



Mr Andrew Tougher
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23 May 2017

Dear Mr Tougher

APPLICATION NO: APP-0002470602
APPLICATION FOR: New Packaged Liquor Licence

APPLICANT: Ashcroft's Supa IGA Moss Vale Pty Ltd

LICENSED PREMISES NAME: Ashcroft's Supa IGA

PROPOSED PREMISES LOCATION: 11-13 Clarence Street MOSS VALE NSW
2577

ISSUE: Whether to grant or refuse an application for
a new packaged liquor licence

LEGISLATION Sections 3, 29, 30, 31, 40, 45, 48 *Liquor
Act 2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR
NEW PACKAGED LIQUOR LICENCE – ASHCROFT'S SUPA IGA MOSS VALE**

The Independent Liquor and Gaming Authority considered application number APP-0002470602 for a new packaged liquor licence (Application) at its meeting on 19 April 2017 and, pursuant to section 45 of the *Liquor Act 2007*, decided to **grant** the Application subject to the following licence conditions:

1. Trading Hours:

Monday to Saturday 8:00AM to 9:00PM
Sunday: 10:00AM to 8:00PM

2. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 2:00 AM and 8:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.

3. Restricted trading & NYE – Retail Sales:

Good Friday Not permitted
December 24th Normal trading Monday to Saturday,

	10:00 AM to 10:00 PM Sunday
Christmas Day	Not permitted
December 31st	Normal trading

4. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained in the community impact statement, application and other information submitted in the process of obtaining this licence.
5. The premises must be operated at all times in accordance with the Plan of Management dated November 2016, as may be varied from time to time after consultation with the Local Area Commander, NSW Police Force.
6. The licensee must ensure the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.
7. The licensee or its representative must join and be an active participant in the local liquor accord.

The licence is granted on the proviso that it may not be exercised unless and until the Authority has: (i) been notified of the appointment of a manager to the licence; or (ii) granted an application for transfer of the licence to an individual licensee.

If you have any enquiries about this letter, please contact the case manager via email to santina.causa@justice.nsw.gov.au

Yours faithfully



Philip Crawford
Chairperson

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

STATEMENT OF REASONS

DECISION

1. The Independent Liquor & Gaming Authority (“the Authority”) is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the application lodged on 5 December 2016 (“the Application”) for a new packaged liquor licence, as all of those parties required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision.
2. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the *Liquor Act 2007* (“the Act”) that the overall social impact of granting this licence would not be detrimental to the well-being of the local and broader communities.
3. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) of the Act.

MATERIAL CONSIDERED BY THE AUTHORITY

4. In making this decision, the Authority has considered the Application, community impact statement (CIS) and all submissions received in relation to the Application. As foreshadowed in Authority *Guideline 6*, the Authority has also had regard to relevant liquor licensing records maintained by Liquor & Gaming NSW (“LGNSW”), Bureau of Crime Statistics and Research (“BOCSAR”) crime data and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. The material considered pursuant to the making of this decision is listed and, in some cases, briefly summarised in the Schedule.

LEGISLATIVE FRAMEWORK

5. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the Act and the *Liquor Regulation 2008* (Regulation). The power to grant an application for a new liquor licence is provided by section 45 of the Act.
6. An application for a new packaged liquor licence is a “relevant application” within the meaning of section 48(2) of the Act for which a CIS is required.
7. Section 48(5) of the Act requires that the Authority must not grant an application unless satisfied 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”.
8. For the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Moss Vale.

9. Consistent with the Authority's long standing policy to find that the broader community comprises the relevant local government area, the Authority is satisfied that the broader community is, at the time of this decision, the area of Wingecarribee Shire Council local government area (Wingecarribee LGA).
10. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
 - (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.*

KEY FINDINGS

11. The Authority is satisfied, on the basis of the Application and CIS material before it including Certificates of Advertising signed by Mr Ian Ashcroft on 20 January 2017 and Grant Cusack solicitor on 31 March 2017, that for the purposes of Section 40 of the Act the Application has been validly made with minimum procedural requirements with regard to the Application, CIS and community consultation satisfied.
12. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a packaged liquor licensed venue of the kind proposed in the Application material. The Authority notes that no probity issues were raised with regard to the Applicant following consultation with law enforcement agencies, including NSW Police ("Police") and LGNSW.
13. The Authority is satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service of alcohol practices will be in place with the commencement of licensed trading. This finding is made on the basis of the Applicant's Plan of Management dated November 2016.
14. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed use of the Premises that is the subject of this Application falls within the scope of the development consent that is currently in force with regard to the Premises. This finding is made on the basis of development approval 98-1080 ("DA") approved by Wingecarribee Shire Council ("Council") on 9 April 1999

permitting development of the Premises for the purposes of the operation as a supermarket.

15. The Authority notes Council's advice dated 8 November 2016, which raises no planning concerns with the Application *per se*, but advises that if there are any "additional plumbing or alterations to the supermarket" those alterations "may" require approval under section 68 of *Environmental Planning and Protection Act 1979*, or the issue of a development consent or the issue of a complying development certificate - "depending on the extent of fit out/alterations". The Authority is satisfied on the basis of the Applicant's submissions regarding the scope of the existing development consent and the principles discussed in *Foodbarn Pty Limited and Ors v Solicitor General (1975) LGRA 157* that the sale of liquor products from the supermarket is an ancillary use to the current approved use of the Premises and that no further development consent is required unless the Applicant modifies the Premises in some relevant respect.

Social Impact – Positive Benefits

16. The Authority considers it likely, having regard to the substantial scale of the supermarket premises (1860 square metres) and its location within a regional area that this new liquor business is likely to attract and service persons throughout the local and broader communities.
17. The Applicant contends, and the Authority accepts, that there are two supermarkets in Moss Vale, the other being a Coles supermarket that does not provide a licensed business.
18. The Authority has considered a very brief submission from a local submitter that there are other incumbent sources of takeaway liquor in the local community and questioning the need for a new licence in Moss Vale. The Authority finds that the location of a BWS store directly across the road objectively reduces the cumulative convenience benefit of adding a new licence in this location.
19. Nevertheless, the Authority is satisfied, on the information provided in the Application, CIS and the additional material supplied by the Applicant that granting this licence will provide some additional, albeit modest, benefit to the local and broader community by way of "one stop" shopping convenience for the customers of this substantial supermarket.
20. The Authority is also satisfied, on the basis of the very limited evidence of community opposition and some significant positive evidence of community support (an 18 page petition signed by persons living in the local and broader communities) that granting the Application will be consistent with the expectations, needs and aspirations of the local and broader community, advancing the statutory object in section 3(1)(a) of the Act.
21. Providing a supermarket based packaged liquor option in a local community that does not have one may also be said to contribute, albeit to a modest extent, to the development of the liquor industry in the local community, advancing the object of section 3(1)(b) of the Act.

22. The Applicant also contends that granting the licence will reduce “escape expenditure” from the local community. The Applicant has not substantiated this claim with any significant evidence or analysis and the claim is difficult to maintain on its face given the availability of a BWS liquor store across the road and other licensed premises authorised to sell takeaway liquor within Moss Vale. That purported community benefit is not accepted.
23. The Applicant also claims that granting this new licence will reduce traffic flow and increase public safety in the local community through an avoidance of special trips. Again, that is a claim of some complexity that warrants support by way of expert evidence and analysis if it is to be substantiated. The Authority can give little weight to this purported community benefit on the material before it.
24. Finally, the Applicant claims that granting the licence will enable an increase in choice for the local and broader community. While the operation of a new business may potentially bring such benefits, it would behove any applicant making such a claim to provide evidence or information specifying which products it will stock that the incumbent community businesses do not. The Authority can give little weight to this purported benefit on the material before it.

Social Impact – Negative Impacts

25. Having reviewed all of the material before it, the Authority considers that over time there is a risk that liquor sold from this new licensed business will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse packaged liquor.
26. The Authority does not accept the Applicant’s frequent characterisation of this proposal as a “small” licensed business. In the Authority’s experience, at 100 square metres, the liquor area will be similar in scale to many stand-alone liquor stores throughout New South Wales.
27. The licensed hours sought by the Applicant are quite extensive across the course of the week, from 8:00AM until 9:00PM Monday through Saturday and from 10:00 AM to 8:00PM on Sunday. While these hours will accord with the Supermarket trading hours and thus increase customer convenience, it is a factor that increases the scope for the liquor sold from this business to contribute to prevailing adverse alcohol related impacts in the communities.
28. When considering the cumulative impact of adding another licence to the local and broader community, the Authority has considered the Applicant’s analysis of LGNSW liquor licence density data provided with the CIS (which largely accords with the analysis of licensing staff). This establishes that Wingecarribee LGA has a moderately higher licence density rate for packaged liquor licensed premises (47.30 per 100,000 persons of population) compared to New South Wales as a whole (35.69 according to LGNSW data). However, licence density in the State suburb of Moss Vale (the community likely to be most directly serviced and impacted by the new licence) is substantially *below* the State-wide rate – at 12.83

licences per 100,000 persons. The Authority does not consider licence density *per se* to be a factor of concern when assessing the relative exposure of the communities to packaged liquor availability.

29. An adverse factor of some concern arises from the BOCSAR crime data for the year to September 2016 indicating that the rate of *alcohol related domestic assault* for the State suburb of Moss Vale was 157.3 per 100,000 persons, compared to a State-wide rate of 118.1. By contrast, Wingecarribee LGA fared considerably better, recording rates of alcohol related domestic assault comfortably below the State average at 100.9 incidents per 100,000 persons. Furthermore, rates of *alcohol related non-domestic assault* for both Moss Vale (108.9) and Wingecarribee LGA (79.9) were both below the State-wide rate (137.9) per 100,000 persons.
30. While alcohol related domestic violence rates for the local community are adverse to this Application, the data overall presents a mixed picture for the local and broader communities on the whole.
31. The Authority derives some comfort from the fact that the Premises is not located in any hotspot for the concentration of domestic assault or non-domestic assault (although there are small hotspots elsewhere in Moss Vale) and local community licence density is low. Notably, no social impact concerns have been raised by Police, Council, LGNSW, FACS, nor other local or broader community interest groups.
32. The Authority notes, on the basis of the ABS Socio-Economic Indexes For Areas (SEIFA) data, that the Wingecarribee LGA is relatively socio economically advantaged compared to other local government areas in New South Wales, ranking on the 8th decile on the Index of Relative Socio-Economic Advantage and Disadvantage compared to New South Wales. The State suburb of Moss Vale, by contrast, is moderately disadvantaged, ranking in the 4th decile compared to other suburbs in New South Wales. Overall, the socio-demographic data does not indicate any particular vulnerability to adverse social impacts in local and broader community.
33. The Authority has also had regard to the harm minimisation measures set out in the Plan of Management dated November 2016, the licence conditions to which the Applicant has consented and the additional harm minimisation measures such as CCTV and security measures. The Plan of Management will be enforceable through the operation of a licence condition. Furthermore, as this liquor business will be situated within a substantial supermarket, there is increased scope for passive surveillance of any persons engaging in alcohol related anti-social conduct associated with liquor sold on the Premises.

Conclusion

34. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision. The interested parties include NSW

Police, the Applicant, Council, NSW Roads and Maritime Services (“RMS”), neighbouring occupiers, NSW Health and Department of Community Services and all other parties required to be consulted under the legislation.

35. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.
36. The Application is granted pursuant to section 45 of the Act. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) – including (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; and (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 Date: 19 April 2017



Philip Crawford
Chairperson

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 and gaming website <https://www.liquorandgaming.justice.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

Material before the Authority

37. Decision on building approval 98-1080 issued by Wingecarribee Shire Council (Council) dated 9 April 1999, permitting development and use of the Premises for planning purposes as a supermarket.
38. Application Form for Packaged Liquor Licence, filed electronically with LGNSW on 5 December 2016. This is accompanied by ASIC Company Extract dated 7 November 2016 for the proposed licensed business owner, Ashcroft's Supa IGA Moss Vale Pty Ltd ACN 133 597 054 and an ASIC Company Extract for the premises owner, Ashmire Pty Ltd ACN 133 036 898 dated 24 November 2016.
39. Community Impact Statement (CIS) accompanying the Application, filed on 5 December 2016 and prepared by Hatzis Cusack Solicitors dated 30 November 2016. The CIS includes a map of the CIS consultation area and list of persons and agencies consulted, plus a list of local special interest groups, and a google map aerial image of the Premises and surrounding area within Moss Vale.
40. The CIS also includes a detailed legal submission from Hatzis Cusack specifying the nature of the proposal, socio demographic data about the local and broader communities, the Applicant's arguments on the likely community benefits and detriments that will flow should the Application be granted, submissions on prevailing liquor licence density, submissions on ABS SEIFA data and BOCSAR crime data for the two communities and a list of liquor licence conditions to which the Applicant consents should the Application be granted.
41. The CIS attaches photographs of the existing IGA supermarket, another colour aerial image of the local area, a submission on why the 6-hour closure period required by section 11A of the Act should be fixed at between 2:00AM and 8:00 AM (to accommodate the opening hours of the supermarket) and an 18-pages petition in support of the Application, signed by numerous persons whose addresses are stated to be in the local and broader communities. An architectural diagram is also provided indicating the proposed licensed area.
42. The Applicant attaches a submission from Family and Community Services (date not apparent) that was addressed to the Applicant during the pre-Application CIS consultation process, advising that FACS have "no legitimate grounds for concern". The Applicant also attaches a submission from RMS dated 20 October 2016 during the CIS process advising no objection in principle while recommending that the Applicant participate in the Local Liquor Accord.
43. The Application and CIS is accompanied by the Applicant's 7 pages *Plan of Management and House Policy* for the liquor business dated November 2016.
44. Submission from Council dated 8 November 2016 not advising any objection to the Application but warning that should certain structural modifications be made to the Premises to accommodate a new liquor business, those modifications "may" require a new development consent or a complying development certificate.

45. Submission from Roads and Maritime Services (RMS) dated 9 December 2016 repeating the position advised to the Applicant during the CIS process.
46. Submission from NSW Aboriginal Affairs dated 13 December 2016, advising no objection to the Application.
47. Submission from WG Myers, a local resident dated 14 December 2016 and received on 19 December 2016.
48. Submission from Roads and Maritime Services (RMS) dated 9 December 2016, advising no objection in principle to the Application but recommending that the Applicant join the local liquor accord.
49. Submission from local Police dated 19 March 2017 advising that Police have no objections to the Application, no concerns with the Applicant and propose a condition requiring the licensee to participate in the local liquor accord.
50. Certificates of Advertising of the Application signed by Mr Ian Ashcroft dated 17 January 2017 and by Mr Grant Cusack dated 31 March 2017.
51. Socio Economic Index for Areas (SEIFA) data sourced by licensing staff from the 2011 Census for Wingecarribee LGA and the state suburb of Moss Vale.
52. LGNSW list of packaged liquor licensed premises for Moss Vale and neighbouring suburbs as at 12 March 2017.
53. LGNSW liquor licence density data obtained by licensing staff on the basis of ABS population data and LGNSW liquor licence data on 30 March 2017.
54. BOCSAR Crime Maps for Moss Vale based on data for the period from October 2015 to September 2016 in the offence categories of alcohol related assault, domestic assault, non-domestic assault and malicious damage.
55. BOCSAR Crime data on rates per 100,000 persons for New South Wales, Wingecarribee LGA and Moss Vale for the 12 months to September 2016 in the offence categories of *alcohol related domestic assault*, *alcohol related non-domestic assault* and *malicious damage to property*.