



Mr Tony Schwartz
Back Schwartz Vaughan
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28 July 2017

Dear Mr Schwartz

APPLICATION NO: 1-5512604660
APPLICATION FOR: New Small Bar Liquor Licence
TRADING HOURS: Consumption on premises
Monday to Sunday 12:00PM to 12:00AM
APPLICANT: McWilliam's Wines Group Ltd
LICENSED PREMISES NAME: McWilliam's Wines Group Ltd
PREMISES LOCATION: Ground Floor, 55-65 Murray Street
PYRMONT NSW 2009
ISSUE: Whether to grant or refuse an application for
a new small bar liquor licence
LEGISLATION Sections 3, 11A, 20A, 20B, 20C, 40, 45 and
48 *Liquor Act 2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR
NEW SMALL BAR LIQUOR LICENCE – MCWILLIAM'S WINES GROUP LTD, PYRMONT**

The Independent Liquor and Gaming Authority considered application number 1-5512604660 for a new small bar liquor licence ("Application") at its meeting on 17 May 2017 and, pursuant to section 45 of the *Liquor Act 2007*, has decided to **grant** the Application subject to the following licence conditions:

1. Restricted trading & NYE

Consumption on premises

Good Friday: Not permitted
Christmas Day: Not permitted
December 31st: Normal trading

Note: Trading is allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00AM.

2. 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 4:00AM and 10:00AM 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.
3. A CCTV surveillance system will be installed at the premises. Physical access to and copies of recordings from the CCTV system are to be made available upon request from NSW Police, Council or Liquor Gaming NSW officers. There is to be a member of staff available when the premises is operating that can gain access to and operate the CCTV system to allow for prompt playback of footage to assist with identification and investigations. CCTV recordings should be retained for a period of 30 days before being reused or destroyed.
4. No drinks commonly referred to as “shots”, “shooters”, “slammers”, and/or “bombs” are to be sold or supplied at the premises after 10PM.

5. Neighbourhood Amenity

- (i) The management of the premises:
 - a. Shall ensure patrons do not crowd or loiter in the vicinity of the premises in such a manner that pedestrian movement is obstructed or hindered.
 - b. Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by council, the management is to employ private security staff to ensure that this condition is complied with.
 - c. Shall record in a register full details of any disturbance complaint/s made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complaint details if provided.
 - d. Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by management/staff to resolve such complaint/s shall be recorded in the register.
- (ii) An adequate queuing system for patrons must be implemented at the main entrance of the licensed premises so as to ensure that if patrons are queuing to gain entry they do not obstruct or impede pedestrian traffic flow.

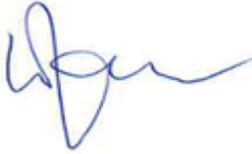
6. Crime Scene Preservation

Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing injury to a person on the premises, the person must:

- (i) Take all practical steps to preserve and keep intact the area where the act of violence occurred
 - (ii) Retain all materials and implements associated with the act of violence in accord with the Crime Scene Preservation Guidelines issued by NSW Police
 - (iii) Make direct and personal contact with the Local Area Commander of NSW Police or his/her delegate and advise the Commander or delegate of the incident and
 - (iv) Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.
7. A full copy of all current development consents (including approved plans) for the operation of the premises, any registers required and any required Plan of Management must be kept on the premises and made available for inspection immediately upon request by Police officers, Council officers and/or Liquor and Gaming NSW officers.

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

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 & 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 grant the application lodged on 17 January 2017 (“the Application”) for a new small bar 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 granting 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 granting this licence would not be detrimental to the well-being of the local and broader communities.
3. The Application is granted pursuant to section 45 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 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 23 December 2016 a related application was lodged seeking the removal of a packaged liquor licence for McWilliam’s Wines Group Ltd (LIQP700383194) from the current premises 68 Anzac Street, Chullora to premises at Level 1, 55-65 Murray Street Pyrmont (“Related Application”).

LEGISLATIVE FRAMEWORK

7. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the Act and the *Liquor Regulation 2008* (“Regulation”). The power to grant an application for a new liquor licence is provided by section 45 of the Act.
8. Legal requirements regarding the grant of a small bar licence are provided by sections 20A, 20B and 20C of the Act. An application for a new small bar licence is a “relevant application” within the meaning of section 48(2) of the Act for which a community impact assessment (“CIS”) is required.

9. However, pursuant to section 48(3A) of the Act a small bar application is not required to be accompanied by a CIS if (a) development consent is required, and (b) local police and the Secretary are notified by the Applicant of the making of the application for development consent or of a variation to the application, not more than 2 working days after the application for the required development consent or any variation to that application is made. The Authority is satisfied, on the basis of the Application Form that the exemption requirements under section 48(3A) of the Act have been satisfied in this case.
10. Although no CIS was required, as noted above an application for a new small bar licence is deemed to be a relevant application within the meaning of section 48(2) of the Act and consequently 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 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”.
11. 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 relevant State suburb of Pyrmont, while the broader community comprises the relevant local government area, which at the time of this decision is the area of Council of the City of Sydney local government area (“Sydney LGA”).
12. Any person exercising functions under the Act must 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

13. The Authority is satisfied, on the basis of the Application Form lodged on 17 January 2016 that the Application has been validly made for the purposes of section 40 of the Act and minimum procedural requirements with regard to the Application have been satisfied.

14. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, 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 all other parties required to be consulted under the legislation.
15. 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 small bar licensed venue of the kind proposed in the Application material. The Authority notes that no probity concerns were raised by Police or LGNSW in response to consultation with those agencies on the Application.
16. The Authority is 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 15 November 2016 and lodged with the Application.
17. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed use of the Premises that is the subject of this Application falls within the scope of the development consent that is currently in force for the Premises. This finding is made on the basis of development consent D/2016/1786 issued by the City of Sydney Council ("Council") on 3 April 2017. The Authority notes that the development consent permits the operation of a small bar on the Premises, for the purposes of planning legislation, during the hours of 12 midday and 10:00pm Mondays to Sundays inclusive with additional trading permitted during the hours of 10:00pm and 12 Midnight Mondays to Sundays inclusive, subject to a 12-month trial period that is in force at the time of granting this Application.

Social Impact – Positive Benefits

18. In making this decision, the Authority has had regard to all of the objects and considerations prescribed by section 3 of the Act and is satisfied that granting this new small bar licence at the Premises is in the public interest.
19. Although consultation through a CIS was not required, the proposal was notified to Council, Police and LGNSW, and none of those agencies have made any objection to the Application on social impact grounds. The Application was also published on the Liquor and Gaming website. In this sense the Authority is satisfied that granting this licence will be consistent with the expectations, needs and aspirations of the community in respect of the local community of Pymont and the broader community of the Sydney LGA being an object of section 3(1)(a) of the Act. The Authority notes that Police did not object to the Application, although Police did provide a lengthy submission, which is addressed in further details below.
20. Notwithstanding there are many licensed premises in the Sydney LGA and the State Suburb of Pymont, there are only two small bar premises in the local community and in this respect granting another more intimate style of venue that is described in the Application and submissions will assist in the diversification of the local liquor industry and contribute to the balanced development, in the public

interest, of the liquor industry in furtherance of the statutory object in section 3(1)(b) of the Act.

Social Impact – Negative Impacts

21. Having reviewed all of the material before it, the Authority considers that over time there is a risk that liquor sold from this new licensed business 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 liquor.
22. The licence type is a small bar. By definition this is a more intimate licence type than other licensed premises, confined by the liquor legislation to accommodating a maximum of 100 patrons enabling better surveillance and management of the consumption of liquor by patrons.
23. The licensed trading hours are from Midday to Midnight 7 days a week. They are quite extensive, albeit not operative during the mornings.
24. Notwithstanding the problematic crime and licensing data, the Authority receives considerable reassurance from the very small scale of the Premises, at approximately 61 square meters in area and with a maximum patron capacity (prescribed by a condition of the development consent) of 60 persons.
25. As for the location of the Premises, the Authority finds that there is cause for concern arising from the BOCSAR Crime Maps January 2016 to December 2016 which indicate that the Premises is located within high-density hotspots for incidents of *alcohol related assault, assault (domestic assault), assault (non-domestic assault)* and *malicious damage to property*.
26. BOCSAR crime data for January 2015 to December 2016 indicated that for the final twelve months of that period, the local community of Pymont had higher rates per 100,000 persons for incidents of *alcohol related assault (domestic assault)* (a rate of 207.1) and *alcohol related assault (non-domestic assault)* (a rate of 885.7) compared to New South Wales (which recorded a rate of 116.9 for incidents of *alcohol related assault (domestic assault)* and 136.5 for incidents of *alcohol related assault (non-domestic assault)*). However, in the year ending December 2016, the suburb of Pymont had a lower rate per 100,000 persons than New South Wales for incidents of *malicious damage to property* (a rate of 778.5 compared to the New South Wales rate of 834).
27. The broader community is also problematic with this same data indicating that Sydney LGA had higher rates per 100,000 persons for incidents of *alcohol related assault (domestic assault)* (a rate of 201.7), *alcohol related (non-domestic assault)* (a rate of 789.1) and *malicious damage to property* (a rate of 1378.5) compared to New South Wales as a whole (which recorded a rate of 116.9 for incidents of *alcohol related assault (domestic assault)* and 136.5 for incidents of *alcohol related assault (non-domestic assault)* and a rate of 834 for incidents of *malicious damage to property*).
28. Liquor licence density provides another cause for concern when assessing the suitability of the location. LGNSW licensed premises information and ABS data from

the 2011 Census indicates that within the State suburb of Pyrmont are **2** small bar licences (at a rate of **17.21** per 100,000 persons) compared to Sydney LGA, which has **35** (a rate of **20.64** per 100,000 persons) and state of New South Wales, which has **64** (a rate of **0.92** per 100,000 persons).

- 29.** 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.
- 30.** 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**.
- 31.** The Authority has considered the eleven-page Police submission dated 19 January 2016 and the Applicant’s response dated 13 April 2017. The Authority accepts the advice from Police that there have been no relevant adverse incidents recorded against the corporate Applicant (which the Authority accepts has had over 35 years experience in the industry as a licensee), and that the Premises falls outside the Sydney CBD Entertainment Precinct and is not located within any Alcohol Free Zone, although there are such zones located nearby the Premises.
- 32.** The Police submission provided a non-exhaustive list of licensed premises trading within the immediate vicinity of the Premises, a BOCSAR crime map for incidents of alcohol related assaults (non-domestic assault) recorded during April 2014 and March 2015 (which highlighted a high concentration of assaults occurring within the City of Sydney and surrounding areas); and an Alcohol Related Crime Information Exchange (“ARCIE”) alcohol linking monthly report for the suburbs (including Pyrmont) covered by the Sydney City Local Area Command (“LAC”) between September 2015 and August 2016. That local command data indicated that 49% of all assaults and 36% of all domestic violence incidents were recorded as alcohol related (equating to 974 alcohol related assaults and 334 alcohol related domestic violence incidents across the Command).
- 33.** Police then reference a study by Melissa Burgess and Steve Moffatt dated January 2011 titled “*The association between alcohol outlet density and assaults on and around licensed premises*” and discuss the results of this study which concluded that in Sydney LGA assaults are more likely to occur around licensed premises than elsewhere. The Authority accepts this relationship.
- 34.** The Authority has also considered the following data provided by Police: Sydney City LAC statistics for alcohol related incidents and assaults between July 2015 to June 2016; Computerised Operational Policing System (“COPS”) data highlighting the number of alcohol related incidents within the Sydney LAC for 2015 and 2016 organised by day of the week and time; and a number of maps and graphs

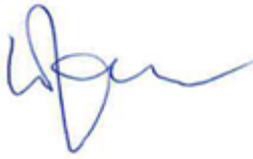
depicting the spread of alcohol related assault incidents by premises type from July 2015 to June 2016 in the City North, City South and the Pymont area.

35. Notwithstanding this data, it is notable that Police do not object to the Proposal. The Authority accepts that the local and broader communities are problematic in respect of their overexposure to alcohol related violence and close scrutiny is required in respect of the overall social impact of introducing any new bar in to this environment.
36. Nevertheless, the small scale, licence type and more intimate style of venue are countervailing factors that reduce the scope for this new venue to contribute to prevailing adverse alcohol related social impacts. While the Applicant did not accept all measures proposed by Police the additional harm minimisation measures that were consented to by the Applicant, over and above the minimum requirements of the legislation (including certain drink restrictions, neighbourhood amenity controls and requirements as to CCTV) are now reflected in the conditions of the new licence. The Authority is satisfied that these measures will further reduce the scope for patrons of this venue to contribute to adverse amenity impacts or anti-social conduct that may otherwise arise from the operation of a bar in this location.
37. Taking into consideration the list of conditions Police requested be imposed upon the licence and the response to each condition provided by the Applicant in the letter dated 13 April 2017, the Authority is satisfied that the conditions imposed by the Authority are warranted and sufficient to act as a mitigating factor. Some of the conditions sought by Police were not imposed by the Authority by reason that they are conditions of the development consent and in the case of this small bar the Authority did not find it necessary to also impose them as conditions on the licence.
38. Alcohol related crime and liquor licence density is quite high, although licence density is a function of the great many licensed premises servicing many residents, visitors and City workers alike. In the Authority's view enforceable harm mitigation measures include the conditions to which the licence will be subject and the reasonably detailed measures set out in the *Plan of Management* dated 15 November 2016.

Overall social impact

39. Having considered together the positive benefits and negative impacts that the Authority is satisfied will flow from granting the Application, the Authority is satisfied, for the purposes of section 48(5) of the Act that the overall social impact of granting this licence would not be detrimental to the well-being of the local and broader communities.
40. The Application is granted pursuant to section 45 of the Act.

Decision Date: 17 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 on 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. NSW BOCSAR Crime Statistics for January 2015 to December 2016 for the suburb of Pymont, Sydney LGA and New South Wales as a whole.
3. BOCSAR Crime Maps based upon data from January 2016 to December 2016 detailing hotspots for the concentration of offences near the location of the Premises.
4. Application Form signed by Mr Mark John Wilson (company secretary) on behalf of the Applicant company on 16 December 2016. The Form is accompanied by Police notice signed by Mr Wilson and dated 16 December 2016; ASIC Current Organisation Extract for Premises owner BRADFIELD GROUP PTY LTD as at 18 October 2016 and subsequent (*creditor*)watch Credit Report dated 18 October 2016; ASIC Current Organisation Extract for the Applicant company MCWILLIAM'S WINES GROUP LTD as at 10 November 2016 and subsequent (*creditor*)watch Credit Report dated 10 November 2016; Plan/diagram of the Premises highlighting the licensed area in red; and Plan of Management dated 15 November 2016.
5. Cover letter from the Applicant's legal representative, Mr Tony Schwartz of Back Schwartz Vaughan dated 19 December 2016 lodging the Application and supporting material.
6. Police submission from Constable Timothy Boardman and Sergeant Paul Ryan of the Sydney City LAC dated 19 January 2016 advising that Police do not object to the Application while requesting the imposition of a number of conditions on the licence should the Application be granted.
7. LGNSW submission dated 2 February 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.
8. Email from the Applicant's legal representative, Mr Schwartz of Back Schwartz Vaughan to licensing staff dated 10 April 2017 requesting an extension of time to respond to an email from licensing staff dated 30 March 2017.
9. Email from the Applicant's legal representative, Mr Schwartz of Back Schwartz Vaughan dated 13 April 2017 responding to an email from licensing staff dated 30 March 2017. The Applicant has attached the following documents to this email:
 - (a) A letter from the Applicant's legal representative, Mr Schwartz of Back Schwartz Vaughan dated 13 April 2017 responding to conditions requested and matters raised by licensing staff in an email dated 30 March 2017 and addressing the Police submission;
 - (b) Development consent D/2016/1786 issued by Council on 3 April 2017.
10. Licensed premises information calculated from the LGNSW licensed premises information sourced by licensing staff dated 2 May 2017 and ABS census 2011

Census QuickStats data for Sydney LGA, the suburb of Pyrmont and the state of New South Wales.

11. List of LGNSW licensed premises for the Sydney LGA and the suburb of Pyrmont sourced by licensing staff on 2 May 2017.
12. Google geographical maps (aerial and satellite view) indicating the location of the Premises extracted by licensing staff on 2 May 2017.
13. Email from the Applicant's legal representative, Mr Schwartz of Back Schwartz Vaughan to licensing staff dated 4 May 2017 agreeing to a condition relating to trading hours.
14. NSW Department of Health data on *alcohol attributable deaths and hospitalisations* for the Sydney LGA compared to New South Wales.