



Dr John Ward
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MOSS VALE NSW 2577
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18 July 2017

Dear Dr Ward,

APPLICATION NO: 1-5490511290

APPLICATION FOR: New Small Bar Liquor Licence

TRADING HOURS: Consumption on premises:
Monday to Saturday 12:00PM to 9:00PM
Sunday 12:00PM to 5:00PM

APPLICANT: Dr John Frederick A Ward

LICENSED PREMISES NAME: Wine Mosaic Lounge

PREMISES LOCATION: 386 Argyle Street
MOSS VALE NSW 2577

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 – WINE MOSAIC LOUNGE**

The Independent Liquor and Gaming Authority has considered application number 1-5490511290 for a new small bar liquor licence (“Application”) and pursuant to section 45 of the *Liquor Act 2007*, has decided to **grant** the Application subject to the following licence conditions:

1. Section 11A of the Liquor Act 2007 applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 4:00 AM and 10:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. **Restricted trading & NYE**
Consumption on premises
Good Friday: Not permitted
Christmas Day: Not permitted
December 31st: Normal trading

3. A maximum number of thirty-five (35) patrons are permitted in the premises at any one time.
4. 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 New South Wales Police.
5. The licensee or its representatives must join and be an active participant in the local liquor accord.
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. Recordings 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.
7. The licensee must ensure that, immediately after the licensee or a staff member or agent becomes aware of an incident involving an act of violence causing an injury to a person on the licensed premises or in the immediate vicinity:
 - i. All reasonable steps are taken to preserve and keep intact the area where the incident occurred, and that any implement or other thing associated with the act of violence is retained in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police Force; and
 - ii. The Local Area Commander of NSW Police or his/her delegate, is advised by the licensee or a staff member or agent of the incident as soon as practicable; and
 - iii. The licensee or staff member complies with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

In this condition, "staff member" means any person employed by or acting on behalf of the licensee of the licensed premises and it includes any person who is employed to carry on the security activities on or about the premises.
8. The following drinks must not be sold or supplied at any time:
 - i. Any drink (commonly referred to as a "shot") that contains no more than 30mls of spirits or liqueur that is designed to be consumed rapidly.
 - ii. Any drink containing alcohol is not to be mixed with an energy drink.

9. The following restrictions and conditions will apply upon the sale/supply alcohol after 10.00pm.
- i. No mixed drinks with any more than sixty (60) mls of alcohol.
 - ii. No ready to drink (RTD) drinks with an alcohol volume greater than 5%
 - iii. No more than four drinks may be served to any patron at one time.

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 enquiries about this letter, please contact 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 5 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 described in the Schedule.
6. The Authority notes that on 4 April 2017 a related application was lodged by Mrs Susan Ward seeking the grant of a new packaged liquor licence for premises located at 386 Argyle Street, Moss Vale NSW 2577 to be known as Argyle Street Wine Merchants (“Related Application”). The Authority’s decision on the Related Application is the subject of separate correspondence. These applications indicate that the packaged liquor licence will occupy premises within the same building as this small bar, but the two licensed premises will be separated by a dividing wall and only accessible through a common front entry foyer. The boundaries of the licensed area for each licenced 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 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 for 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 also a “relevant application” within the meaning of section 48(2) of the Act for which a community impact statement (“CIS”) is required.
9. However, pursuant to section 48(3A) of the Act, a small bar licence 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 information provided in the Application Form, that the prerequisites for exemption provided for by section 48(3A) of the Act have been satisfied and as a result no CIS was required in this instance.
10. Nevertheless, 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 as a result 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 State suburb of Moss Vale, while the broader community comprises the relevant local government area, which at the time of this decision is the area of Wingecarribee Shire Council local government area (“Wingecarribee 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 lodged on 5 January 2017 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, noting that the exemption under section 48(3A) from having to provide a CIS applies.
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 and 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. This finding is made on the basis that no probity issues were raised by NSW Police ("Police") or LGNSW in response to the Application and on the basis of the National Police Certificate NCHRC-2017-3310 issued on 25 January 2017 which advised that there are no disclosable court outcomes or outstanding matters recorded against the Applicant.
16. The Authority is also 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 Applicant's *Plan of Management* dated 5 May 2017.
17. The Authority is further 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 16/1229 issued by Wingecarribee Shire Council ("Council") on 2 February 2017.

Social Impact – Positive Benefits

18. Noting that no CIS was required, the Applicant has provided evidence of a site notice that was posted on the Premises. Licensing staff have published the Application on the Liquor and Gaming Notice Board and the Applicant has advised that the Application was brought to the attention of LGNSW and Police. Council are on notice of the proposal by way of the related development application.
19. The Authority is satisfied, on the basis of the information provided in the Application and additional material supplied by the Applicant, that granting the licence will provide a new small bar that will service the local and broader communities, increasing choice and convenience for persons in the communities seeking a more intimate style of premises than the conventional hotel and club offerings currently available.
20. The Authority is also satisfied, on the basis of the wine menu provided by the Applicant, that the Premises will provide a range of wines that have been sourced from various locations within Australia including Margaret River, the Yarra Valley and the Southern Highlands region in which the Premises is situated. This, coupled

with the evidence provided by way of a food menu for the licensed business, satisfies the Authority that the proposed new bar will provide a boutique liquor selection and quality food, as claimed by the Applicant.

21. The Authority notes that no adverse submissions were made by Police or Council, who were on notice of this proposal. No adverse community submission was received, notwithstanding that the Application was advertised through a site notice on the Premises and published on the Liquor and Gaming website. In this sense, the Authority is satisfied that the new bar will be consistent with the expectations, needs and aspirations of the community in respect of the local community of Moss Vale and the broader community of the Wingecarribee LGA being an object of section 3(1)(a) of the Act.
22. The Authority is satisfied, having regard to the LGNSW information about the type, number and location of licensed premises in the communities, and noting that there are presently no small bars among the existing licensed premises, that granting the Application will diversify 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

23. 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.
24. The licence type is a small bar. By definition this is a more intimate licence type than other licensed premises, confined by the legislation to accommodating a maximum of 100 patrons. Furthermore, the photographs and diagram of the Premises provided by the Applicant satisfy the Authority that the venue is quite small, and development consent DA16/1229 restricts patron capacity for planning purposes to a maximum of 35 persons and the Applicant has consented to the imposition of a condition upon the liquor licence restricting patron capacity accordingly.
25. The scale, layout and patron capacity of the bar satisfies the Authority that the Premises will be readily amenable to supervision by the licensee and staff.
26. The licensed trading hours sought in the Application are relatively modest, extending from midday to 9:00 pm Monday through Saturday and from midday to 5:00 pm on Sunday. This factor constrains the scope for this business to attract and accommodate drinkers during traditionally higher risk times of the week for the occurrence of alcohol related anti-social conduct – such as later in the evenings and on weekends.
27. When considering the cumulative impact of adding another licence to the local and broader community, the Authority has considered data extracted by licensing staff as to licence density, calculated from LGNSW licensed premises records and ABS population data. Notably, as at 2 May 2017 New South Wales recorded a rate of

0.93 small bar licences per 100,000 persons of population, the local community of Moss Vale (the community likely to be most directly serviced and impacted by the new licence) and the broader community of Wingecarribee LGA have **0** small bar licences.

- 28.** 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), 37 hotel licences per 100,000 persons (moderately above the New South Wales rate of 26.41), 146 on-premises licences per 100,000 persons (substantially above the New South Wales rate of 98.08) and 44 packaged liquor licences per 100,000 persons (above the New South Wales rate of 30.53).
- 29.** Notwithstanding the higher than average density of liquor licences other than small bar licences, the Authority did not consider that the incremental increase to licence density through addition of a single small bar licence would of itself materially contribute to any negative social impacts.
- 30.** BOCSAR crime data for the year to December 2016 indicated that the rate of *alcohol related domestic assault* within the State-suburb of Moss Vale was 157.3 per 100,000 persons, moderately above the State-wide rate of 116.9. The Wingecarribee LGA fared relatively well, at 100.9 incidents per 100,000 persons. The rates of *alcohol related non-domestic assault* for both Moss Vale (108.9) and Wingecarribee LGA (79.9) were both below the State-wide rate (136.5) per 100,000 persons.
- 31.** In conclusion, the alcohol related domestic violence rates in the local community present an adverse factor of some concern to the Authority. The scope for this new business to contribute to the prevailing rates of alcohol related crime are somewhat ameliorated by the small scale of the Premises, boutique wine bar nature of the business and the limited hours of the proposed new bar. Furthermore, BOCSAR crime maps calculated on the basis of data recorded during the 2016 calendar year 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 the concentration of *non-domestic assault* and *alcohol related assault*.
- 32.** The Authority derives further reassurance from the absence of any social impact concerns having been 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. Notably, the Applicant has arranged for security cameras to be installed in the Premises prior to opening that will “exactly comply” with the Police specifications.
- 33.** 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 **8th** decile on the Index of Relative Socio-economic Advantage and Disadvantage (with a score of 10 being the most advantaged) compared to other suburbs in the State, while the Moss Vale suburb is ranked in the **4th** decile on that Index. Overall, the socio-demographic

data does not indicate any particular vulnerability to adverse social impacts in the relevant communities.

34. 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.
35. The Authority has also had regard to the numerous conditions to which the licence will be subject and the reasonably detailed harm minimisation measures set out in the Applicant's *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.

Overall social impact

36. 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.
37. The Application 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 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 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 detailing hotspots for the relative concentration of offences in Moss Vale, which is derived by reference to crime across the Wingecarribee LGA.
4. Application Form signed by the Applicant on 6 December 2016 and lodged on 5 January 2017. This was accompanied by a notice to Police, a copy of the site notice posted on the Premises and a notice to the local consent authority signed by the Applicant and dated 6 December 2016. Also provided was Certificate number 10000892998 recording that the Applicant had successfully completed a responsible service of alcohol (RSA) course on 20 December 2016.
5. Email from Senior Constable Phillip Anderson of the Hume Local Area Command ("LAC") of Police dated 13 February 2017 advising that Police have no objection to the Application. Police attached an undated letter confirming that they have no objection while requesting the imposition of a number of conditions regarding 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.
6. LGNSW submission dated 16 February 2017 attaching a copy of an automated Environment and Venue Assessment Tool ("EVAT") Assessment Report and advising that LGNSW does not intend to carry out any further assessment.
7. Email from the Applicant dated 19 April 2017 in response to requisitions from licensing staff, attaching decision on approval of development consent DA16/1229 issued by Council on 2 February 2017; Australian Securities and Investments Commission ("ASIC") Current Company Extract for the corporate Premises owner EFSTATHIOU INVESTMENTS PTY LTD as at 15 April 2017; diagrams of the Premises indicating the licensed area of the Premises in red; Certificate of Advertising signed by the Applicant dated 14 April 2017; National Police Certificate NCHRC-2017-3310 issued by Police in respect of the Applicant dated 25 January 2017; ASIC Record of Registration for Business Name *Wine Mosaic Lounge* dated 13 April 2017; architectural plans/diagrams of the Premises prepared by Ian Jones Design; Applicant's *Plan of Management*; Applicant's Code of Conduct for guests of the business (undated); the Autumn 2017 food menu for the proposed small bar; Autumn 2017 wine list.
8. Email from the Applicant dated 28 April 2017, responding to an email from licensing staff of the same date, agreeing to a licence condition limiting patron capacity to **35**.

9. LGNSW licensed premises information sourced by licensing staff dated 2 May 2017 and ABS 2011 *Quickstats* data for the Wingecarribee LGA, the suburb of Moss Vale and the state of New South Wales.
10. LGNSW licensed premises information in respect of small bar licences in the state of New South Wales, sourced by licensing staff on 2 May 2017.
11. Google geographical maps (aerial and satellite view) indicating the location of the Premises, as extracted by licensing staff on 5 May 2017.
12. Geographical map depicting the Alcohol-Free Zones established in the suburb of Moss Vale extracted by licensing staff on 5 May 2017.
13. Email from the Applicant to licensing staff dated 7 May 2017 attaching the Applicant's revised *Plan of Management* dated 5 May 2017.
14. Email from the Applicant to licensing staff dated 10 May 2017 attaching seven photographs of the Premises.
15. NSW Department of Health data on *alcohol attributable deaths and hospitalisations* for the Wingecarribee LGA for 2012 to 2013.