



Mr Brett Tobin  
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8 August 2017

Dear Mr Tobin

<b>Application No.</b>	APP-0002490294
<b>Application for</b>	Packaged Liquor Licence
<b>Trading hours</b>	Monday to Sunday 10:00 am – 9:00 pm
<b>Applicant</b>	Namlieh Retail Services Pty Ltd
<b>Licence name</b>	Top Cellars Mona Vale
<b>Premises</b>	Pittwater Place Shop 6 10 Park Street MONA VALE NSW 2103
<b>Issue</b>	Whether to grant a packaged liquor licence
<b>Legislation</b>	Sections 3, 11A, 12, 29, 30, 31, 40, 45 and 48 of <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority  
Application for a packaged liquor licence – Top Cellars Mona Vale**

The Independent Liquor and Gaming Authority has considered your application on behalf of the Applicant for a packaged liquor licence and, pursuant to section 45 of the *Liquor Act 2007*, has decided to **grant** the licence subject to the following conditions:

1. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 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 and NYE (std)  
Retail Sales  
Good Friday Not permitted  
December 24<sup>th</sup> Normal trading Monday to Saturday  
8:00 am to 10:00 pm Sunday  
Christmas Day Not permitted  
December 31<sup>st</sup> 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 reasonably be 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 representative must join and be an active participant in the local liquor accord.
5. The premises is to be operated at all times in accordance with the Plan of Management dated April 2017 as may be varied from time to time after consultation with the Local Area Commander of NSW Police. A copy of the Plan of Management is to be kept on the premises,

and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

6. Boutique and craft liquor products

- (1) The licensee must ensure that only craft beer, craft cider, craft spirits and boutique wines are sold and supplied on the premises.
- (2) Other complementary liquor products, provided that those other products do not exceed more than 30% of the total product lines or 30% of the total products stocked on the premises at any one time, are also permitted.
- (3) The licensee must ensure that a list of the product lines and products stocked on the licensed premises at any one time is to be kept at the premises and made available to Police or L&GNSW Compliance Officers upon request.
- (4) For every craft beer, craft cider, craft spirit or boutique wine product that is available for sale on the premises, the licensee must maintain and make available for inspection on the premises written documentation from the supplier confirming that the product meets the relevant definition specified in this condition.

Definitions

For the purposes of this condition:

- (1) Craft beer is defined as beer that is:
  - (a) produced by a craft brewer in Australia that produces less than 40 million litres of beer per annum or by a craft brewer located overseas that produces less than 6 million barrels of beer per annum,
  - (b) not more than 25 percent of the craft brewery is owned or controlled (or equivalent economic interest) by a beverage alcohol industry member that is not itself a craft brewer,
  - (c) the craft brewery has a majority of its total beverage alcohol volume in beers whose flavour derives from traditional or innovative brewing ingredients and their fermentation (flavoured malt beverages are not considered beers), and
  - (d) is not generally considered to be mainstream beer.
- (2) Craft cider is defined as cider that is:
  - (a) produced by a craft producer in Australia that produces less than 40 million litres of cider per annum or by a craft producer located overseas that produces less than 6 million barrels of cider per annum,
  - (b) where less than 25 percent of the craft cider producer is owned or controlled (or equivalent economic interest) by a beverage alcohol industry member that is not itself a craft cider producer,
  - (c) made from liquid consisting only of juice (no concentrates), and
  - (d) is not generally considered to be mainstream cider.
- (3) Craft spirits are defined as spirits that are:
  - (a) the product of a distillery that has maximum annual sales of less than 100,000 proof gallons or 52,000 cases, or in respect of blended spirits, the products of an independently owned and operated facility that uses any combination of traditional and/or innovative techniques such as fermenting, distilling, re-distilling, blending, infusing or warehousing to create products with a unique flavour profile,
  - (b) distilled at a distillery where the spirit has either been run through a still by a craft distiller, or in the case of a blended spirit, the spirit has been distilled originally by a craft distiller, and
  - (c) is not generally considered to be a mainstream spirit.
- (4) Boutique wine is defined as wine that is manufactured by or on behalf of a boutique wine company which crushes and bottles 250 tonne or less annually under its own label and is owned independently (i.e., not owned by a larger wine company).

7. Closed-circuit television system

- (1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

- (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of premises that is not required to cease trading, continuously at all times),
  - (b) recordings must be in digital format and at a minimum of 15 frames per second,
  - (c) any recorded image must specify the time and date of the recorded image,
  - (d) the system's cameras must cover the following areas:
    - (i) all entry and exit points on the premises,
    - (ii) the footpath immediately adjacent to the premises, and
    - (iii) all publicly accessible areas (other than toilets) on the premises.
- (2) The licensee must also:
- (a) keep all recordings made by the CCTV system for at least 30 days,
  - (b) ensure that there is at least one member of staff on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
  - (c) provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings.

If you have any questions, please contact the case manager at [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 and Gaming Authority

# Statement of reasons

## Decision

1. On 12 December 2016 the Independent Liquor and Gaming Authority (“the Authority”) received from the Applicant, through Liquor and Gaming NSW (“L&GNSW”), an application for a packaged liquor licence (“the Application”).
2. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority has decided to grant the licence.
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 29, 30, 31, 40, 45 and 48 of the Act, and relevant provisions of the *Liquor Act Regulation 2008*.

## Material considered by the Authority

4. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. In accordance with the Authority’s *Guideline 6*, the Authority has also had regard to relevant L&GNSW liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, sourced by L&GNSW staff from publicly available sources.
7. The material considered by the Authority is listed in the Schedule, with a summary where appropriate.

## Legislative framework

8. The Authority has considered the Application in the context of the following legislative provisions.

## Objects of the Act

9. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations and needs of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
10. In the pursuit of these objectives, section 3 requires the Authority to, in determining a liquor licence application, have due regard to the need to minimise alcohol related harm, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

## Trading hours and 6-hour closure period

11. Section 12 of the Act sets out the standard trading period for different types of liquor licences. Additionally, section 11A imposes a condition on all licences prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

## Minimum procedural requirements

12. Section 40 of the Act prescribes the minimum procedural requirements for a liquor licence application to be validly made to the Authority.

### Fit and proper person, responsible service of alcohol, and development consent

13. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:

- a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
- b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
- c) the applicable development consent (“DC”) required for use of the premises for the proposed business is in force.

### Community impact statement

14. Section 48 of the Act requires certain applications, including an application for a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.

15. Section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter brought to its attention.

### Provisions specific to a packaged liquor licence

16. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.

17. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.

18. Section 30 requires a separate liquor sales area to be set up on the licensed premises if its primary business is not to sell liquor for consumption away from the premises.

19. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

### **Key findings**

20. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

### Validity, procedural and trading requirements

21. The Authority is satisfied that:

- a) the Application has been validly made and meets the procedural requirements under section 40 of the Act,
- b) the proposed trading hours for the Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods,
- c) the proposed use of the Premises as a standalone liquor store satisfies the requirements under section 29 of the Act, and renders sections 30 and 31 not applicable.

### Fit and proper person, responsible service of alcohol, and development consent

22. Pursuant to section 45 of the Act, the Authority is also satisfied that:

- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant’s probity were raised upon consultation with relevant law enforcement agencies,
- b) practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol, having regard to the

Applicant's Plan of Management ("POM") and the conditions to be imposed on the licence, and

- c) the requisite DC is in force, based on the notice of determination issued by Pittwater Council and modified on 1 August 2014.

#### Community impact statement

23. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Premises on the local and broader communities.
24. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Mona Vale, and the relevant "broader community" comprises Northern Beaches Local Government Area ("the LGA").
25. The Authority notes that the LGA was formed on 12 May 2016 following a merger of the Manly, Pittwater and Warringah Local Government Areas, and that most of the statistics relied upon in reaching this decision refer to these former Local Government Areas.

#### Positive social impacts

26. The Authority notes from the L&GNSW data that Mona Vale has six packaged liquor outlets, representing an outlet density of 59.02 licences per 100,000 persons of the population, which is considerably higher than the NSW state average of 35.80.
27. The Applicant acknowledged the high density in the area, but contended that the Premises will provide "substantial convenience" to customers of the Pittwater Place shopping centre ("the Centre") in which the Premises is located, on the basis that:
  - a) the Centre does not presently have any packaged liquor outlet,
  - b) customers of the Centre will be able to enjoy "one stop shopping" by purchasing liquor at the Premises while fulfilling their other shopping needs in the Centre, without having to walk out of the Centre or drive to another place, and
  - c) the Premises will operate as "a boutique liquor store" and focus on higher end products, including wine from small producers and craft beers and spirits "not normally available from typical suburban liquor chain stores".
28. In support of these contentions, the Applicant submitted:
  - a) a letter from the manager of the Centre supporting the Application and stating that foot traffic at the Centre had increased significantly over recent years,
  - b) a petition supporting the Application, containing 171 signatures purported to have been collected from patrons at the Centre in one day (although the date on page 2 of the petition is different to the date on the other pages), and
  - c) a report from A&M Consultants setting out an independent consultant's observation of the trouble a customer of the Centre has to go through to purchase liquor from other liquor outlets.
29. Consistent with the apparent public support for the Application, the Authority notes that no community objection was received in relation to the Application. This distinguishes the Application from the application by Liquorland in 2014 to remove a packaged liquor licence to the same location as the Premises, which was refused by the Authority following strong opposition by the community.

30. The Authority also notes that the Applicant has more than seven years of experience in managing packaged liquor outlets, and currently operates two outlets in Newtown and North Ryde.

31. Having regard to the above, the Authority is satisfied that:

- a) the Premises will provide some additional convenience and choices to local customers, particularly those who choose to shop at the Centre, and
- b) the Premises' focus on providing boutique and craft liquor products, overseen by an experienced operator, will contribute to the balanced and responsible development of the liquor industry.

#### Negative social impacts

32. The Authority has received objections from NSW Police, NSW Health, and Northern Beaches Council in relation to the Application.

33. Both NSW Police and NSW Health opposed the grant of the licence on the basis that:

- a) there is already an adequate number of liquor licences close to the Premises,
- b) the parks near the Premises are frequented by young people, including minors, and known for street drinking, pre-fuelling and alcohol related crimes and anti-social behaviour, and
- c) the Premises will provide young people in the local community with an additional source of alcohol, and exacerbate existing alcohol related crime and health issues, and other disturbances to the neighbourhood.

34. Additionally, NSW Health contended that:

- a) an increase in liquor outlets can lead to aggressive price discounting, which will also increase alcohol consumption by young people, and
- b) the Applicant's claim that the Premises will operate as a boutique liquor store and focus on high end products lacked clarity and supporting evidence.

35. Northern Beaches Council opposed the grant of the licence on the basis that the proposed trading hours are inconsistent with its policy on permitted trading hours for a packaged liquor licence.

36. In response to the objections, the Applicant argued that:

- a) there has been a significant reduction in alcohol related crime and anti-social behaviour around the Centre in the past 12 months, as confirmed in a letter from the Centre management,
- b) two of the existing packaged liquor outlets in Mona Vale only sell liquor via online and telephone orders, and are not directly accessible in person,
- c) the independent consultant engaged by the Applicant had inspected the surroundings of the Premises and found that:
  - i. the existing liquor outlets in Mona Vale do not adequately meet the needs of those who shop at the Centre, as access to these outlets from the Centre is more troublesome than it may seem on the map
  - ii. there was no evidence of alcohol related "adverse activity" or police presence at the park in the vicinity of the Premises (Village Park) on Friday and Saturday evenings, and
  - iii. the Premises is more than 600 metres away from the park frequented by young people (Kitchener Park), who would be unlikely to purchase liquor from the Premises as there are two other liquor stores closer to the park,

- d) the “upmarket nature” of the Premises and its focus on boutique liquor products:
  - i. are supported by a stock list for the Applicant’s other liquor store in Newtown, showing “many high value items not usually offered in mainstream chain stores”
  - ii. will less likely appeal to young people, and
  - iii. differentiates the Premises from the other liquor stores in Mona Vale and will not drive down local liquor prices,
- e) a number of measures have been outlined in the Applicant’s POM and implemented by the Centre to ensure the responsible service of alcohol and minimise alcohol related harm, and
- f) the proposed trading hours are permitted under the relevant modified DC.

37. The Authority notes from the BOCSAR data that:

- a) for the year to December 2016, the Premises was:
  - i. located within high density hotspots for incidents of alcohol related assault, non-domestic assault, and malicious damage to property, but
  - ii. not located within any hotspots for incidents of domestic assault, and
- b) for the two years to December 2016, Mona Vale reported:
  - i. a considerably higher rate of alcohol related non-domestic assault, but
  - ii. lower rates of alcohol related domestic assault and malicious damage to property,

in comparison with the corresponding NSW figure.

38. The Authority also notes from the HealthStats NSW data that for the period 2012-13, the LGA (comprising the three former Local Government Areas) reported alcohol attributable deaths below the NSW state average, and alcohol attributable hospitalisations above the state average.

39. The Authority finds the submissions received and the relevant crime and health statistics to raise legitimate concerns about, and warrant careful consideration of, the impact of an additional liquor licence in the area.

40. The Authority acknowledges that there may be a risk that liquor sold or supplied at the Premises will contribute to the prevailing levels of alcohol related crime and health issues in the local and broader communities, particularly among younger consumers who are more vulnerable to alcohol related harm.

41. The Authority accepts that the concerns and risks identified are somewhat mitigated by:

- a) the information provided by the Applicant, including the observations of the third party consultant about access to other liquor outlets and activities at nearby parks,
- b) the measures set out in the POM to ensure the responsible service of alcohol at the Premises,
- c) the evidence of support and lack of opposition from the community, which distinguishes the Application from the application by Liquorland in 2014, and
- d) the extensive experience of the Applicant in managing similar liquor outlets without known issues.

42. The Authority nevertheless considers that additional qualifications need to be imposed to adequately address all of the concerns in respect of the potential negative social impacts of the Premises.

43. First, the Authority notes that the Premises proposes to open for 90 hours a week, which will be longer than all of its local competitors. In light of the concerns identified earlier, the Authority considers some moderation of the hours to be warranted. In the circumstances, the Authority finds it appropriate to allow the Premises to trade from 10 am to 9 pm, Monday to Sunday.
44. Secondly, the Authority considers it appropriate to impose a condition in respect of the definition and proportion of boutique liquor products to be sold at the Premises. In light of the concerns identified by NSW Health, and the high liquor outlet density in the area, the Authority finds it appropriate to hold the Applicant accountable for its repeated emphasis on the boutique nature of the Premises. Acknowledging that the Applicant also intends to sell “mainstream products”, the condition allows for some flexibility in this regard.
45. Thirdly, the Authority finds it appropriate to impose a condition to expressly set out the requirement for a CCTV system and the technical specifications, to enhance the clarity and enforceability of the measures outlined in the POM. The Authority has considered the Applicant’s request to relax some of the requirements, but concludes that these requirements are reasonable and not overly burdensome.

#### Overall social impact

46. The Authority has had regard to the ABS data indicating that as at 2011, Mona Vale was among the most advantaged in comparison with other suburbs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage.
47. Having considered the positive and negative impacts that are likely to flow from granting the licence, and the proposed measures and licence conditions, the Authority is satisfied that the overall social impact of granting the licence would not be detrimental to the well-being of the local and broader communities.
48. The Authority is also satisfied that a decision to grant the licence would be consistent with the objects of the Act to regulate liquor supply and facilitate responsible industry development in line with community expectations and needs.
49. Accordingly, the Authority has decided to grant the packaged liquor licence.



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.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 2011 Census Quickstats for Mona Vale and the LGA (represented by three former Local Government Areas)
2. ABS SEIFA data based on the 2011 Census, ranking the suburb of Mona Vale and the LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
3. HealthStats NSW data showing alcohol related deaths and hospitalisations in the LGA for the period 2012-13.
4. BOCSAR crime maps for the year to December 2016, indicating the location of the Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
5. NSW crime statistics for the two years to December 2016, published by BOCSAR, showing the rates of alcohol related domestic and non-domestic assault and malicious damage to property in Mona Vale and the LGA.
6. Notice of determination of a development application issued by Pittwater Council on 1 August 2014, approving the Applicant's DC modification application N0007/14/S96/1.
7. Completed Category B CIS form, signed by the Applicant and dated 5 December 2016, and additional information provided by the Applicant in support of the CIS.
8. Completed online application form dated 12 December 2016, with attachments including copies of notices of the application, and relevant ASIC extracts.
9. Submissions from NSW Police, NSW Family & Community Services, Northern Beaches Council, and NSW Health in relation to the Application.
10. Certification of Advertising Application signed by the Applicant's representative and dated 29 March 2017.
11. Plan of Management for the Premises dated April 2017.
12. Submission from Hatzis Cusack Lawyers on behalf of the Applicant, dated 3 May 2017, with attachments including a petition of customers of Pittwater Place Shopping Centre, letters from Centre Management, report of A & M Consultants, and relevant product and price lists.
13. Liquor licensing records from L&GNSW as at 25 May 2017, listing packaged liquor licences in the LGA.
14. Google maps extracted from the Google website on 25 May 2017, showing the location of the Premises and distance to other packaged liquor outlets in Mona Vale.
15. Floor plan indicating the Premises' proposed licensed area.
16. Submission from Hatzis Cusack Lawyers on behalf of the Applicant, dated 7 July 2017, about the proposed conditions in respect of a CCTV system and sale of boutique liquor products.