



Mr Tony Schwartz
Back Schwartz Vaughan
Level 1, 156 Edgecliff Road
WOOLLAHRA NSW 2025
tschwartz@bsv.com.au

28 July 2017

Dear Mr Schwartz,

APPLICATION NO: 1-5427729318
APPLICATION FOR: Removal of a Packaged Liquor Licence
TRADING HOURS: Consumption off premises:
Monday to Saturday 8:30AM -10:00PM
Sunday 10:00AM – 10:00PM

APPLICANT: Mark John Wilson
LICENSED PREMISES NAME: McWilliam's Wines Group Ltd

CURRENT PREMISES: 68 Anzac Street
CHULLORA NSW 2190

PROPOSED PREMISES: Level 1, 55-65 Murray Street
PYRMONT NSW 2009

ISSUE: Whether to approve an application to remove
a packaged liquor licence

LEGISLATION Sections 3, 29, 30, 40, 45, 48 and 59 *Liquor
Act 2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION - APPLICATION FOR
REMOVAL OF A PACKAGED LIQUOR LICENCE – MCWILLIAM'S WINES GROUP LTD**

The Independent Liquor and Gaming Authority has considered application number 1-5427729318 seeking the removal of a packaged liquor licence ("Application") and pursuant to section 59 of the *Liquor Act 2007* ("Act") has decided to **approve** the removal of the licence, subject to the imposition of 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 2:30AM and 8:30AM 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 & NYE**

Retail Sales

Good Friday Normal Trading

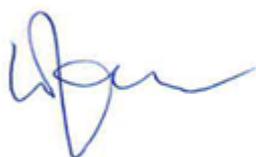
Christmas Day Normal Trading

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 be reasonably expected from the information contained in the community impact statement, application and other information submitted in the process of removing this licence to premises at Level 1, 55-65 Murray Street, Pyrmont.
4. The Independent Liquor & Gaming Authority approved the removal of the licence at Ground and Level 1, 55-65 Murray Street, PYRMONT NSW 2009 on 17 May 2017.
5. Notwithstanding this approval, the licence is not to be exercised at Ground and Level 1, 55-65 Murray Street, PYRMONT NSW 2009 unless and until the Independent Liquor and Gaming Authority has been provided with evidence that the premises is complete and ready to trade.
6. The liquor licence remains at 68 Anzac St, CHULLORA, NSW 2190 subject to the same conditions and trading hours that were immediately in force before this approval was granted until such time as the Independent Liquor and Gaming Authority is notified that the licence has been moved.
7. The licensee or its representative must join and be an active participant in the local liquor accord.
8. The premises are to be operated at all times in accordance with the Plan of Management dated 28 November 2016 as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
9. The licence is 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.
10. This licence authorises only the sale of products made, bottled or sold under agency by McWilliam's Wines Pty Limited.
11. The Applicant will not make an Application to the Independent Liquor and Gaming Authority to include any part of the ground level of 55-65 Murray Street Pyrmont in the licensed area of this licence unless that Application is accompanied by a category A community impact statement.

The attached statement of reasons has been prepared in the context of a high-volume jurisdiction, which requires the publication of reasons as soon as practicable. If you have any advice or enquiries about this letter, please contact the case manager via email to santina.causa@justice.nsw.gov.au

Yours faithfully



Philip Crawford
Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

STATEMENT OF REASONS

DECISION

1. The Independent Liquor & Gaming Authority (“the Authority”) is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to approve the application lodged on 23 December 2016 (“the Application”) for the removal of a packaged liquor licence, as all of those parties required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered.
2. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from approving the Application, the Authority is satisfied, for the purposes of section 48(5) of the *Liquor Act 2007* (“the Act”), that the overall social impact of removing this licence would not be detrimental to the well-being of the local and broader communities.
3. The Application is approved under section 59 of the Act.
4. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) of the Act.

MATERIAL CONSIDERED BY THE AUTHORITY

5. In making this decision, the Authority has considered the Application, Community Impact Statement (“CIS”) and all submissions received in relation to the Application. As foreshadowed in Authority *Guideline 6*, the Authority has also had regard to relevant liquor licensing records maintained by Liquor & Gaming NSW (“LGNSW”), Bureau of Crime Statistics and Research (“BOCSAR”) crime data and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. The material considered pursuant to the making of this decision is listed and, in some cases, briefly summarised in the Schedule.
6. The Authority notes that on 17 January 2017 a related application was lodged seeking the grant of a new small bar licence for McWilliam’s Wines Group Ltd at premises located at Ground Floor, 55-65 Murray Street Pyrmont (“Related Application”).

LEGISLATIVE FRAMEWORK

7. The legal requirements regarding the removal of a licence to another premises are provided by section 59 of the Act and relevant provisions in the *Liquor Regulation 2008* (“Regulation”).
8. Section 48 of the Act and clause 10 of the Regulation requires a Category “B” CIS to be lodged with an application to remove a packaged liquor licence to other premises.

9. Section 48(5) of the Act requires that the Authority must not grant a licence, authorisation or approval to which a relevant application relates unless satisfied, having regard to the CIS and 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”.
10. For the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Pyrmont, while the broader community comprises the relevant local government area, which at the time of this decision is City of Sydney (“Sydney LGA”).
11. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
 - (1) *The objects of this Act are as follows:*
 - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
 - (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
 - (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

KEY FINDINGS

12. The Authority is satisfied, on the basis of the Application and CIS material before the Authority that, for the purposes of section 59(2) of the Act, the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
13. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to approve the removal of the packaged liquor licence, as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered. The interested parties include NSW Police (“Police”), the Applicant, City of Sydney Council (“Council”), Roads and Maritime Services (“RMS”), Aboriginal Affairs and neighbouring occupiers and all other parties required to be consulted under the legislation.
14. Section 59(3) of the Act provides that when determining an application for approval to remove a licence to other premises, the Authority is to deal with the application

as if it were an application for the granting of a licence in respect of those other premises. The Authority has the same powers in relation to the Application as the Authority has in relation to an application for a new licence.

15. To that end, the Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a licensed venue of the kind proposed in the Application. The Authority notes that no probity issues were raised with regard to the Applicant following consultation with law enforcement agencies, including Police and LGNSW.
16. The Authority is further satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service of alcohol practices will be in place with the commencement of licensed trading. This finding is made on the basis of the *Plan of Management* dated 28 November 2016.
17. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act that the proposed use of the Proposed Premises that is the subject of this Application falls within the scope of the development consent that is currently in force with regard to the Proposed Premises. This finding is made on the basis of Complying Development Certificate (“CDC”) 16000343/1 approved on 11 October 2016 by Modern Building Certifiers and modification D/2012/460/F granted by Council on 27 March 2017.
12. Following further submissions from Council dated 23 May 2017 as to the scope of the existing development consent, the Authority has imposed a condition, with the Applicant’s consent, limiting the mode of business that may be conducted on the Proposed Premises to the sale of liquor by telephone, facsimile or mail order, or through an internet site.
18. Council advised licensing staff on 23 May 2017 that the Applicant’s lawyers had stated in their Notice of Intention to make the Application dated 31 October 2016 and in a letter to Council dated 6 December 2016 that “There will be no traditional retail sales and display area at the New Location”. Council considers that the imposition of a licence condition consistent with that representation would be consistent with the existing development consent for the Proposed Premises and seeks consultation in the event that the licensee seeks to remove this restriction.

Social Impact – Positive Benefits

19. The Authority is satisfied, on the basis of OneGov licence details as at 3 May 2017, that the current liquor licence for the business was granted in 1977. The Authority is satisfied, on the basis of the CIS and additional material provided by the Applicant, that removing this licence a distance of approximately 14.5 kilometres (although within a different State suburb) will provide the benefit of continued convenience and choice to members of the community who seek to continue to purchase the McWilliams’s brand of wine from this business by way of online sales or telephone orders.

20. In light of the limited public opposition to the proposed removal of the licence and the limited nature of the business that may operate on the Proposed Premises, the Authority is satisfied that removing the licence will be consistent with the “expectations, needs and aspirations of the community” in respect of the local and broader community, being an object of section 3(1)(a) of the Act.
21. The Authority is satisfied, on the basis of the CIS and additional material supplied by the Applicant, that the removal of the packaged liquor facility will permit the long standing business to continue to provide McWilliam’s wines to the public and in this sense the Authority is satisfied that granting the Application will reasonably develop, in the public interest, the liquor industry in respect of the local community and the broader community, in furtherance of the statutory object in section 3(1)(b) of the Act.
22. The Authority notes that in a submission dated 4 April 2017 the Applicant consents to a condition remaining upon the licence limiting sales to products made, bottled or sold under agency by McWilliams Wines Pty Limited. This reinforces the speciality nature of the licence.
23. The Applicant has advanced a number of other purported community benefits with respect to improving and contributing to the vibrancy of Pymont, enhancing the economic viability of the neighbourhood, improving community amenity, enhancing neighbourhood safety, yielding social and economic benefit and enhancing social entertainment prospects in the communities.
24. While the Authority accepts that the business will generate economic activity and employment and may likely serve persons making telephone or internet orders within the relevant communities and beyond, the Authority has been unable to accord great weight to these further submissions on the little supporting evidence that is available. These are complex purported economic benefits that are not supported by independent evidence or analysis. In the absence of a bricks and mortar presence it is difficult to appreciate the extent of those benefits and how they will apply to the relevant communities.
25. While the contended benefits of increased employment and contribution to local charities are generally credible, in the absence of specification as to the catchment area for the Applicant’s employees (who may be employed from anywhere in Sydney) and the nature, timing and extent of any charitable support, little weight may be given to those benefits.

Social Impact – Negative Impacts

26. Having reviewed all of the material before it, the Authority considers that over time there is a risk that liquor sold from this licensed business at the new location will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse packaged liquor.

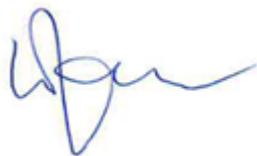
27. The Authority notes that the licensed trading hours sought by the Application are reasonably extensive across the course of the week, with trading until 10:00PM on Mondays through Sundays.
28. The Authority is satisfied, on the basis of the Application CIS and Applicant's plan or diagram of the licensed area, that the scale of the Proposed Premises is quite extensive at approximately 322 square metres.
29. There is significant cause for concern arising from prevailing licence density in the local and broader communities. Licensed premises information sourced from LGNSW on 2 May 2017 and ABS census 2011 Census QuickStats data for Sydney LGA indicates that the State suburb of Pyrmont has **11** packaged liquor licences (a rate of **94.68** per 100,000 persons) while the Sydney LGA has **173** (a rate of **102.06** per 100,000 persons). Both rates are well above the rate for New South Wales as a whole, which has a total of **2477** licenses at a rate of **35.8** per 100,000 persons. This high rate of packaged liquor licences reflects the great many city residents, workers and visitors that are serviced by the liquor industry in the Sydney LGA.
30. Further concern arises from the BOCSAR crime data for the period from January 2015 to December 2016. During the final twelve months of that period, the local community of Pyrmont recorded rates of *alcohol related domestic assault* at a rate of **207.1** per 100,000 persons of population and *alcohol related assault non-domestic assault* a rate of **885.7**.
31. The broader community is also problematic with this BOCSAR data indicating that Sydney LGA recorded rates of *alcohol related domestic assault* at **201.7** per 100,000 persons and rates of *alcohol related non-domestic assault* at **789.1** per 100,000 persons.
32. These rates are well above the New South Wales wide rates for *alcohol related domestic assault* at **116.9** per 100,000 persons and *alcohol related non-domestic assault* at **136.5** per 100,000 persons.
33. Further cause for concern arises from BOCSAR crime maps for the Sydney LGA derived from data from the period January 2016 to December 2016, indicating that the Proposed Premises is located within high-density hotspots for incidents of *alcohol related assault, domestic assault and non-domestic assault*.
34. Although the crime and licence density is clearly problematic the Authority notes that this is a function of the great many licensed premises servicing many residents, visitors and City workers alike. Notably, this licence will be restricted to taking orders over the telephone or by facsimile or mail order, or through an internet site and restricted to sales of the Applicant's branded products only. The licence presently serves that function from an office in Chullora, and will now do so from an office in Pyrmont. Being a brand specific telephone and internet based business, deliveries of liquor may be expected to service a broad area regardless of the location of the office.

35. The absence of any capacity for walk in sales and the specialty nature of the licence are factors that considerably reduce the scope for this relocated business to contribute to alcohol related misconduct involving the abuse of packaged liquor in public spaces, secondary supply of minors, or alcohol affected patrons adversely affecting local amenity.
36. ABS Socio-Economic Indexes For Areas (“SEIFA”) data establish that the local and broader communities are relatively advantaged, with Pyrmont ranking in the 9th decile compared to other suburbs in New South Wales and Sydney LGA ranking in the 9th decile compared to other New South Wales local government areas on the Index of Relative Social Advantage and Disadvantage. That is, socio economic disadvantage is not a factor of concern when assessing the vulnerability of these communities to adverse alcohol related social impacts.
37. The Authority also notes the NSW Department of Health data on *alcohol attributable deaths and hospitalisations* for the Sydney LGA which indicates a slightly higher smoothed standardised mortality ratio of **104.80** and a higher smoothed standardised separation ratio of **130.10** compared to a NSW average of **100**. These are further adverse factors that have been taken into account when assessing the overall social impact of granting this licence removal.
38. The Authority notes the concerns raised by local residents of Murray Street with regard to the risk of noise and anti-social behaviour but is satisfied that insufficient evidence has been provided to give these concerns great weight, particularly in light of the condition that will confine this licence to phone and internet sales.
39. The Authority further notes that a submission was received from Beatty Legal Pty Limited on behalf of Strata Plan 49249 located at 50 Murray Street Pyrmont dated 18 November 2016. The submitter sought further information, which was supplied by the Applicant on 25 November 2016 and no actual objection was made.
40. The Authority notes that no issues of concern were raised by Police, LGNSW or Council with regard to the Applicant, the location of the Proposed Premises or the previous trading history of the business. The Authority has also had regard to the conditions to which the licence will be subject, the reasonably detailed harm minimisation measures set out in the Applicant’s *Plan of Management dated 28 November 2016* and the business model of the packaged liquor licence that facilitates direct to consumer sales via their website or telephone.

Overall social impact

41. Having considered together the positive benefits and negative impacts that the Authority is satisfied will flow from approving the Application, the Authority is satisfied for the purposes of section 48(5) of the Act that the overall social impact of removing this licence would not be detrimental to the well-being of the local and broader communities.
42. Removal of the licence is approved pursuant to section 59 of the Act.

Decision Date: 30 May 2017



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 in the liquor and gaming website <https://www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>

SCHEDULE

Material before the Authority

1. ABS SEIFA data sourced from the 2011 Census for the suburb of Pymont and Sydney LGA.
2. BOCSAR Crime Maps based upon data from January 2016 to December 2016 detailing hotspots for the concentration of offences near the location of the Proposed Premises.
3. NSW BOCSAR Crime Statistics for January 2015 to December 2016 for the suburb of Pymont, Sydney LGA and New South Wales as a whole.
4. CDC 16000343/1 issued by Modern Building Certifiers on 11 October 2016.
5. Back Schwartz Vaughan (“BSV”) CIS Survey Form submitted by local resident, Mr P Button of Bunn Street Pymont, dated 5 November 2016 in support of the Application citing benefits by way of improved local employment and increased trade for local traders.
6. Email from Aboriginal Affairs dated 7 November 2016 advising no objection to the Application provided that the New South Wales Aboriginal Land Council and the Local Aboriginal Land Council were also notified.
7. Letter from Council dated 11 November 2016 discussing development consent and the proposed trading hours.
8. Letter from RMS dated 14 November 2016 including road crash statistics and recommendations for the operation of the Proposed Premises.
9. Letter from Mr Andrew Beatty of Beatty Legal Pty Limited dated 18 November 2016 on behalf of the owners of Strata Plan 49249 (which comprises the major residential development known as One Darling Harbour – home to approximately 1,000 residents) located at 50 Murray Street Pymont. In this letter, Mr Beatty notes that the Application is “extensive” and requests further information for the owners to better understand the nature of the activities proposed.
10. Email from the Applicant’s legal representative, Mr Tony Schwartz of Back Schwartz Vaughan to Mr Andrew Beatty of Beatty Legal Pty Limited dated 25 November 2016. Mr Schwartz responds to the letter dated 18 November 2016.
11. BSV CIS Survey Form submitted by local resident, Mr J Price of Murray Street Sydney, dated 30 November 2016 raising concerns about noise and anti-social behaviour and requesting that a number of conditions be imposed on the licence.
12. BSV CIS Survey Form submitted by Strata Plan 49259 of 50 Murray Street Sydney, dated 1 December 2016 raising the same issues and requesting the same conditions proposed by Mr Price in his submission dated 30 November 2016.
13. Email from Council dated 20 December 2016 attaching a letter of the same date advising on development consent and the proposed trading hours.

14. Certificate of Advertising signed by the Applicant and dated 22 December 2016 and a copy signed by the Applicant's legal representative Mr Schwartz dated 20 December 2016.
15. Application form lodged on 23 December 2016 accompanied by notice to local consent authority, site notice and notice to Police signed by the Applicant and dated 6 December 2016; Australian Securities and Investments Commission ("ASIC") Current Organisation Extract for the business owner MCWILLIAM'S WINES GROUP LTD as at 10 November 2016 and subsequent (*creditor*)watch Credit Report dated 10 November 2016; and four photographs depicting the inside of the Proposed Premises.
16. CIS lodged with the Application on 23 December 2016 accompanied by a list of stakeholders and special interest groups notified of the Application; a community impact assessment of the Application prepared by the Applicant's legal representative Back Schwartz Vaughan dated 7 December 2016; the Plan of Management dated 28 November 2016; a map of the Alcohol Free Zones in Sydney LGA and the location of the Proposed Premises; Health Statistics issued by the New South Wales Department of Health discussing alcohol attributable deaths by LGA, NSW 2012-2013 and alcohol attributable hospitalisations by LGA, NSW 2012-13 to 2013-14.
17. LGNSW submission dated 11 January 2017 attaching a copy of the Environment and Venue Assessment Tool ("EVAT") Assessment Report and advising that LGNSW does not intend to carry out any further assessment.
18. Police submission from Constable Matthew Anderton and Sergeant Paul Ryan from Sydney City Local Area Command ("LAC") dated 22 February 2017 advising no objection to the granting of the Application.
19. Modification to development consent D/2012/460/F granted by Council on 27 March 2017.
20. Email from the Applicant's legal representative, Mr Tony Schwartz of Back Schwartz Vaughan dated 4 April 2017 in response to an email from licensing staff dated 28 March 2017. The Applicant responds to questions from licensing staff, a number of proposed licence conditions and the submissions received.
21. Licensed premises information calculated by licensing staff from LGNSW licensed premises information dated 2 May 2017 and ABS census 2011 Census QuickStats data for Sydney LGA, the suburb of Pyrmont and New South Wales.
22. List of LGNSW packaged liquor licensed premises for the Sydney LGA and the State suburb of Pyrmont sourced by licensing staff on 2 May 2017.
23. Google geographical maps (aerial and satellite view) indicating the location of the Proposed Premises extracted by licensing staff on 2 May 2017.
24. *Onegov* licence details for McWilliams's Wines Group Ltd LIQP700383194 located at the Current Premises as at 3 May 2017.

25. Letter from Council dated 4 May 2017 advising no matter of concern with the Application as the proposed use for a packaged liquor licence appears to be consistent with the current approved development consent.
26. Email from Council to licensing staff dated 10 May 2017 discussing the use of the Proposed Premises for the purpose of development consent.
27. Email from Council dated 23 May 2017 in response to an email from licensing staff of the same date. In this email Council clarify, in accordance with the development consent, whether a condition limiting the sale or supply of liquor to orders over the telephone, facsimile, mail order or internet should be imposed.
28. Email to licensing staff from the Applicant's legal representative, Mr Schwartz dated 29 May 2017 responding to an email from licensing staff dated 26 May 2017. In this email, the Applicant discusses whether the use of the premises for the purpose of a packaged liquor licensed premises is in accordance with the development consent and whether a condition limiting the sale or supply of liquor to orders over the telephone, facsimile, mail order or internet should be imposed.
29. Plan/diagram depicting the licensed area of the Proposed Premises.
30. NSW Department of Health data on *alcohol attributable deaths and hospitalisations* for the Sydney LGA compared to New South Wales.