



Ms Angela Frost
angelamfrost@bigpond.com

15 June 2018

Dear Ms Frost

Application No.	1-6485152031
Applicant	Bayswater Operating Pty Ltd
Application for	Packaged Liquor Licence
Licence name	Bayswater Fine Wines
Trading hours	Monday to Saturday 9:00 am – 10:00 pm Sunday 10:00 am – 10:00 pm
Premises	Ground Floor, 69-77 Bayswater Road Rushcutters Bay NSW 2011
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 – Bayswater Fine Wines**

The Independent Liquor and Gaming Authority considered, at its meeting on 14 February 2018, the application above for a packaged liquor licence and, pursuant to section 45 of the *Liquor Act 2007*, 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 3:00 am and 9:00 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 premises is to be operated at all times in accordance with the Plan of Management dated 2 November 2017 as may be varied from time to time after consultation with 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.
4. Closed-circuit television system
 - 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.

A statement of reasons for this decision is attached at the end of this letter.

Appointment of an approved manager

Please note that the licence cannot be exercised unless and until the Authority has been notified of the appointment of an approved manager to the licence, or the licence has been transferred to an individual licensee.

Trading between 10 pm and 11 pm, Monday to Saturday

Please note that pursuant to section 12 of the *Liquor Act 2007*, the standard trading period during which liquor can be sold for consumption away from the licensed premises must end at 10 pm on all trading days. Nevertheless, the exemption provision under section 70AB of the *Liquor Regulation 2008* permits takeaway liquor sales between 10 pm and 11 pm on days other than Sundays and restricted trading days.

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 9:00 am.

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

Yours faithfully



David Armati
Deputy Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 2 November 2017, Bayswater Operating Pty Ltd (“Applicant”) lodged an application (“Application”) with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”). The Application sought the granting of a packaged liquor licence (“Licence”) for the premises at Ground Floor, 69-77 Bayswater Road, Rushcutters Bay (“Premises”).
2. The Authority considered the Application at its meeting on 14 February 2018 and decided to grant the Licence under section 45 of the *Liquor Act 2007* (“Act”). A preliminary advice letter advising of the decision and the relevant licence document were issued to the Applicant on 26 February 2018.
3. In reaching this decision, the Authority has had regard to the relevant material before it, the legislative requirements under sections 3, 11A, 12, 29-31, 40, 45 and 48 of the Act, and the relevant provisions of the Liquor 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 its Guideline 6, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
7. A list of the 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, needs and aspirations 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 exercising its powers under the Act, have due regard to the need to minimise harm associated with misuse and abuse of liquor, 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 before it.

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 on the material before it 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,
 - c) if the Licence were to be granted, liquor would be sold and supplied in accordance with the authorisation conferred by a packaged liquor licence, as required by section 29 of the Act, and
 - d) sections 30 and 31 of the Act does not apply to the Application as the Premises is not intended to operate as is contemplated by the sections.

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 would be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol, having regard to the Plan of Management for the Premises and the conditions to be imposed on the licence, and
- c) the requisite development consent is in force, based on the notice of determination of development application D/2017/666 in respect of the Premises, issued by City of Sydney Council on 30 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 Rushcutters Bay, and the relevant “broader community” comprises Sydney Local Government Area (“the LGA”).

Positive social impacts

25. The Authority notes that the Premises is located on the ground floor of a mixed use commercial and residential building, and comprises an area of approximately 86 square metres.
26. The Authority accepts, on the available information, the Applicant’s contention that the Premises will benefit local residents and visitors through:
- a) providing additional convenience to customers wishing to purchase packaged liquor,
 - b) offering a diverse range of local and international wines and other liquor products, and
 - c) facilitating winery tours and wine educational courses and events through its Wine Club membership program and suitably qualified staff.
27. The Authority considers the proposed social benefits above to be somewhat limited by the absence of any evidence to indicate community support for the Application, but also notes that there have been no objections from the community in respect of the Application.
28. Having regard to the above, the Authority is satisfied that granting the Licence would be in line with the expectations, needs and aspirations of the community, and contribute to the balanced and responsible development of the liquor industry.

Negative social impact

29. The Authority notes that the density of packaged liquor licences in Rushcutters Bay and the LGA is considerably higher than the NSW state average.
30. The Authority also notes from the BOCSAR data for the year to September 2017 that:
- a) the Premises was located within high density hotspots for incidents of alcohol-related assault, domestic assault, non-domestic assault and malicious damage to property,
 - b) Rushcutters Bay recorded an above state average rate of alcohol-related domestic assault, and lower than average rates of alcohol-related non-domestic assault and malicious damage to property, and
 - c) the rates of alcohol-related assault (domestic and non-domestic) and malicious damage to property in the LGA were considerably higher than the state average.
31. The Authority further notes, from the most recent HealthStats NSW data available at the time of its consideration, that the LGA recorded a similar level of alcohol-attributable deaths and higher level of alcohol-attributable hospitalisations compared to the corresponding NSW figures.
32. Having regard to the above, the Authority accepts that the prevailing level of alcohol-related crime and health issues is concerning in some respects, particularly at the LGA level. The

Authority also accepts that there may be a risk that if the Licence were to be granted, liquor sold or supplied at the Premises will, over time, contribute to an increase in alcohol-related issues and disturbances in the local and broader communities.

33. The Authority is nevertheless satisfied that the risk is adequately mitigated by the following:
- a) There were no objections from any of the key stakeholders consulted, including NSW Police and NSW Health, or any members of the public.
 - b) The Applicant has consented to all proposed licence conditions, such as the requirement to operate a CCTV system, and committed to adhering to the measures set out in the Plan of Management to ensure the responsible serving of alcohol.
 - c) The relevant ABS data indicates that as at 2011, Rushcutters Bay and the LGA were relatively advantaged in NSW, ranking among the top 20 percent and 10 percent respectively on the Index of Relative Socio-economic Advantage and Disadvantage. The Authority accepts that this data, while seven years old, raises no immediate concern as to the potential social impact of granting the Licence in the context of any socio-economic disadvantages in the local or broader community.

Overall social impact

34. Having considered the positive and negative social 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.
35. The Authority is also satisfied that the Application has met all of the other statutory criteria for the granting of the Licence.
36. Accordingly, the Authority has decided to grant the Licence under section 45 of the Act.



David Armati
Deputy 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 considered by the Authority

1. ABS SEIFA data based on the 2011 Census for Rushcutters Bay and the LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol attributable deaths in the LGA for the period 2012-13 and alcohol attributable hospitalisations in the LGA for the period 2013-15.
3. NSW Recorded Crime Statistics 2016 outlining the proportion of offences in the LGA by day of week and time of day.
4. Premises plan dated April 2017 for the Premises.
5. Notice of determination issued by Sydney City Council on 30 August 2017 approving development application D/2017/666 in relation to the Premises.
6. Submission from NSW Transport Roads & Maritime Services, dated 15 September 2017, in relation to the Application.
7. BOCSAR crime maps for the year to September 2017, indicating the location of the Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
8. NSW crime statistics for the two years to September 2017, published by BOCSAR, showing the counts, rates and trends of alcohol related assault (domestic and non-domestic) and malicious damage to property in Rushcutters Bay, the LGA and NSW.
9. Completed application forms for the Licence and variation of the 6-hour closure period dated 2 November 2017.
10. Copy of the public consultation site notice, police notice and local consent authority notice signed for the Applicant on 2 November 2017.
11. Completed Category B Community Impact Statement dated 2 November 2017.
12. Acknowledgement from NSW Police, dated 2 November 2017, of receipt of the notice of the Application.
13. Plan of Management for the Premises dated 2 November 2017.
14. Certification of Advertising signed for the Applicant and dated 4 December 2017.
15. Correspondence between L&GNSW staff and the Applicant's legal representative, between 1 and 7 December 2017, in relation to the assessment of the Application.
16. Email from L&GNSW staff to NSW Police on 15 January 2018 inviting comments in relation to the Application.
17. Google map images extracted from the Google website on 15 January 2018, showing the location and photos of the Premises in map view, earth view and street view.
18. L&GNSW liquor licensing records as at 15 January 2018, outlining the density of all types of liquor licences in Rushcutters Bay, the LGA and NSW, and listing all packaged liquor licences in Rushcutters Bay and the LGA.
19. ASIC business records in relation to the Applicant.