



Mr Craig Wealands
31 Kincaid Street
WAGGA WAGGA NSW 2650

Dear Mr Wealands

**Application for removal of a hotel licence
Application for a minors area
Thirsty Crow – Wagga Wagga**

I am writing to you regarding two applications received by the Independent Liquor and Gaming Authority on 10 June 2015.

The first application seeks the removal of a hotel (general bar) licence under section 59 of the *Liquor Act 2007* from premises located at 31 Kincaid Street, Wagga Wagga, NSW 2650 to new premises at 153-163 Fitzmaurice Street, Wagga Wagga, NSW 2650.

The second application seeks the grant of a minors area authorisation within the meaning of section 102 of the *Liquor Act 2007* for premises located at 153-163 Fitzmaurice Street, Wagga Wagga, NSW 2650.

The Authority considered the matters at its meeting on 16 December 2015 and decided to grant the applications pursuant to section 59 and 102 of the Act respectively. Authority staff informally notified the Authority's decisions via email dated 15 January 2016.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. This letter attaches the Authority's statement of reasons with respect to the removal Application. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statement of reasons as soon as practicable.

If you have any questions please contact the case manager, Ms Santina Causa via email at santina.causa@ilga.nsw.gov.au

Yours faithfully

Micheil Brodie
Chief Executive 19 FEB 2016

STATEMENT OF REASONS

INTRODUCTION

1. On 10 June 2015 the Independent Liquor and Gaming Authority (Authority) received two applications (Applications) regarding the licensed premises located at 31 Kincaid Street, Wagga Wagga, NSW 2650 (Existing Premises), presently trading as the Thirsty Crow Hotel. These Applications were made by Mr Craig Wealands, the appointed manager of the Thirsty Crow Hotel, on behalf of Thirsty Crow Pty Limited (Applicant).
2. The first application (Removal Application) seeks the removal of a hotel (general bar) licence under section 59 of the *Liquor Act 2007* (Act). The licence presently attaches to premises located at 31 Kincaid Street, Wagga Wagga, NSW 2650 (Existing Premises). The Application seeks to remove the licence to premises at 153-163 Fitzmaurice Street, Wagga Wagga, NSW 2650 (Premises).
3. The second application (Minors Area Application) seeks the grant of a minors area authorisation within the meaning of section 102 of the Act at the Premises.
4. The proposed licensed trading hours for the new business to operate on the Premises are:
Monday to Saturday 12:00 midday to 12:00 midnight
Sunday 12:00 midday to 10:00pm.
5. The Application seeks that the 6-hour closure period required by section 11A of the Act be fixed at between 3:00am and 9:00am.
6. The Existing Premises also has a producer/wholesaler license which the Applicant has also sought to remove to the Premises. That matter is the subject of a separate decision by the Authority.
7. Authority staff informally notified the Authority's decision via email dated 15 January 2016. This letter serves to provide a formal record of the decision to grant the Application.
8. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. This statement of reasons has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

MATERIAL BEFORE THE AUTHORITY

9. Application Form for the removal of the hotel licence, dated 3 June 2015. The Application seeks to exercise licensed trading hours between the following hours:
Monday to Saturday 12:00 midday to 12:00 midnight
Sunday 12:00 midday to 10:00pm.
10. The Application seeks that the 6-hour daily closure period required by section 11A of the Act be fixed between 3:00am and 9:00am.
11. The Application form records the owner of the property of the Premises as the Norwood Unit Trust while the proposed licensed business owner is Thirsty Crow Pty Limited.
12. The Applicant also makes the following contentions in this document:
 - a) The proposed business will not trade beyond 12:00 midnight. "This is one key factor in harm minimisation and the limitation of misuse and/or abuse of alcohol".

- b) The proposed business is "a small producer of craft beer so the sale price for consumption of liquor will never be able to "compete" with the mass producers...another factor that minimises the misuse and/or abuse of alcohol".
 - c) The Premises has off street parking and the business will continue to arrange alternative transport for patrons.
 - d) The opinion of the local Police is "positive" as a relocation of the licence to the main street "makes their jobs easier as it centralises all patrons".
 - e) The effect of the Thirsty Crow leaving the Existing Premises will be that the owner of the Existing Premises will have to find a new tenant.
13. Application for Minors Area Authorisation for the Premises, dated 3 June 2015.
14. Community Impact Statement (CIS) submitted by the Applicant and dated 24 April 2015. In this document the Applicant makes the following contentions:
- a) The Thirsty Crow has operated for over four years in the Existing Premises. By removing the licence to the Premises the business "will continue what we do: same trading hours, same produce sold and a continuation of following the appropriate Responsible Service of Alcohol (RSA) protocols".
 - b) The business has "Thirsty Crow experienced staff members and proven operational procedure that works".
 - c) The removal involves relocation of the licence "onto the main street and further away from residential areas, which can only be a benefit for all stakeholders".
 - d) The business has "won major awards for our Brewery & Restaurant, which attracts tourism to our community. We also have a mantra of: quality over quantity and will continue to educate people with our passion of craft beer".
 - e) The business has "spoken to all stakeholders that if issues do arise – to immediately contact us so we can determine a solution that is mutually recognised".
15. Plan of the Premises. The Applicant has provided a diagram showing the Premises and the boundaries of the proposed licenced area and proposed minors authorisation area.
16. OneGov record of the existing liquor licence for the Premises as at 23 November 2015.
17. City of Wagga Wagga Council Development Application (DA) (Number DA14/0669) dated 6 March 2015. This DA records the grant of planning consent for a "Pub & Micro Brewery" at the Premises. This DA addresses, *inter alia*, the regulation of construction, fire safety, maintenance, and amenity. The DA limits the operating hours of the Premises (for the purposes of planning legislation) to between 12:00 midday and 12:00 midnight Monday to Saturday and between 12:00 midday and 10:00pm Sunday.
18. Email from Authority Staff to the Applicant dated 19 August 2015. This email attaches a copy of the Environment and Venue Assessment Tool (EVAT) report provided to the Authority by the Office of Liquor, Gaming and Racing (OLGR) for comment by the Applicant and requests that the Applicant provide the following:
- a) An estimated date when the physical removal of the licence to the Premises is to occur.
 - b) Amended floor plans of the Premises indicating the licenced area and the minor area.
 - c) A copy of the Plan of Management and House Policy.
 - d) A copy of the final occupation certificate.
 - e) Confirmation that a maximum number of 140 patrons will be permitted on the Premises.
 - f) Confirmation that CCTV surveillance will be maintained on the Premises.
19. Email from the Applicant to Authority Staff, sent on 21 August 2015. This email responds to the email from Authority Staff sent on 19 August 2015. The Applicant makes the following comments:
- a) In response to the EVAT report the Applicant contends that they are already trading in this "high risk location" but this Application will move the business further away from the residential area where it will "continue to have a positive impact for our community".

- b) The Applicant states that the estimated date for the physical removal of the licence is 27 October 2015.
 - c) In relation to definition of the proposed licenced area the Applicant contends that the beer garden will be entirely fenced with a "traditional-form panelling that is 2.1m high".
 - d) The Applicant contends that the "fermentation tank area" for the Premises is a "stage 2 plan, which may never get off the ground".
 - e) The Applicant contends that the maximum number of the patrons on the Premises will be 140 and that CCTV surveillance will be installed.
20. "Operational Management Plan" for the Thirsty Crow submitted by the Applicant via email on 21 August 2015. This internal business planning document includes the following statements:
- a) The operating hours of the Thirsty Crow will not extend past 12:00 midnight.
 - b) The kitchen is open from the time of opening until "late every night" and water is "available, visible and easily accessible to all patrons every night".
 - c) Thirsty Crow will have a capacity of 140 people, "even though it has room for many more... This allows patrons to not be frustrated by lack of personal space".
 - d) The venue is "not dimly lit" and does not have "music blaring" so conversations and body language can be "easily gauged by bar staff or concerned patrons".
 - e) Closing before 12:00 midnight "reduces the risk of patrons being belligerent".
 - f) Mr Craig Wealands, the Licensee of Thirsty Crow has over 12 years' experience in the Hotel Industry with 10 of them being as manager.
 - g) The "appropriate records" of patrons numbers, customer behaviour and incidents will be recorded to monitor all trends and "relevant measures" will be put in place.
 - h) "Strong communication" with bar staff and "regular meetings" will ensure Thirsty Crow is the "market leader in Duty of Care".
21. Email from Authority Staff to the Applicant, sent on 23 November 2015. This email sought additional information about the Application including:
- a) Details of how the licensed area for the proposed hotel (general bar) licence and the producer/wholesaler licenced area will be separated.
 - b) Request for an ASIC search for Norwood Unit Trust.
 - c) Confirmation of the imposition of conditions on the producer/wholesaler licence including:
 - i. "Limited to the sale of liquor only by means of taking orders over the telephone or by facsimile or mail order, or through an internet site"
 - ii. "The licensee will ensure the liquor sales area is adequately defined from the general bar licence by means of a fixed, solid and permanent barrier"
 - d) Confirmation that there are to be no direct sales or tap connection from the producer/wholesaler licence to the hotel. The Hotel must purchase beer from the producer/wholesale licenced premises via telephone or by facsimile or mail order, or through an internet site.
22. Email response from the Applicant to Authority Staff, sent on 24 November 2015. This email attaches a copy of the Norwood Unit Trust Fixed Deed and responds to the questions posed by Authority staff in their email dated 23 November 2015 as follows:
- a) The Applicant contends that the "separation of the producer and wholesaler will be noticeable/defined – with glass panelling separating from the public space and brewery area... There is no doubt where the boundaries are".
 - b) The Applicant does not object to the imposition of the conditions proposed by the Authority.
 - c) The Applicant confirms that there will be no direct sales by the producer/wholesale licence from the hotel.
23. Norwood Unit Trust Fixed Deed trust number 8003355-001 (Trust), dated 20 February 2015. This documents records the trustees of the Trust as Mr Kevin Charles Wealands and Ms Carmel Frances Wealands.

24. Submission from OLGR sent via email on 24 July 2015. This submission attaches a copy of the EVAT report and notes that OLGR "does not intend to carry out any further assessment of this application at this time".
25. OLGR EVAT Assessment Report (LA15/02768) for Thirsty Crow, dated 9 July 2015. This EVAT document identifies the location and venue risk factors for the Premises. The risk of alcohol related assaults and offensive behaviour are assessed as "high", and the Police assessment is also assessed as having a "high" risk. The risk ascribed to Council assessment is stated to be "moderate". The licence type (a hotel) is rated as having a "high" risk component, the maximum number of patrons is recorded as providing "moderate" risk and other venue specific factors are rated as "low" risk.
26. Submission from Wagga Wagga Local Area Command (LAC) emailed to the Authority on 22 June 2015. This submission records that "Police have no objection to the granting of this Application".
27. Publically available Bureau of Crime Statistics and Research (BOCSAR) mapping data for July 2014 to June 2015. These crime maps indicate that the Premises:
 - a) is located within a medium density hotspot and near a high density hotspot for the concentration of incidents of *non-domestic assault*
 - b) is located near a high density hotspot for the concentration of incidents of *domestic assault*
 - c) is located within a medium density hotspot and near a high density hotspot for the concentration of incidents of *malicious damage to property*.
28. Data sourced from BOCSAR for calendar year 2013 detailing rates of offences for the Wagga Wagga LGA compared to rates for NSW as a whole. This data details rates of certain reported crime incidents that were also recorded by Police as *alcohol-related*. This report indicates that for calendar year 2013 in the Wagga Wagga LGA as a whole:
 - a) the rate of *alcohol-related assault police* incidents was 27 per 100,000 persons compared to 24 per 100,000 persons for NSW as a whole.
 - b) the rate of *alcohol-related domestic-violence assault* incidents was 205 per 100,000 persons compared to 145 per 100,000 persons for NSW as a whole.
 - c) the rate of *alcohol-related malicious damage to property* incidents was 165 per 100,000 person compared to 122 per 100,000 persons for NSW as a whole.
 - d) the rate of *alcohol related non-domestic violence assault* incidents was 301 per 100,000 persons compared to 191 per 100,000 persons for NSW as a whole.
29. Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS) in 2011, indicating that the state suburb of Wagga Wagga falls within the fifth decile on the Index of Relative Socio-economic Advantage and Disadvantage (IRSAD) for all suburbs, and the Wagga Wagga LGA falls within the eighth decile on the IRSAD for all LGAs in NSW (with a ranking of 10 being the most advantaged).
30. Authority licensing records. These records, which are updated regularly and available for purchase from the OLGR indicate that within the State suburb of Wagga Wagga there are:
 - a) six registered club licences
 - b) thirteen full hotel licences
 - c) two hotel/general bar licences
 - d) fifty-seven on premises licences.
31. Authority license density data. This data records the liquor licence density in respect of the Wagga Wagga LGA compared to the State of NSW as a whole. It indicates that within Wagga Wagga LGA there are:
 - a) 8.41 club licences per 100,000 persons compared to NSW as a whole which has 20.48 per 100,000 persons
 - b) 16.82 full hotel licenses per 100,000 persons compared to NSW as a whole which has 30.36 per 100,000 persons

- c) 0 hotel, general bar licenses compared to NSW which has 1.35 per 100,000 persons
- d) 18.50 on premises licenses per 100,000 persons compared to NSW as a whole which has 121.31 per 100,000 persons.

LEGISLATION

32. The power to grant a new liquor licence is provided by section 45 of the Act, which states:

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) ...
- (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.*

33. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

34. Section 48(5) of the Act states:

48 Community impact

- (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.*

35. An application for a packaged liquor licence is a type of licence prescribed by section 48(2) requiring a CIS and satisfaction of the overall social impact test.

36. In determining the Application, the Authority also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states:

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.*

REASONS

- 37. The Authority is satisfied, on the basis of the Application material and submissions before it that, for the purposes of section 40 of the Act, the Application and CIS material establishes that the Application has been validly made and relevant consultation and advertising requirements of the legislation were observed.
- 38. The Authority is satisfied, for the purposes of section 45(3)(a), for the purposes of section 45(3)(a), that the Applicant company has previously established that it is a fit and proper corporate person from a probity perspective and that no probity concerns have been raised in submissions from the other stakeholders, particularly NSW Police or OLGR, in this regard. The Authority notes that the Applicant has operated the Thirsty Crow in the suburb of Wagga Wagga since the Authority granted a licence for this business in 2010.
- 39. The Authority is further satisfied that that the Applicant is experienced in operating a packaged liquor business and that the Applicant's *Operational Management Plan* disclose that a risk mitigation regime has been devised by the Applicant and will be in place at the Premises. There is no adverse information before the Authority as to the Applicant company's fitness in response to consultation on this Application with relevant law enforcement agencies including Police and OLGR.
- 40. The Authority is satisfied, for the purposes of section 45(3)(b), that responsible service practices will be in place with the commencement of licensed trading, on the basis of the *Operational Management Plan* and submissions provided by the Applicant and noting an absence of adverse submission from OLGR or from Police with regard to the Applicant in this regard.
- 41. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent is in place for proposed use of the Premises to include the sale of packaged liquor by retail within Supermarket, on the basis of the City of Wagga Wagga Council DA 14/0669, dated 6 March 2015.

Local and Broader Community

- 42. With regard to the overall social impact test prescribed by section 48(5) of the Act and consistent with the Authority's usual regulatory practice, the Authority is satisfied that the local community comprises the state suburb of Wagga Wagga and the broader community comprises the Wagga Wagga LGA.

Overall Social Impact

- 43. Applying the overall social impact test requires a degree of speculation, albeit speculation informed by the particular proposal and the prevailing circumstances in the relevant local and broader community

Positive Benefits

- 44. The Authority accepts that the removing the Thirsty Crow licence from one location to another within the same local community will make little difference to serving the expectations, needs and aspirations of the local community within the meaning of section 3(1)(a) of the Act. The Authority is satisfied that removal of the licence may advance, to a

modest extent, the balanced development of the local liquor industry being an object of section 3(1)(b) of the Act by facilitating the commercial development of the business and relocating it to a more central location in the town of Wagga Wagga.

Negative Impacts

45. The Authority accepts that over time there will likely be some contribution from the liquor sold at the Premises to alcohol related crime, disturbance or impact on amenity from a minority of customers who abuse liquor purchased at this Premises. The nature of the licensed business is a hotel and its primary purpose is the sale of liquor by retail for consumption on the Premises.
46. The Authority notes that there is cause for concern arising from the prevailing rates of crime within in the local and broader community. BOCSAR crime data for Wagga Wagga LGA recorded in the calendar year of 2013 indicates that the rate of *alcohol-related non-domestic assault* in the Wagga Wagga LGA (301 per 100,000 persons) was higher than NSW as a whole (191 per 100,000 persons).
47. The rate of *alcohol related domestic violence assault* for the Wagga Wagga LGA (205 per 100,000 persons) is also higher than for NSW as a whole (145 per 100,000 persons).
48. The rate of *alcohol related assault police* (a type of offence that is commonly associated with on premises venues when Police intervention is required) is slightly higher in the broader community, with a rate of 27 per 100,000 persons compared to NSW as a whole with a rate of 24 per 100,000 persons.
49. However, on the evidence before the Authority and noting the lack of any objection from Police of Council the Authority does not consider that the removal of the licence to the proposed new address will significantly increase the scope for this business to contribute to the prevailing problems of alcohol related disturbance in the local or broader community.
50. Furthermore, the Authority is satisfied that the following aspects of the proposal and the relevant communities concerned may operate to constrain the extent of contribution that this new business is likely to make to the prevailing alcohol related social problems in the local and broader communities.
51. The scale of the Premises provides an objective mitigating factor, in that the Applicant has accepted a condition in the licence that limits the number of patrons in the Premises to 140 at any time.
52. The Applicant has proposed licensed trading hours that are less extensive than the potential scope for licensed trading available under section 12 of the Act. The Premises will sell or supply liquor between the hours of 12:00 midday and 12:00 midnight Monday to Saturday and 12:00 midday to 10:00pm on Sunday. This objectively serves to reduce the scope for any contribution to alcohol related crime or alternatively, conduct that falls short of criminality but nevertheless adversely affects local amenity and causes disturbance to local residents.
53. The Applicant has accepted a number of conditions to the liquor licence and has proved an Operational Management Plan, both of which outline security measures for the Premises as well as providing strategies for the management of patrons and responsible service of alcohol.
54. The Authority notes that the Applicant has been operating this business in the suburb of Wagga Wagga since 2010 and no evidence has been submitted to suggest that this business has previously had a detrimental social impact on the local or broader communities.

CONCLUSION

55. Considering together the modest positive benefits facilitated by removing the licence and the limited scope for the removal of this licence within the same local community to increase the negative impacts likely to flow from the operation of this business over time, the Authority is satisfied that the overall social impact of granting the Application to remove the licence will not be detrimental to the well-being of the local or broader community.
56. The Authority is otherwise satisfied that the proposed minors authorisation area is in the public interest, in enabling a family friendly aspect to the business in an appropriate area of the hotel.
57. In making these decisions the Authority has had regard to all of the statutory objects of section 3(1) and all of the statutory considerations prescribed by section 3(2). The balance of those objects and considerations favour granting both applications.
58. In making this decision, the Authority has determined the 6-hour closure period under section 11A(3) of the Act as the period from 3:00am to 9:00am.



Micheil Brodie
Chief Executive

DATED 19 FEB 2016