale from January 2018 to December 2018 for alcohol related assault, domestic assault, non-domestic assault and malicious damage to property, sourced by licensing staff on 26 March 2019.
16. Google geographical maps and street view image of the Premises, sourced by licensing staff on 26 March 2019.
17. BOCSAR Crime data for January 2017 to December 2018 comparing the count and rate per 100,000 persons for incidents of alcohol related domestic assault, alcohol related non-domestic assault, malicious damage to property and alcohol related disorderly conduct (offensive conduct) for NSW in the suburb of Mona Vale and the LGA, sourced by licensing staff on 26 March 2019.
18. BOCSAR data on number of selected offences flagged as alcohol related by NSW Police by day of week and time of day for the LGA, the suburb of Mona Vale and NSW

between January 2018 to December 2018, sourced by licensing staff on 26 March 2019.

19. BOCSAR data on number and proportion of selected offences flagged as alcohol related by Police for the LGA and NSW from 2018, sourced by licensing staff on 26 March 2019.
20. ABS Socio-Economic Indexes For Areas data based on the 2011 Census for Mona Vale and 2016 Census for the LGA, sourced by licensing staff on 26 March 2019.
21. Two-page letter from the Applicant's legal representative dated 4 April 2019 responding to an email from licensing staff dated 3 April 2019 regarding conditions proposed by Local Health to be included on the licence should the Application be granted.

## Schedule 2

### Relevant extracts from the *Liquor Act 2007* (NSW)

#### 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) (a), the **standard trading period** for premises to which this subsection applies ends at 10 pm.
- (1C) Subsection (1B) applies to the following premises or part of premises:
  - (a) if the primary purpose of the business carried on 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 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 10 pm 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 after 10 pm on any day of liquor for consumption away from the licensed premises.

(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.

#### **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
  - (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.