



Mr Stephen John Eastlake
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Wombat NSW 2587

skeastie@yahoo.com

Dear Mr Eastlake

**Application for Packaged Liquor Licence
"Wombat Cellars", Wombat**

I am writing to you about the application made on 29 September 2015 by Mr Stephen John Eastlake to the Independent Liquor and Gaming Authority regarding premises to be located at 1 Wombat Street, Wombat for a new packaged liquor business proposed to trade as "Wombat Cellars".

Under section 13 of the *Gaming and Liquor Administration Act 2007*, the Authority delegates the specific functions of the Authority to each position holder specified against that function, subject to two general conditions and to such additional conditions specified in respect of a particular function as is contained in the Regulatory Delegations Manual.

The Application was considered by the Licensing Co-ordinator on 26 November 2015. The delegate decided, pursuant to section 45(1) of the Act, to grant the Application.

Authority staff informally notified the delegate's decision by email dated 27 November 2015. This letter serves to provide a formal record of the decision.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.

The enclosed letter provides a statement of reasons for the delegate's decision to grant the Application. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

The actual conditions to which the licence is granted are set out in the OneGov record of the liquor licence, which was provided to the Applicant on 27 November 2015.

Yours faithfully

Stephanie Salviejo
Delegate

7/3/16

STATEMENT OF REASONS

Introduction

1. On 30 September 2015, the Independent Liquor and Gaming Authority (**Authority**) received an application (**Application**) regarding premises located at 1 Wombat Street, Wombat (**Premises**) in respect of a new licensed business that is proposed to trade under the name "Wombat Cellars".
2. The Application is made by Mr Stephen John Eastlake (**the Applicant**) and seeks the grant of a packaged liquor licence within the meaning of section 29 of the *Liquor Act 2007* (**Act**) in respect of the Premises. Should the Application be granted, the Applicant will be the licensee, premises and business owner.
3. The Application initially sought licensed trading hours from 9:00am to 5:00pm Monday through Sunday. However, these hours were amended to from 10:00am to 4:00pm Monday through Sunday so as to align with the granted Development Approval.
4. The proposed name for the business to trade on the Premises as indicated on the initial Application form was "Grog Shed". However, following consultation with staff assisting the Authority on 1 October 2015, the Applicant's attention was drawn to section 95(5)(b) of the Act which prohibits the use of a licensed premises name if it is a name that the Authority has notified the licensee in writing is objectionable, inappropriate or misleading.
5. The Applicant was placed on notice by Authority staff that the decision maker may find the reference to "Grog" inappropriate for a packaged liquor business from a responsible service of alcohol perspective. The Applicant changed the proposed name of the business to "Wombat Cellars".

Delegation

6. Under section 13 of the *Gaming and Liquor Administration Act 2007*, the Authority delegates the specific functions of the Authority to each position holder specified against that function, subject to two general conditions and to such additional conditions specified in respect of a particular function as is contained in the Regulatory Delegations Manual published on the Authority website.
7. The Application was considered by the Licensing Co-ordinator (**Delegate**) on 26 November 2015. The Delegate decided, pursuant to section 45(1) of the Act, to grant the Application.
8. Authority staff informally notified the Delegate's decision by email dated 27 November 2015. This letter serves to provide a formal record of the decision.
9. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.

10. This letter provides a statement of reasons for the Delegate's decision to grant the Application. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.
11. The actual conditions to which the licence is granted are set out in the OneGov record of the liquor licence, which was provided to the Applicant on 27 November 2015.

MATERIAL BEFORE THE DELEGATE

12. **Licence Application Form dated 29 September 2015** and received by the Authority on 30 September 2015.
13. **Category B CIS document and supporting material dated 15 September 2015.**
14. **Plan of Premises** being a diagram outlining the proposed boundaries of the licensed area on the Premises.
15. **Google maps** images of the location of the Premises.
16. **Identification documents for the Applicant:** including a NSW drivers licence; Medicare card; Australian passport; and OLGR Responsible of Service (**RSA**) Competency Card.
17. **ASIC Record of Registration for Business Name** for "Wombat Cellars" dated 7 October 2015.
18. **Development Approval (DA.041-2015) issued by Harden Shire Council (Council) on 9 February 2015.** The DA describes the proposed development to be conducted on the Premises for planning purposes as the "erection of a colorbond shed to be used for the retail of pre-prepared and pre-packaged food and drink products".
19. **National Police Certificate for the Applicant dated 1 September 2015.**
20. **Local Consent Authority Notice provided by the General Manager of Council dated 1 September 2015.** The notice notes that development consent for the proposed use of the Premises is required and is in place.
21. **Submission from a delegate of the Secretary of the (then) NSW Trade and Investment, now the Department of Justice dated 13 October 2015,** by an officer within the Compliance Section of the Office of Liquor Gaming and Racing (**OLGR**).
22. OLGR provided a Environment and Venue Assessment Tool (EVAT) Assessment Report for the Premises. EVAT assesses the relative risk associated with each liquor licence application and was implemented across NSW on 1 March 2015. It provides separate assessments of several identified location and venue risk factors. Risk assessments are identified as either mitigating, low, moderate, high or extreme. EVAT does not determine

applications but is a source of information amongst many that can inform the decision making process.

23. EVAT produces a location risk assessment at the suburb level and examines risk factors including: rate of alcohol-related assaults; rate of offensive behaviour; presence or absence of late night transport; police risk assessment; council risk assessment; radial estimate of liquor licence density (i.e. average number of liquor licences within a 1km radius); proportion of high risk venues (i.e. hotel licences); proportion of diversifying venues (e.g. on-premises licences without primary service authorisations); and proportion of venues with late night trading.
24. In respect of the suburb of Wombat, the EVAT assessment for the location risk was “low”, “mitigating” or “moderate” in several risk categories but “high” in respect of the proportion of all nearby venues that are of high risk (i.e. hotel licence).
25. In addition, EVAT generates venue risk factors that are specifically related to an individual liquor licence application and examines risk factors including: licence type; patron capacity; extended trading; liquor accord membership; and other mitigating strategies. In respect of this Application, the EVAT assessment of the venue risk as “low” but with a “moderate” assessment in respect of the licence type.
26. **Email from staff assisting the Authority to the Applicant dated 1 October 2015.** The Applicant was requested to provide a signed certificate of advertising and a copy of development consent from Council. In addition, the Applicant’s attention was drawn to section 95(5)(b) of the Act which prohibits a name for a licensed premises if it is a name that the Authority has notified the licensee in writing is prohibited as being objectionable, inappropriate or misleading. The Applicant was placed on notice that the Authority may find the reference to “Grog” inappropriate.
27. **Email from the Applicant to staff assisting the Authority dated 6 October 2015.** The Applicant provided development consent (DA 041-2015) and provided the Authority with a written authorisation to change the name on the total licence documentation from “Grog Shed” to “Wombat Cellars”.
28. **Email from staff assisting the Authority to the Applicant dated 5 November 2015.** The Applicant was requested by staff to provide a dated House Policy and Plan of Management. Further, the Applicant was placed on notice that should the Authority be minded to grant the Application, certain standard conditions imposed upon packaged liquor licences may be imposed upon this licence, including a requirement fixing the daily 6-hour closure period for the purposes of section 11A of the Act between 4:00am and 10:00am; a requirement that the licence not operate with a greater overall social impact on the wellbeing of the community; a condition requiring active local liquor accord participation; a condition requiring that the Premises operate in accordance with the Plan of Management; and a requirement that the licence cannot be exercised until the Authority has been provided with evidence that the Premises are complete and ready to trade.

29. **Further email from staff assisting the Authority to the Applicant dated 5 November 2015.** The Applicant was requested by staff to provide a site plan and to update the premises plan to include numbered pages, the address, indicate streets and the direction of north; ensure all areas of the Premises are labelled; and ensure that the proposed licensed area is outlined in red.
30. **Email from the Applicant to staff assisting the Authority dated 6 November 2015.** The Applicant provided a House Policy and Management Plan dated 6 November 2015 addressing, inter alia, the RSA policies of the proposed new business; staffing; management; and an incident register for the business. The Applicant also advised consent to the conditions proposed by staff assisting the Authority along with an amended Premises Plan and Site Plan.
31. **Email from staff assisting the Authority to the Applicant dated 10 November 2015.** Staff assisting the Authority drew the Applicant's attention to section 30(1) of the Act which restricts the sale of liquor to an adequately separated part of the premises if the primary purpose of the business carried out by a packaged liquor licence is not the sale of liquor for consumption away from the licensed premises. The Applicant was requested to describe and provide photographs as evidence of the above. Further, it was noted that the Applicant currently holds a producer/wholesaler licence (LIQW824012046) and was asked whether this licence would be retained. In addition, the Applicant was again requested to provide a signed certificate of advertising in respect of the Application.
32. **Email from the Applicant to staff assisting the Authority dated 11 November 2015.** The Applicant provided a signed certificate of advertising and notified staff assisting the Authority that the Premises does not propose to sell food and that the licence LIQW824012046 is in the name of Ms Kerry Eastlake [the Applicant's wife] and both that licence and the proposed packaged liquor licence would be retained by Mr and Mrs Eastlake.
33. **Liquor licensing data sourced from Authority licensing records** noting the licence type and address for all registered club, hotel and packaged liquor licenced premises located in the state suburb of Wombat. This data discloses that within the suburb of Wombat there is *one* full hotel licence, *one* producer/wholesaler licence, *one* on-premises (restaurant) licence and no packaged liquor licences.
34. **NSW Bureau of Crime Statistics and Research (BOCSAR) crime data for the Harden LGA** regarding incidents of liquor offences, malicious damage to property, assault (domestic assault) and assault (non-domestic assault) offences based on data from July 2014 to June 2015.

LEGISLATION

35. In determining the Application, the Delegate has considered the relevant provisions of the Act, including the statutory 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.*

36. Section 45 of the Act provides the power pursuant to which the Authority may grant or refuse to grant, an application for a new liquor licence. Relevantly this section 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) *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.*

37. Division 5 of the Act makes provision for packaged liquor licences. Sections 29 to 31 state:

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).

SOCIAL IMPACT TEST

38. Pursuant to 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.

39. Section 48(5) states:

48 Community impact

(5) The Authority must not grant a licence, authorization 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, authorization or approval being granted will not be detrimental to the well-being of the local or broader community.*

40. An application for a packaged liquor licence is a type of "relevant application" that is prescribed by section 48(2).

41. The CIS usually provides the Authority with information about the views of relevant stakeholders and other aspects of the local community in which the proposed licensed premises is to be located. This includes, for example, the proximity of the licensed premises to sensitive facilities such as hospitals or health facilities, nursing homes, schools and churches.

LOCAL AND BROADER COMMUNITIES

42. As noted in Authority *Guideline 6: Consideration of Social Impact*, the Authority will identify the relevant "local" community by reference to the locality in which the licensed premises is situated, while the "broader" community will usually be the local government area in which the licensed premises is situated.

43. For the purposes of this Application, the Delegate is satisfied that the relevant "local community" comprises the community located within the town or State suburb of Wombat while the "broader community" comprises the Harden LGA.

Applicant Submissions on Social Impact

44. In the CIS, the Applicant made the following submissions and contentions as to the overall social impact of granting this Application upon the community:

"I really can't see any potential negative effects on the stakeholders. Wombat is a very small village at the junction of two major roads. It has roughly one hundred people around the village and surrounds. There are two businesses in Wombat only and this venture would add to the tourism in the area, as the area includes the Hilltops region of wine. Thus enabling passersby to buy wines of the area, without having to detour far from the main road. The village people are happy to see another business opening up on the block.

As the business is only a take-away alcohol venue there will be no impact on the noise level. As the opening hours will usually be 10am to 4pm (9-5pm in cherry season) there should be no effect on village life. The business will be able to promote tourism in the Hilltops area."

REASONS FOR GRANT

45. The Delegate has critically examined the Application and all the material before it pertaining to that Application. The Delegate has decided to grant the Application pursuant to section 45(1) of the Act.
46. The Delegate is satisfied, on the basis of the Application and CIS material and in the absence of any information to the contrary, that the Application has been validly made for the purposes of section 40 of the Act and that the minimum procedural requirements including advertising, CIS and consultation requirements have been satisfied.
47. The Delegate is satisfied, on the basis of the NSW National Police Check and the absence of information to the contrary from OLGR or Police that, for the purposes of section 45(3)(a) of the Act, the Applicant is a fit and proper person.
48. The Delegate 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 *House Policy* provided by the Applicant and noting an absence of any adverse submission from OLGR or Police in this regard.
49. The Delegate is satisfied, for the purposes of section 45(3)(c) of the Act that the required development consent is in place for the proposed use of the Premises (for planning purposes) as a packaged liquor licenced business. This finding is made on the basis of the DA (041-2015) dated 9 February 2015 and the local consent authority notice dated 1 September 2015, both issued by Council and provided by the Applicant.

Overall Social Impact

50. The Delegate is satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting the Application will not be detrimental to the wellbeing of the local or broader community.
51. Determining the overall social impact of granting the Application requires a degree of speculation about what is likely to occur in the event that the Application is granted – albeit speculation that is informed by the prevailing circumstances in the relevant local and broader communities.

52. As noted above, with regard to the overall social impact test prescribed by section 48(5) of the Act, the Delegate is satisfied that the local community comprises the state suburb of Wombat and the broader community comprises the Harden LGA.

Positive Benefits

53. The Applicant has provided submissions in support of the positive benefits that are contended to flow to the local or broader community from permitting the Premises to sell packaged liquor by retail.
54. The Delegate accepts the Applicant's submission that granting the Application will contribute to a related industry, being local tourism. This contention is objectively supported by the location of the Premises in the wine growing region of the Hilltops area.
55. In this sense, the Delegate is satisfied that the proposed new business will responsibly develop related industries, including tourism, which is a statutory object of section 3(1)(c).
56. The Delegate notes that within the suburb of Wombat there is currently only one full hotel licence, the Wombat Hotel. The Delegate notes that the Hotel is known for having the longest continuous liquor licence in NSW (1877).
57. There is no standalone packaged liquor business in the local community and in this respect granting the Application may be said to provide further convenience for local residents in the the local liquor industry, which is an object of section 3(1)(b) of the Act.
58. In addition, there is one producer wholesaler licence, the Grog Shed, which is operated by the Applicant's wife. The Delegate notes that it is located on a property known as Wombats Heights Orchard where guests can experience fruit picking and sample and purchase local produce.
59. The Delegate notes that the suburb of Wombat is located in the Harden LGA and is a small village at the junction of two major roads, having a population of less than 250 people.
60. Wombat is located approximately 15km south west of Young and is known for its cherry production. There is a slight increase to the population from November to March during fruit picking season. The Delegate accepts that the granting of the Application will support the two other local businesses in the suburb of Wombat and that this too will responsibly develop related industries, again in line with the statutory object of section 3(1)(c).
61. The Delegate notes that no adverse submissions have been made in relation to the Application by any local residents or businesses, nor have adverse submissions been made by the agencies with whom the Applicant was required by legislation to consult.

62. The Delegate is satisfied that granting the Application is consistent with the “desires, needs and expectations” of the local and broader community within the meaning of section 3(1)(a) of the Act.

Negative Impacts

63. The Delegate accepts that over time there will more likely than not be some contribution from the liquor sold at the Premises to alcohol related crime, disturbance or adverse impact on amenity from a minority of customers who abuse packaged liquor that is purchased from the Premises.
64. A minority of patrons of the new business may also contribute to other adverse packaged liquor related impacts upon local amenity, such as drinking in public, “pre-fuelling” before attending licensed premises or alcohol related litter. However, there are no submissions before the Delegate drawing attention to localised problems of that nature pertaining to the local or broader community. The local community is very small and there is no indication of localised social problems or issues involving the abuse of packaged liquor.
65. The 2015 BOCSAR *Report on Crime by Local Government Area and Alcohol Related Status* for 2015 (based on data from July 2014 to June 2015) satisfies the Delegate that the rates for Harden LGA for alcohol related incidents are generally below the average compared to NSW.
66. The report indicates that in the Harden LGA, there were no recorded incidents of *alcohol related assault police* compared with a NSW total of **18.2** per 100,000 population.
67. The rate per 100,000 population for *alcohol related domestic violence offences* was **160.0** compared with a NSW total of **122.6**.
68. The rate of *alcohol related non-domestic violence related offences* was **53.3** compared with a NSW total of **144.0**.
69. Notwithstanding that the alcohol related domestic violence rates provide a cause for concern with respect to the broader community, BOCSAR crime mapping data for the period from July 2014 to June 2015, reveal that the Premises is *not* located in a particularly sensitive location in terms of concentration of prevailing crime impacts. It is not located within any “hotspot” for the concentration of reported domestic assault, non-domestic assault or the occurrence of reported malicious damage offences (noting that such matters may or may not be recorded as alcohol related).
70. Furthermore, with respect to the potential contribution that this business may make to prevailing alcohol related crime or other adverse social impacts, the Delegate notes that NSW Police have not provided a submission in respect of the Application and the potential for alcohol-related harm.
71. Police did not provide any submission despite a message being left for Senior Constable Woods of the Harden Local Area Command and a number of direct

attempts to contact him by telephone by staff assisting the Authority. While it would have assisted the Delegate to have had some input from Police, given the absence of adverse submissions from any other agencies or local community members the Delegate is satisfied that local anti-social conduct in this tiny local community is not of concern to Police.

72. Importantly, the Delegate notes that the proposed trading hours for the Premises are quite limited - confined to 10:00am to 4:00pm on Monday to Sunday. These opening hours are considerably shorter than those potentially permitted under the Act and considerably less than are exercised by many mainstream liquor stores across the State.
73. The limited licensed trading hours sought by the Applicant is a mitigating factor that objectively reduces the scope for *this* licensed business to contribute to adverse social impacts in the local and broader community, particularly from sales during higher risk times of the day and week for alcohol related violence and anti-social conduct.
74. Having considered together the found positive benefits of granting this Application and the factors that objectively reduce the scope for negative impacts arising from the operation of this business over time, the Delegate is satisfied that the overall social impact of granting the Application will not be detrimental to the local and broader community for the purposes of section 48(5) of the Act.
75. In making this decision, the Delegate has determined that the 6-hour daily closure period for the purposes of section 11A(3) of the Act shall be fixed at between 4:00am and 10:00am.
76. The Delegate emphasises that this Application has been granted on the basis of the information provided in the Applicant, CIS and submissions from the Applicant establishing the limited trading hours.
77. In making this decision the Delegate has considered all of the statutory objects and considerations prescribed by section 3 of the Act.

Yours Sincerely


Stephanie Salviejo
Delegate

7/3/16