



Mr Michael Marr
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20 December 2016

Dear Mr Marr

APPLICATION NO: APP-0001835599
APPLICATION FOR: New Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Sunday 10:00AM – 10:00PM

APPLICANT: Mr Stephen Rankin

PROPOSED LICENSED PREMISES NAME: Johnny's Wholesale/Retail

PREMISES LOCATION: Shop 25, 332-346 Military Road
CREMORNE NSW 2090 (Premises)

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 – JOHNNY'S WHOLESALE/RETAIL**

The Independent Liquor and Gaming Authority considered application number APP-0001835599 at its meeting on 16 November 2016 and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **grant** the application subject to the following conditions:

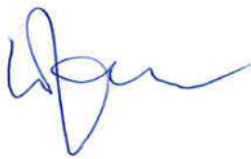
- Trading Hours**
Monday to Sunday 10:00AM – 10:00PM
- Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 4:00AM and 10:00AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
- 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.

4. The premises must be operated at all times in accordance with the Plan of Management dated 16 October 2016 and as amended on 6 December 2016, as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. The licence is restricted to local and imported boutique wine, beer and spirits, not otherwise readily available in mainstream packaged liquor outlets. For the purposes of this condition, "boutique wine" means wine that is manufactured by or on behalf of a boutique wine producer which crushes and bottles 250 tonnes or less annually, under its own label and is owned independently (not owned by a larger wine company).
7. The licensee will ensure that quality Australian wines will be available for sale on the premises, at a minimum of \$16 per bottle, up to \$3,000 per bottle.
8. There will be no discounted wines or cartons of beer, no RTD's, no casks, no clean skin wines or other discounted alcoholic products.

The licence is subject to a requirement under section 47(2) of the Act that it cannot be exercised unless and until the Authority is notified of the appointment of an approved manager to the licence and evidence is provided to the Authority that the Premises are complete and ready to trade.

If you have any enquiries about this letter please contact 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

Material before the Authority

1. The following is a summary only of the material and submissions before the Independent Liquor and Gaming Authority (Authority) for the purposes of publication of a statement of reasons, as soon as practicable, in a high-volume jurisdiction.
2. In making this decision, the Authority has considered the packaged liquor licence application filed on 15 May 2016 (Application), the accompanying 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 and licence density data maintained by Liquor and 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. That material is listed and in some cases briefly summarised in the Schedule.

Summary of Further Submissions

3. Local Consent Authority Notice from North Sydney Council (Council) dated 16 May 2016 acknowledging the Application and advising that “development consent is required but not in place” with respect to the proposed use of the Premises.
4. Submission from Northern Sydney Local Health District – Health Promotion, NSW Health (NSW Health), dated 6 July 2016. In this submission, NSW Health submits that it does not support granting the Application, citing HealthStats NSW data indicating that the North Sydney Local Government Area (LGA) has the fourth highest rate of alcohol-attributable hospitalisations in the Greater Sydney Area and that packaged liquor outlets are “consistently associated with violence in suburban areas such as Cremorne” (referring to Livingston, M, (2008) *A Longitudinal analysis of alcohol outlet density and assault*. *Alcoholism: Clinical and Experimental Research*, 32 (6): 1-6).
5. NSW Health submits that there are 9 packaged liquor licences, 4 hotel licences and 1 registered club licence within a 1 kilometre radius of the Premises, and that increased exposure and access to alcohol generated by granting the Application is “likely to increase the potential for alcohol-related harm in the community”.
6. *Plan of Management* for the Premises dated 16 October 2016. This 3-page document states that the Premises is located within a licensed premises of 68 square metres, comprising a split level retail space in a commercial shopping centre, located on a main road location in Cremorne. The stated purpose of the licensed business is to operate a “boutique style store for discerning fine-wine connoisseurs and collectors”. The Plan states that a selection of low-strength alcoholic beverages and non-alcoholic beverages will be available for sale. The Plan also provides information about proposed hours of operation; noise mitigation measures; security and safety measures, including CCTV surveillance; responsible

service of alcohol procedures; cleaning processes; and impact of the business upon general amenity.

7. The Plan sets out several specific measures or protocols for staff to ensure the responsible service of alcohol, including reminding adults whose children accompany them to the Premises of the \$11,000 maximum fine for secondary supply (where appropriate); screening all customers to ensure that they are over the age of 18 years and can produce an approved form of ID; exclusion of “hip flasks” or “alco-pops” to deter younger patrons and the ongoing monitoring of all customers on the Premises by an experienced manager.
8. Email from the Applicant’s consultant, Michael Marr, to the Authority on behalf of the Applicant dated 3 November 2016. In response to the submission from Council, Mr Marr attaches a Notice of Determination of a Development Application (DA) No.188/15 issued by Council dated 19 November 2015, advising that consent is granted for “fitout works and use of two commercial tenancies as a liquor store and a licensed café” at the Premises subject to certain specified conditions.
9. In response to the submission from NSW Health, Mr Marr submits that Cremorne is a “middle to upper class area” and contends on the basis of his experience as a Licensing Sergeant at Harbourside Local Area Command (LAC), that the “overall level of alcohol-related incidents was not a major concern”. Mr Marr states that on 19 October 2016 a meeting took place between the Applicant/business owner and North Sydney Licensing Police (Police) in which Police requested the provision and implementation of a Plan of Management and specified licence conditions, but Police “did not have any issues in the Cremorne area with anti-social behaviour, malicious damage, offensive conduct or assaults”.
10. Further email from Mr Marr to the Authority on behalf of the Applicant dated 5 November 2016, consenting to standard licence conditions proposed by licensing staff and providing a list of speciality spirits to be sold on the Premises.
11. Letter from the Owners Corporation, Strata Plan 30621 to LGNSW dated 5 November 2016. In this letter in support of the Application, the Owners Corporation advises that it “still has no objection” to the granting of the Application.

Legislative Framework

12. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the *Liquor Act 2007* (Act) and the *Liquor Regulations 2008* (Liquor Regulations). The power to grant an application for a new liquor licence is provided by section 45 of the Act.
13. 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.*
14. Section 48(5) of the Act requires the Authority, in certain circumstances, to consider a CIS (as well as any other matter the Authority is made aware of during the application process) in order to ensure that the overall impact of the licence, authorisation or approval being considered will not be detrimental to the local or broader community.
15. 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.
16. 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”.
17. 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 Cremorne.
18. 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 the North Sydney LGA.

Analysis of Relevant Facts

19. The Authority is satisfied, on the basis of the Application and CIS material before it, that for the purposes of section 40 of the Act, the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
20. 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 Police.
21. 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 *Plan of Management* document dated 16 October 2016.

22. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed use of the Premises falls within the scope of development consent. This finding is made on the basis of DA No.188/15 issued by Council on 19 November 2015, provided by the Applicant on 3 November 2016.

Social Impact – Positive Benefits

23. The Authority is satisfied, on the basis of the Application, CIS and additional material supplied by the Applicant that granting the licence will provide some additional benefit to those members of the local and broader community who wish to purchase premium and specialised liquor products.
24. The Authority is satisfied on the basis of the CIS and additional material that the Applicant's proposal is to operate a small, boutique liquor store "marketed to discerning mature-aged customers" and "not readily available in larger, mainstream bottle shops". The Authority is satisfied that this proposal will provide some measure of additional convenience to those members of the local and broader community with an interest in "expensive" wine and other specialised liquor products, consistent with their expectations, needs and aspirations (within the meaning of the object in section 3(1)(a) of the Act).
25. The Authority is also satisfied, on the basis of the CIS and supporting material, that the Applicant intends to stock "quality Australian wines" priced at up to \$3000 per bottle; that "hip flasks" of spirits and "alco pops" will not be sold at the Premises; that liquor sold at the Premises will not be "heavily discounted" or the subject of "irresponsible liquor promotions"; and that generally the Applicant's target market is "mature-aged" so that younger persons are not as likely to be attracted to the Premises as a source of alcohol for underage or binge drinking. In this sense, by providing an alternative to the traditional chain liquor outlet, granting the Application may reasonably develop, in the public interest, the liquor industry serving the local and broader community, promoting an object of section 3(1)(b) of the Act.

Social Impact – Negative Impacts

26. 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.
27. The Authority notes that the licensed trading hours sought by the Applicant are extensive, trading until 10:00PM nightly. This is a factor which may objectively increase the likelihood of adverse impacts on neighbourhood amenity occurring as a result of granting the Application.
28. However, the moderate scale of the proposed licensed area (41 square metres) is less extensive than many mainstream packaged liquor outlets, which is a factor that reduces the scope for this new business to contribute to adverse social impact over time.

29. When considering the cumulative impact of adding another licence, LGNSW liquor licence density data satisfies the Authority that the North Sydney LGA has lower rates of *packaged liquor licences, registered club licences and full hotel licences* per 100,000 persons compared to New South Wales as a whole. The Authority has also had regard to the LGNSW licensed premises information disclosing the type and number of licensed premises in North Sydney. While Health NSW has referred to the number of licensed premises within a 1 km radius, the Authority's longstanding practice is to assess the social impact test with regard to the local community as a whole and the broader community as a whole.
30. The research of Livingston cited by NSW Health indicates that at a certain level of licence density, there is a correlation between packaged liquor outlets and domestic assault. However, the NSW Health submission does not explain how licence density across *this* local or broader community is at a level that the research would suggest is problematic. The Authority does not consider that prevailing licence density at the level of either of those communities *per se* gives rise to any particular cause for concern.
31. When considering the risk of liquor contributing to alcohol related crime, the Authority takes considerable comfort from the BOCSAR *Report on Crime by LGA and Alcohol Related Status* for July 2010 to June 2015 which records that during 2015 the North Sydney LGA recorded rates of *alcohol related assaults* that were well below those for New South Wales as a whole.
32. At the local community level, the BOCSAR Crime Maps between July 2015 and June 2016 give rise to some cause for concern in that the Premises is located inside a high density hotspot for incidents of domestic assault, and a medium density hotspot for incidents of malicious damage to property. However, those concentrations are derived by reference to low overall rates of crime in the North Sydney LGA and this has not translated into any objection or comment from LGNSW or Police as to concerns with the proposed location of the Premises.
33. The Authority has carefully considered the data specified by NSW Health establishing that during 2014-2015 the North Sydney LGA recorded the fourth highest rate of alcohol related hospitalisations per 100,000 persons of population for any local government area in the Sydney Metropolitan Area.
34. The Applicant's response to the objection from NSW Health by email of 3 November 2016 did not specifically address this data. Rather, the Applicant addresses rates of crime in the North Sydney LGA and provides only anecdotal evidence of the Applicant's agent, a former police officer, with respect to alcohol-related incidents in the LGA.
35. Plainly enough this NSW Health data is adverse to the Application when assessing the relative vulnerability of this population to alcohol-related harm. This new licence will have a capacity to contribute, along with the incumbent licences, to those prevailing negative health impacts.
36. While the NSW Health data presents a negative factor of some weight, it has not been decisive when considered in the context of the other evidence and material

before the Authority. First, the Authority's longstanding practice is to assess a community's relative exposure to adverse social impacts by reference to socio demographic data for *New South Wales* as a whole, not the Sydney Metropolitan Area. Second, the health data is not compounded by the presence of high licence density rate or high alcohol related crime rates compared to NSW in the relevant local and broader community. Third, the extent of alcohol related abuse apparent from the health data is not translating into other social problems such as alcohol related crime or significant localised amenity impacts.

37. The Authority is further satisfied, on the basis of the ABS Socio-Economic Index For Areas (SEIFA) data, that both the suburb of Cremorne and the North Sydney LGA are, relatively, very advantaged communities. Cremorne ranks in the 10th decile of the Index of Relative Socio-Economic Advantage and Disadvantage, and the North Sydney LGA ranks in the 10th decile for LGAs (with a decile ranking of 10 being the most advantaged). That is, these communities are socio-economically robust and well-resourced to respond to adverse alcohol related social impacts when they occur.
38. When assessing the scope of negative impacts likely to flow from granting the Application, the Authority has also taken into account the scale of the liquor outlet and the additional measures proposed by the Applicant in the Application, CIS and submissions to reduce harm, including security features to prevent alcohol product related theft and the sale of alcohol to minors.
39. The Authority has also had regard to the reasonably detailed harm minimisation measures set out in the *Plan of Management* document dated 16 October 2016, the licence conditions to which the Applicant has consented, the additional harm minimisation measures such as CCTV, and the location of the Premises within a commercial shopping area on a main road.
40. The Authority has given weight to the Applicant's consent to a licence condition restricting liquor products to be sold on the Premises to local and imported boutique wine, beer and spirits, not otherwise readily available in mainstream packaged liquor outlets. The Applicant has provided a substantial product list illustrating the products to be sold by this business. That material, and the enforceable licence condition, supports the bona fides of the Applicant's proposal to cater for quality products but also limits the range of products to be sold on the Premises and reduces the risk of discounted or lower quality products that may be more attractive and accessible to consumers engaging in binge drinking.

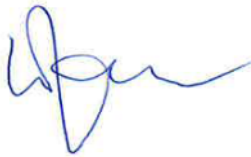
Conclusion

41. 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, 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.

42. 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.
43. The Application is granted pursuant to section 45 of the Act.
44. 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: 16 November 2016



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

1. Category B CIS dated 5 May 2016.
2. Application Form lodged online on 15 May 2016.
3. Material provided in support of the CIS and Application comprising:
 - (a) Notice of Application to Local Consent Authority dated 15 May 2016.
 - (b) Public Consultation – Site Notice for Application dated 15 May 2016.
 - (c) Google geographical maps depicting an aerial view of the location of the Premises.
 - (d) Plan or diagram of the Premises, showing the Ground Floor (with shelving, refrigeration and cash register) and Mezzanine level with a total licensed area of 68 square metres.
4. Advice from North Sydney Council in response to Notice of Application dated 16 May 2016. Council advise that development consent is required for the proposed use of the Premises but not in place.
5. Submission from Northern Sydney Local Health District – Health Promotion, NSW Health, dated 6 July 2016.
6. Email from the Authority to Michael Marr on behalf of the Applicant dated 13 September 2016, providing third party submissions and proposed licence conditions to the Applicant for comment and requesting a Plan of Management for the proposed Premises.
7. *Plan of Management* dated 16 October 2016.
8. Email response to the Authority from Mr Marr dated 3 November 2016, attaching a Notice of Determination of DA No.188/15 issued by Council on 19 November 2015.
9. Further email from the Authority to Mr Marr dated 5 November 2016 requesting consent to proposed licence conditions.
10. Email response to the Authority from Mr Marr dated 5 November 2016 consenting to proposed licence conditions.
11. BOCSAR Crime Maps based upon data from July 2015 to June 2016 detailing hotspots for the concentration of offences within the local community indicating that the Premises is located in:
 - (a) a *high-density hotspot* for the concentration of *domestic assault* incidents within the local community; and
 - (b) a *medium-density hotspot* for the concentration of *malicious damage to property* incidents in the local community.
12. Liquor licence density data from LGNSW indicating that the North Sydney LGA recorded:

- (a) A rate of **20.87** *packaged liquor licences* per 100,000 persons, which is below the NSW state wide rate of **32.85**.
 - (b) A rate of **8.03** *registered club licences* per 100,000 persons, which is well below the NSW state wide rate of **20.48**.
 - (c) A rate of **16.05** *full hotel licences* per 100,000 persons, which is well below the NSW state wide rate of **30.36**.
- 13.** Liquor licensing records from LGNSW indicating that the suburb of Cremorne already has 1 registered club licence, 1 full hotel licence and 6 packaged liquor licences.
- 14.** BOCSAR Report on *Crime by Local Government Area and Alcohol Related Status* for July 2010-June 2015 indicating that:
- (a) The rate of *alcohol related assault police* incidents across the North Sydney LGA from July 2014 to June 2015 was **16.9**, below the rate of **18.2** per 100,000 for New South Wales.
 - (b) The rate of *alcohol related non-domestic assault* across the North Sydney LGA from July 2014 to June 2015 was **125.3**, less than the State-wide rate of **144**.
 - (c) The rate of *alcohol related domestic violence assault* incidents across the North Sydney LGA from July 2014 to June 2015 was **77.4** per 100,000 persons, substantially below the rate for New South Wales at **122.6** per 100,000 persons.
 - (d) The rate of *alcohol related offensive behaviour* offences flagged by reporting Police as *alcohol related* across the North Sydney LGA from July 2014 to June 2015 was **109.8** per 100,000 persons, above the State-wide rate of **88.2**.
- 15.** Data on alcohol related crime obtained from published BOCSAR sources for the period between July 2014 and June 2015.
- 16.** ABS SEIFA data prepared on the basis of the 2011 Census indicating that the State suburb of Cremorne ranked in the 10th decile and the North Sydney LGA also ranked in the 10th decile compared to other local government areas and state suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).