



Mrs Susan Ward  
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18 July 2017

Dear Mrs Ward,

<b>APPLICATION NO</b>	APP-0002474596
<b>APPLICATION FOR</b>	New Packaged Liquor Licence
<b>TRADING HOURS</b>	Consumption off premises: Monday to Saturday 10:00AM -7:00PM Sunday 10:00AM – 5:00PM
<b>APPLICANT</b>	Susan Louise Ward
<b>LICENSED PREMISES NAME:</b>	Argyle Street Wine Merchants
<b>PREMISES LOCATION</b>	386 Argyle Street MOSS VALE NSW 2577
<b>ISSUE</b>	Whether to grant or refuse an application for a new packaged liquor licence
<b>LEGISLATION</b>	Sections 3, 11A, 29, 30, 31, 40, 45 and 48 <i>Liquor Act 2007</i>

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION - APPLICATION FOR A  
NEW PACKAGED LIQUOR LICENCE – ARGYLE STREET WINE MERCHANTS**

The Independent Liquor and Gaming Authority has considered application number APP-0002474596 seeking a new packaged liquor licence (“Application”) and pursuant to section 45 of the *Liquor Act 2007* (“Act”) has decided to **grant** the licence, subject to the imposition of the following conditions:

- 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.
- Restricted trading & NYE**  
Retail Sales

Good Friday	Not permitted
December 24 <sup>th</sup>	Normal Trading Monday to Saturday 8:00AM to 10:00PM Sunday
Christmas Day	Not permitted
December 31 <sup>st</sup>	Normal trading
- 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 obtaining this licence.

4. The licensee or its representatives must join and be an active participant in the local liquor accord.
5. The premises are to be operated at all times in accordance with the Plan of Management dated 5 May 2017 as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
6. The Licensee shall maintain a CCTV system that meets the following minimum requirements:
  - i. A camera must be located at the main entrance to the venue and positioned to record any person entering through this entrance. The CCTV recordings of this camera must be sufficient to enable the identity of an individual to be established beyond reasonable doubt when:
    - a. the person represents 100% of screen height, and
    - b. there is an unobstructed view of the persons face
  - ii. Recording should be retained for a period of 30 days before being reused or destroyed.
  - iii. Immediate access to the CCTV system and the ability to review recordings on the system is to be granted to NSW Police, Liquor & Gaming NSW or other regulatory officers upon request.
  - iv. When the venue is trading, at least one person shall be at the venue who is capable of accessing the CCTV system and is able to immediately review recordings and produce copies.
  - v. All surveillance cameras must be operational 30 minutes prior to when the licensed premise opens to trade and continues to record for 30 minutes after the licensed premises ceases to trade.
  - vi. The CCTV system shall be able to reproduce a copy of the recordings on CD, DVD or USB memory stick and must be provided within 24 Hours to NSW Police, Liquor & Gaming NSW or other regulatory officers upon request.

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](mailto: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 grant the application lodged on 4 April 2017 (“the Application”) for a new 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 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 under 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, 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 while making this decision is listed and, in some cases, briefly described in the Schedule.
6. The Authority notes that on 5 January 2017 a related application was lodged by Dr John Frederick Ward seeking the grant of a new small bar licence for premises located at 386 Argyle Street, Moss Vale NSW 2577 to be known as *Wine Mosaic Lounge* (“Related Application”). The Authority’s decision on this Related Application is the subject of separate correspondence. These applications indicate that the licence that is the subject of the Related Application will be situated within the same building as the premises of this packaged liquor business (Premises) but the two licensed premises will be separated by a dividing wall and only accessible through the front entry foyer. The boundaries of the licenced areas for each licensed premises do not overlap.

## 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 relevant provisions in 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. An application for a new packaged liquor licence is a “relevant application” within the meaning of section 48(2) of the Act for which a CIS is required
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 Moss Vale, while the broader community comprises the relevant local government area, which at the time of this decision is Wingecarribee Shire Council (“Wingecarribee 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 40 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 grant the Application for

a new 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, the Applicant, Council and neighbouring occupiers and all other parties required to be consulted under the legislation.

14. 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 a National Police Certificate NCHRC-2017-23648 was issued by Police for the Applicant on 28 March 2017 and neither Police nor LGNSW have raised any probity concerns with regard to the Applicant.
15. 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 updated *Plan of Management* dated 5 May 2017 provided by the Applicant to licensing staff on 7 May 2017.
16. 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 with regard to the Premises. This finding is made on the basis of development consent 16/1229 issued by Wingecarribee Shire Council (“Council”) on 2 February 2017.

#### **Social Impact – Positive Benefits**

17. The Authority accepts, on the basis of the CIS provided by the Applicant, that the Applicant has distributed the consultation notice to stakeholders and neighbouring premises without receiving any adverse comments or complaints. On this basis, the Authority is satisfied that granting 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.
18. The Authority is further satisfied, on the information provided in the CIS, that the proposed new business will stock wine from small producers from throughout Australia and overseas, boutique craft beers made locally and some artisanal spirits that made in Australia. The Authority accepts the Applicant’s information and contentions that the business will offer some degree of specialisation and include a focus on introducing new grape varieties, wine styles and education for the consumer.
19. While the Authority also accepts the Applicant’s contention in the CIS that the business will showcase small producers that are not found in chain stores like Woolworths, Coles and Aldi supermarkets, without sufficient evidence or specificity as to which products the Applicant is referring to, the Authority can only provide minimal weight to this submission.

20. Nevertheless, on the information provided in the CIS about the style and purpose of the proposed new business and having regard to LGNSW information about the available licensed liquor outlets in the communities, the Authority is satisfied, on the basis of the CIS, that granting the Application will reasonably develop, in the public interest, the liquor industry in respect of the local and broader community, 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 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 packaged liquor.
22. The Authority notes that the licensed trading hours sought by the Application are reasonably extensive across the course of the week, with trading commencing from 10:00am Monday through Sunday. However, the Applicant proposes a licensed closing time of 7:00PM on Monday through Saturday and 5:00PM on Sunday. This presents a moderating factor that reduces the scope for this new business to generate sales during traditionally higher risk times of the week for alcohol related anti-social conduct, such as later in the evenings and on weekends.
23. The Authority is further satisfied, on the basis of the Application, CIS and Applicant's plan or diagram of the Premises, that the scale of the licensed area of the Proposed Premises is relatively small with the proposed patron capacity of the licensed area being 35 people. The small scale underscores the boutique nature of this proposal and reduces the capacity for *this* business to contribute, over time, to the prevailing alcohol related social problems in the relevant communities.
24. When considering the cumulative impact of adding another licence to the local and broader community, the Authority has considered licence density data calculated by reference to LGNSW licensed premises records and ABS population data.
25. Wingecarribee LGA recorded moderately higher prevailing licence density rates for *packaged liquor* licensed premises (44 per 100,000 persons of population) compared to New South Wales as a whole (which has a rate of 30.53 according to LGNSW data). The LGA also recorded moderately higher rates of *hotel licences* (37 compared to the New South Wales rate of 26.41).
26. This data further indicates that as of 6 February 2017 Wingecarribee LGA recorded a rate of 17 club licences per 100,000 persons (almost on par with the New South Wales rate of 16.33) and 146 on-premises licences per 100,000 persons (substantially above the New South Wales rate of 98.08).
27. LGNSW licensed density data sourced by licensing staff as at 2 May 2017 indicates that the local community of Moss Vale (the community likely to be most directly serviced and impacted by the new licence) had only 1 devoted packaged liquor licenced premises in respect of a BWS (Beer Wine Spirits) outlet. This has since

changed with the Authority's grant, as notified on 23 May 2017, of a new packaged liquor licence for Ashcroft's Supa IGA. While off premises licence density is not particularly high in either community, there is some cause for caution with respect to licence density rates across all categories in the broader community.

28. An adverse factor of some concern arises from the BOCSAR crime data for the year to December 2016, indicating that the rate of *alcohol related domestic assault* for the suburb of Moss Vale was 157.3 per 100,000 persons, above the State-wide rate of 116.9. By contrast, the Wingecarribee LGA recorded 100.9 incidents per 100,000 persons. This data also indicated that rates of *alcohol related non-domestic assault* for both Moss Vale (108.9) and Wingecarribee LGA (79.9) were substantially *below* the State-wide rate (136.5) per 100,000 persons.
29. While alcohol related domestic violence rates in the local community present an adverse factor of particular interest when considering a new packaged liquor licence (given that most domestic violence occurs in private residences where packaged liquor is expected to be consumed) the crime data presents a mixed picture for the local and broader communities on the whole. Countervailing factors, particularly the small and specialist nature of this proposal and its moderate trading hours have been taken account in this case.
30. BOCSAR Crime Maps from January 2016 to December 2016 indicate that the Premises is not located *within* any hotspots for the concentration of *domestic assault*, although there is a small low-density hotspot in close proximity, just south of the Premises. The Premises is not in any hotspot for *non-domestic assault* and *alcohol related assault*.
31. The Authority derives considerable reassurance from the absence of any social impact concerns raised by Police, Council or LGNSW – agencies with a law enforcement capacity. Police requested that a number of conditions be imposed upon the licence if granted and the Applicant agreed to these measures in an email dated 19 April 2017.
32. ABS Socio-Economic Indexes For Areas ("SEIFA") data establish that the broader community is relatively advantaged while the local community of Moss Vale is only moderately disadvantaged. Wingecarribee LGA is ranked in the 8<sup>th</sup> decile on the Index of Relative Socio-economic Advantage and Disadvantage compared to other suburbs in the State, while Moss Vale suburb is ranked in the 4<sup>th</sup> decile. Overall, this data does not indicate particular vulnerability to adverse social impacts.
33. NSW Department of Health *Health Stats* data for 2012 to 2013 indicates that the smoothed standardised mortality ratio (alcohol related deaths) in the Wingecarribee LGA was **101.50**, very close to the State-wide rate that is fixed at 100. The smoothed standardised separation ratio (for alcohol related hospitalisation) for the LGA was **89.60**, significantly below the State-wide rate.
34. The Authority has also had regard to those additional harm minimisation measures, over and above the minimum requirements of the legislation, to which

the licence will be subject. The Applicant has provided a reasonably detailed *Plan of Management* dated 5 May 2017. This will not only provide guidance on risk management for the licensee and staff but will be enforceable as a condition on the licence. The licence will also be subject to an exacting condition mandating the operation of CCTV on the Premises.

### **Overall social impact**

35. 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 Act that the overall social impact of granting this licence would not be detrimental to the well-being of the local and broader communities.
36. This Application for a new packaged liquor licence is granted pursuant to section 45 of the Act.



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 Moss Vale and the Wingecarribee LGA.
2. NSW BOCSAR Crime Statistics for January 2015 to December 2016.
3. BOCSAR Crime Maps based upon data from January 2016 to December 2016 indicating the relative concentration of certain offences in Moss Vale and derived from crime data recorded across the Wingecarribee LGA as whole.
4. Email from the Applicant to licensing staff dated 22 March 2017 attaching a copy of the revised development consent notifying permitted hours of use, and an undated letter from Senior Constable Philip Anderson, Licensing Officer of the Hume Local Area Command ("LAC") of NSW Police, apparently provided during development application process in which Police advise that they do not object to the proposed change of use of the Premises while requesting that a number of conditions be imposed on the development consent concerning participation in the local liquor accord, maintaining a CCTV system, crime scene preservation, preventing shots and alcohol drinks mixed with energy drinks from being sold or supplied at any time and restricting the sale and supply of alcohol after 10:00pm.
5. Application Form and CIS lodged on 4 April 2017. These forms are accompanied by a notice of the Application to the local consent authority, a site notice posted on the Premises and an (unsigned) notice of the Application to Police. Also provided was an ASIC Current Organisation Extract for the corporate business owner ARGYLE STREET WINE MERCHANTS PTY LTD as at 3 April 2017; a National Police Certificate NCHRC-2017-23648 issued for the Applicant on 28 March 2017; a letter to the Applicant from LGNSW dated 22 March 2017 enclosing a copy of the Applicant's RSA Competency Card CCH10661794 with expiry date 15 March 2022 and a road map of the suburb of Moss Vale.
6. Licensed premises information obtained by licensing staff from LGNSW licensed premises information as at 6 February 2017 and ABS 2011 Census population data for the Wingecarribee LGA and the State of New South Wales.
7. LGNSW records listing all packaged liquor licensed premises in the Wingecarribee LGA and the suburb of Moss Vale, sourced by licensing staff on 2 May 2017.
8. Google geographical maps (aerial and satellite view) indicating the location of the Premises and the surrounding area extracted by licensing staff on 5 May 2017.
9. Geographical map depicting the Alcohol-Free Zones established in the suburb of Moss Vale extracted on 5 May 2017.
10. Email from the Applicant dated 5 May 2017 responding to an email from licensing staff dated 1 May 2017. The Applicant addresses a submission from Police provided during the development application process and responds to questions

regarding the proposed licensed trading hours, Plan of Management, proposed operation of the business, proposed licence conditions and the operation of the small bar (the subject of the Related Application). The Applicant also provided a Certificate of Advertising dated 2 May 2017; a diagram of the Premises highlighting the proposed licensed area in red, a copy of Council's development approval decision number DA16/1229 dated 2 February 2017 and a summary schedule of modified conditions regarding the permitted hours of operation for planning purposes in respect of the proposed bottle shop and the related small bar.

11. Email from the Applicant to licensing staff dated 7 May 2017 attaching a copy of a revised *Plan of Management* dated 5 May 2017.
12. Email from the Applicant to licensing staff dated 10 May 2017 attaching seven photographs of the Premises.
13. Email from the Applicant to licensing staff dated 10 May 2017 attaching a copy of the Application Form with the relevant Department of Family and Community Services section completed.
14. NSW Department of Health data obtained by licensing staff on *alcohol attributable deaths and hospitalisations* for the Wingecarribee LGA for 2012 to 2013.