

Mr Grant Cusack
Hatzis Cusack Pty Limited
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20 November 2017

Dear Mr Cusack

Application No.	APP-0003047694
Application for	Packaged Liquor Licence
Trading hours	Monday to Sunday 10:00 am – 9:00 pm
Applicant	P&V Merchants Pty Ltd
Licence name	P & V Wine and Liquor
Premises	64 Enmore Road NEWTOWN NSW 2042
Issue	Whether to grant a packaged liquor licence
Legislation	Sections 3, 11A, 12, 29, 30, 31, 40, 45 and 48 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for a packaged liquor licence – P&V Merchants Pty Ltd**

The Independent Liquor and Gaming Authority has considered the Applicant's application for a packaged liquor licence and, pursuant to section 45 of the *Liquor Act 2007*, has decided to **grant** the licence subject to the following conditions:

1. 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 4:00 am and 10:00 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.
2. Restricted trading and NYE (std)
Retail Sales
Good Friday Not permitted
December 24th Normal trading Monday to Saturday
8:00 am to 10:00 pm Sunday
Christmas Day Not permitted
December 31st Normal trading
3. 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 reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4. The licensee or its representative must join and be an active participant in the local liquor accord.
5. The premises is to be operated at all times in accordance with the Plan of Management dated August 2017 as may be varied from time to time after consultation with the Local Area Commander of NSW Police. A copy the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

6. Boutique and craft liquor products

- 1) The licensee must ensure that only craft beer, craft cider, craft spirits (including spirit mixes) and wines (being limited to boutique wines, natural wines, organic wines and biodynamic wines) are sold or supplied on the premises.
- 2) Other complementary liquor products, provided that those other products do not exceed more than 10% of the total product lines or 10% of the total products stocked on the premises at any one time, are also permitted to be sold or supplied.
- 3) The licensee must ensure that a list of the product lines and products stocked on the licensed premises at any one time is to be kept at the premises and made available to Police or L&GNSW Compliance Officers upon request.
- 4) For every craft beer, craft cider, craft spirit or boutique wine product that is available for sale on the premises, the licensee must maintain and make available for inspection on the premises written documentation from the supplier confirming that the product meets the relevant definition specified in this condition.

Definitions

For the purpose of this condition:

- 1) Craft beer is defined as beer that is:
 - a) produced by a craft brewer in Australia that produces less than 40 million litres of beer per annum or by a craft brewer located overseas that produces less than 6 million barrels of beer per annum;
 - b) where not more than 25 percent of the craft brewery is owned or controlled (or equivalent economic interest) by a beverage alcohol industry member that is not itself a craft brewer;
 - c) the craft brewery has a majority of its total beverage alcohol volume in beers whose flavour derives from traditional or innovative brewing ingredients and their fermentation (flavoured malt beverages are not considered beers); and
 - d) is not generally considered to be mainstream beer.
- 2) Craft cider is defined as cider that is:
 - a) produced by a craft producer in Australia that produces less than 40 million litres of cider per annum or by a craft producer located overseas that produces less than 6 million barrels of cider per annum;
 - b) where less than 25 percent of the craft cider producer is owned or controlled (or equivalent economic interest) by a beverage alcohol industry member that is not itself a craft cider producer;
 - c) made from liquid consisting only of juice (no concentrates); and
 - d) is not generally considered to be mainstream cider.
- 3) Craft spirits are defined as spirits that are:
 - a) the product of a distillery that has maximum annual sales of less than 100,000 proof gallons or 52,000 cases, or in respect of blended spirits, the products of an independently owned and operated facility that uses any combination of traditional and/or innovative techniques such as fermenting, distilling, re-distilling, blending, infusing or warehousing to create products with a unique flavour profile;
 - b) distilled at a distillery where the spirit has either been run through a still by a craft distiller, or in the case of a blended spirit, the spirit has been distilled originally by a craft distiller; and
 - c) is not generally considered to be a mainstream spirit.
- 4) Boutique wine is defined as wine that is manufactured by or on behalf of a boutique wine company which crushes and bottles 250 tonne or less annually under its own label and is owned independently (i.e. not owned by a larger wine company).
- 5) Natural wine is defined as wine that is produced from vineyards that are farmed organically or biodynamically and then produced with no additions (additives) in wine making, including MegaPurple, tartaric acid, enzymes, malabugs, and bottled with lower levels of sulphur (preservative 220).

- 6) Bio-dynamic wines are defined as wines produced from vineyards and farms farmed biodynamically or to bio-dynamic standards, typically with little or no additions in wine making.
 - 7) Organic wines are defined as wines produced from vineyards and farms farmed organically or to organic standards, typically with little or no additions in wine making.
7. CCTV
- 1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises (“the premises”) in accordance with the following requirements:
 - a) the system must record continuously from opening time until one hour after the premises is required to close,
 - b) recordings must be in digital format and at a minimum of six (6) frames per second,
 - c) any recorded image must specify the time and date of the recorded image,
 - d) the system’s cameras must cover the following areas:
 - (i) all entry and exit points on the premises, and
 - (ii) all publicly accessible areas (other than toilets) within the premises.
 - 2) The licensee must also:
 - a) keep all recordings made by the CCTV system for at least 30 days,
 - b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
 - c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.
8. Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:
- 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
 - 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor & Gaming NSW website,
 - 3) make direct and personal contact with the NSW Police Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
 - 4) comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.
- In this condition, ‘staff member’ means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.
9. The licensee shall ensure that patrons only access the premises via the front door located on Enmore Road.
 10. The licensee must ensure that patrons do not access the first-floor area other than patrons who are attending a liquor appreciation or related course or event conducted in the board room, and providing there are no more than 20 patrons in the first-floor area at any one time.

Trading on a Sunday that falls on 24 December

Please note that in the case of any Sunday that falls on 24 December, the 6-hour closure period overrides the statutory provision that would otherwise allow the licence to trade from 8:00 am. In accordance with the 6-hour closure period for the current licence, the Premises must not trade earlier than 10:00 am.

Licence must not be exercised until the premises is complete and ready to trade

Please also be advised that the licence cannot be exercised unless and until the Authority has been provided with evidence that the premises is complete and ready to trade.

If you have any questions, please contact the case manager at beatrice.pitpaiaac@liquorandgaming.nsw.gov.au.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 6 June 2017 the Independent Liquor and Gaming Authority (“the Authority”) received from P&V Merchants Pty Ltd (“the Applicant”), through Liquor and Gaming NSW (“L&GNSW”), an application for a packaged liquor licence (“the Application”) for the premises at 64 Enmore Road, Newtown (“the Premises”).
2. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority has decided to grant the licence.
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 29, 30, 31, 40, 45 and 48 of the Act, and relevant provisions of the *Liquor Act Regulation 2008*.

Material considered by the Authority

4. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. In accordance with the Authority’s *Guideline 6*, the Authority has also had regard to relevant L&GNSW liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, obtained by L&GNSW staff from publicly available sources.
7. The list of material considered by the Authority is set out in the Schedule.

Legislative framework

8. The Authority has considered the Application in the context of the following legislative provisions.

Objects of the Act

9. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations and needs of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
10. In the pursuit of these objectives, section 3 requires the Authority to, in determining a liquor licence application, have due regard to the need to minimise alcohol-related harm, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Trading hours and 6-hour closure period

11. Section 12 of the Act sets out the standard trading period for various types of liquor licences. Additionally, section 11A imposes a condition on all licences prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

Minimum procedural requirements

12. Section 40 of the Act prescribes the minimum procedural requirements for a liquor licence application to be validly made to the Authority.

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

13. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
- a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
 - b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - c) the applicable development consent required for use of the premises for the proposed business is in force.

Community impact statement

14. Section 48 of the Act requires certain applications, including an application for a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
15. Section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter brought to its attention.

Provisions specific to a packaged liquor licence

16. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.
17. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.
18. Section 30 requires a separate liquor sales area to be set up on the licensed premises if its primary business is not to sell liquor for consumption away from the premises.
19. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

Key findings

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

Validity, procedural and trading hour requirements

21. The Authority is satisfied that:
- a) the Application has been validly made and meets the procedural requirements under section 40 of the Act,
 - b) the proposed trading hours for the Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods, and
 - c) the proposed use of the Premises as a standalone liquor store satisfies the requirements under section 29 of the Act, and renders sections 30 and 31 not applicable.

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

22. Pursuant to section 45 of the Act, the Authority is also satisfied that:
- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
 - b) practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol, having regard to the Applicant's Plan of Management and House Policy ("POM") and the conditions to be imposed on the licence, and

- c) the requisite development consent is in force, based on the Complying Development Certificate issued by a private certifier on 2 May 2017, and the notice of determination issued by Inner West Council on 14 August 2017.

Community impact statement

23. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Premises on the local and broader communities.
24. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the suburb of Newtown, and the relevant “broader community” comprises Inner West Local Government Area (“the LGA”).

Positive social impacts

25. For the following reasons, the Authority finds that there is already an ample supply of packaged liquor in the vicinity of the Premises, and the local and broader communities:
- a) The Premises is within short distances from a number of liquor outlets, some operating under a hotel licence, from which packaged liquor can be purchased for take away consumption.
 - b) Relevant L&GNSW data indicates that:
 - i) the density of packaged liquor licences, represented by the number of licences per 100,000 persons of the population, is lower than the NSW average in Newtown, but higher than the NSW average in the LGA, and
 - ii) the density of hotel licences in both Newtown and the LGA is considerably higher than the corresponding NSW figure.
26. The Authority has nevertheless had regard to the Applicant’s contention and evidence that the Premises will:
- a) operate in a substantially different manner to that of existing liquor stores in the area, in that it will focus on selling local and Australian boutique and craft wines, beers, spirits and ciders, many of which not available in mainstream liquor stores,
 - b) be managed by one of the Applicant’s shareholders, Mr Mike Bennie, who has extensive experience and is highly regarded in the liquor industry in NSW,
 - c) cater for the increasing consumer interest in and demand for natural and local liquor products, such as organic and bio-dynamic wines, and
 - d) offer a unique experience of tasting and learning about boutique and craft liquor products, which will help to attract tourists and visitors to Newtown, and strengthen the viability of local craft liquor producers, including many in Sydney’s Inner West area.
27. In considering the Applicant’s contention, the Authority has taken into account the letters of support from liquor industry participants and a local resident, media articles about the Inner West Brewery Association, and lists of the likely range and price of liquor products to be sold at the Premises.
28. The Authority also notes that the Applicant has consented to a licence condition which requires at least 90 percent of the liquor products sold at the Premises to be boutique and craft products.
29. On the basis of the available information, the Authority is satisfied that given the proposed business model and management’s industry expertise, the Premises will benefit the local and broader communities through:
- a) specialising in selling a variety of boutique and craft liquor products not available in existing liquor stores, and

- b) attracting more visitors and promoting local craft liquor products and brewers through its product range and liquor tasting and educational programs.
30. Accordingly, the Authority is satisfied that granting the licence will be in line with the expectations and needs of the community, and contribute to the balanced and responsible development of the liquor industry.

Negative social impacts

31. NSW Police opposes the grant of the licence on the following basis:
- a) The area is already saturated with hotels, packaged liquor outlets and restaurants licensed to serve alcohol.
 - b) Statistics for the Newtown Local Area Command demonstrate an unacceptable level of alcohol related crime and public amenity issues in the area, including public drinking and the 'pre-loading' of alcohol by minors.
 - c) The Premises is located within close proximity to many liquor outlets, a residential premises, a clinic specialised in treating alcohol and substance addiction, and a number of areas known for public drinking and alcohol related antisocial behaviour.
 - d) Police maintains the position that any liquor licence application, regardless of 'what type or in what capacity' would exacerbate existing alcohol related crime issues.
32. The Authority notes from the BOCSAR data that:
- a) for the year to June 2017, the Premises was located within high density hotspots for incidents of domestic, non-domestic and alcohol related assault, and malicious damage to property,
 - b) for the two years to June 2017:
 - i) Newtown reported considerably higher rates of alcohol related assault (both domestic and non-domestic) and malicious damage to property in comparison with the corresponding NSW figure, and a stable two year trend for these incidents, and
 - ii) the LGA, represented by the former Local Government Areas of Ashfield, Leichardt and Marrickville, generally reported lower rates of alcohol related assault (domestic and non-domestic) and malicious damage to property than the NSW state average, with the exception of the Marrickville Local Government Area which reported above average rates.
33. The Authority also notes from the HealthStats NSW data that the LGA (comprising the former Local Government Areas of Ashfield, Leichardt and Marrickville) reported a lower level of alcohol related deaths, but a considerably higher level of alcohol related hospitalisations, in comparison with the NSW state average.
34. The Authority finds that the relevant crime and health statistics generally support the concerns expressed by NSW Police, and call for a cautious approach to be taken in considering the social impact of an additional packaged liquor licence in the area.
35. The Authority accepts that, over time, there may be a risk that liquor sold or supplied at the Premises will contribute to the prevailing levels of alcohol related crime and health issues in the local and broader communities.
36. However, the Authority notes that the submission from NSW Police raises concerns that are serious but also general in nature, and has not specifically taken into account the individual circumstances and merits of the Application.
37. Having regard to all of the available information, the Authority considers that the risks and concerns identified in respect of the negative social impact of the Premises are mitigated by the cumulative effect of the following:
- a) The vast majority of the products sold at the Premises will be boutique wines and other craft and natural liquor products, and will generally have a higher price than the more

mainstream products at existing liquor outlets. The Authority accepts that these products are less likely to be purchased for immediate consumption in open public areas, or to 'preload' minors.

- b) The business model and management of the Premises will help to promote liquor products and brewers which are less well represented in the current market, and attract new visitors and consumers to Newtown. Strong support for the Premises was received from the local business community and at least one local resident.
- c) Apart from the submission from NSW Police, no objection was received from other stakeholders in respect of the Application. One submission from a local resident requested that the number of patrons on the first floor be limited and a pricing floor be imposed. In response, the Applicant has consented to a licence condition limiting patron numbers on the first floor area of the Premises, and provided the proposed pricing for the products to be sold.
- d) The Premises will cease trading at 9 pm on all days, which will help to further reduce any adverse impact its operation may have on the amenity of the community.
- e) The Applicant has consented to a number of licence conditions, including the majority of the conditions proposed by NSW Police either in their current form or an amended form, to address the potential risks and concerns in respect of the Premises' operation. These conditions reiterate and complement the practices and procedures set out in the POM to ensure the responsible service of alcohol.

38. On the basis of the above, the Authority does not consider that the negative social impacts of granting the licence are sufficient to lead to a conclusion that the grant of the licence will be detrimental to the community's wellbeing.

Overall social impact

39. The Authority has had regard to the ABS data indicating that as at 2011, Newtown and the LGA were among the most advantaged areas in NSW on the Index of Relative Socio-economic Advantage and Disadvantage.

40. Having considered the positive and negative impacts that are likely to flow from granting the licence, the Authority is satisfied that the overall social impact of granting the licence would not be detrimental to the well-being of the local and broader communities.

41. The Authority is also satisfied that a decision to grant the licence would be consistent with the objects of the Act to regulate liquor supply and facilitate responsible industry development in line with community expectations and needs.

42. Accordingly, the Authority has decided to grant the packaged liquor licence.



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.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. ABS SEIFA data based on the 2011 Census ranking Newtown and the LGA (represented by three former Local Government Areas of Ashfield, Leichardt and Marrickville) on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol attributable deaths and hospitalisations for the LGA (represented by three former Local Government Areas of Ashfield, Leichardt and Marrickville) for the period between 2012 and 2013.
3. Notice of intention to apply for liquor licence, dated 1 April 2017, in respect of the Application.
4. Email from a local resident, dated 6 April 2017, in respect of the Application.
5. Email from Aboriginal Affairs, dated 6 April 2017, in respect of the Application.
6. Submission from NSW Family & Community Services, dated 10 April 2017, in respect of the Application.
7. Submission from Transport NSW Roads and Maritime Services, 10 April 2017, in respect of the Application.
8. Complying Development Certificate No. C2017040, issued by an accredited private certifier on 2 May 2017, in respect of the Premises.
9. ASIC data extracted on 10 May 2017 in relation to the company details of the Applicant and the owner of the Premises.
10. BOCSAR crime maps for the year to June 2017, showing the Premises' location relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
11. NSW crime statistics for the two years to June 2017, published by BOCSAR, on incidents of alcohol-related assault (domestic and non-domestic) and malicious damage to property in Newtown and the LGA (represented by three former Local Government Areas of Ashfield, Leichardt and Marrickville).
12. Completed Category B CIS form, signed and dated 1 June 2017, and relevant additional information prepared by the Applicant's representative.
13. Completed online application lodged on 6 June 2017, accompanied by a local consent authority notice and a public consultation site notice in respect of the Application.
14. Submission from a local resident, dated 8 June 2017, in respect of the Application.
15. Media articles, dated 16 June 2017, on the launch of the Inner-West Brewery Association.
16. Submission from NSW Police, dated 20 June 2017 and submitted to L&GNSW on 12 July 2017, in respect of the Application.
17. Email from Inner West Council on 6 July 2017, with a signed local consent authority notice confirming that development consent is required and in place for the Application.
18. Management Plan and House Policy for the Premises, dated August 2017.
19. Notice of determination of a development application, issued by Inner West Council on 14 August 2017, approving the modification of Determination No. 200900433 in respect of the Premises.

20. L&GNSW liquor licensing records as at 28 August 2017, setting out the density of packaged, hotel and club liquor licences in Newtown, the LGA and NSW based on the population at the time of the 2016 Census.
21. Submission prepared by the Applicant's representative, dated 18 September 2017, in response to the submissions received in respect of the Application.
22. Correspondence between L&GNSW and the Applicant's representative, by emails between 12 July and 19 September 2017, in relation to the submissions received and additional information required for the Application.
23. Two copies of Certification of Advertising Application, signed respectively by the Applicant on 18 September 2017, and by the Applicant's representative on 19 September 2017.
24. Google map and earth views showing the location of the Premises, extracted from the Google website on 6 October 2017.
25. Notice of appointment of an approved manager for the Premises, signed and dated 17 October 2017 and received by L&GNSW on 31 October 2017.
26. Seven letters from industry participants, including industry associations, local producers, restaurant and bar operators, and people who have known and worked with the appointed manager for the Premises, in support of the Application.
27. Undated floor plan indicating the Premises' proposed licensed area.
28. Undated list of proposed liquor products to be offered at the Premises and their pricing.