



Mr Craig Brown-Thomas
Moon Mountain Vineyard
1733 Broke Rd
POKOLBIN, NSW 2320

19 December 2016

Dear Ms Brown-Thomas,

APPLICATION NO: APP-0001807710
APPLICATION FOR: New Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Sunday 10:00AM – 5:00PM

APPLICANT: Craig Brown-Thomas
**PROPOSED LICENSED PREMISES
NAME:** Thomas Allen Wines Cellar Door

PREMISES LOCATION: Moon Mountain Vineyard
1733 Broke Rd
POKOLBIN, NSW 2320 (Premises)

ISSUE: Whether to grant or refuse an application for
a new packaged liquor licence

LEGISLATION: Sections 3, 29, 30, 31, 40, 45, 48 *Liquor Act
2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION - APPLICATION FOR
NEW PACKAGED LIQUOR LICENCE – THOMAS ALLEN WINES CELLAR DOOR,
POKOLBIN**

The Independent Liquor and Gaming Authority considered the Application at its meeting on 16 November 2016 and, pursuant to section 45 of the *Liquor Act 2007* (Act), has decided to **grant** the Application number APP-0001807710 subject to the following conditions:

1. Trading Hours
Monday to Sunday 10:00AM – 5:00PM
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 – 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. Retail Sales

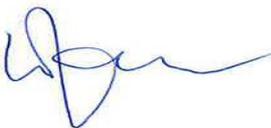
Good Friday	Not permitted
December 24 th	Normal trading
Christmas Day	Not permitted
December 31 st	Normal trading

4. The business authorised by this licence must not operate with a greater overall level of social impact on the well being 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.
5. The Premises is to be operated at all times in accordance with the Plan of Management dated 20 October 2016 as may be varied from time to time after consultation with the Local Area Commander.
6. The licensee will ensure the liquor sales area is adequately defined from the rest of the premises by means of a fixed, solid and permanent barrier.
7. The licensee or its representative must join and be an active participant in the local liquor accord.

At its meeting the Authority also considered a related application to change the boundaries of the licence number LIQW880014546 for the MM Vineyard, Pokolbin and decided, under section 94 of the Act, to grant that application. The attached statement of reasons concerns the Application for the packaged liquor licence.

If you have any enquiries about this letter please contact the case manager via email to santina.causa@justice.nsw.gov.au

Yours faithfully,



Philip Crawford

Chairperson

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

STATEMENT OF REASONS

Material Before The Authority

1. The following is a summary only of the material and submissions before the Independent Liquor and Gaming Authority (Authority) for the purposes of publishing a statement of reasons, as soon as practicable, in a high-volume jurisdiction.
2. In making this decision, the Authority has considered the application filed on 3 May 2016 (Application), the accompanying 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 and licence density data maintained by Liquor and 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. That material is listed and in some cases briefly summarised in the Schedule.

Summary of Further Submissions

3. Letter from Ms Tracey Le Brun, Senior Development Assessment Planner for Cessnock City Council (Council), certifying that notice of the Application was received by Council on 3 May 2016 and advising that “development consent is required and in place” for the proposed use of the Premises. The development approval (DA) is numbered DA 8/2012/12/1.
4. LGNSW Environment and Venue Assessment Tool (EVAT) Report for the Premises, dated 20 May 2016 indicating that the location risk associated with the Application is assessed to be “moderate” while the venue type risk is “low”.
5. Email from licensing staff dated 7 July 2016 advising that the LGNSW Policy section have confirmed that a producer can sell wine under their producer’s licence as long as they produce 50% of the wine on the licensed premises.
6. Email from Ms Davis-Meehan to licensing staff dated 30 October 2016. Ms Davis-Meehan submits that in making this Application there are no changes proposed to the current “Cellar Door” operation but the wine grower is simply trying to have part of his premises licenced to enable the sale of packaged liquor so that he can sell wine that contains grapes from *other vineyards* in the event of a season of poor weather. Selling that wine would not be within the scope of the Applicant’s producer wholesaler licence. The Applicant responds to questions posed by licensing staff on 18 October 2016. The CIS and Plan of Management were attached to this email, noted below.
7. Plan of Management dated 20 October 2016 which provides:
 - (a) a venue overview including details about the licensee/ manager, trading hours, bar and service areas and food service;
 - (b) information regarding the Responsible Service of Alcohol at the Premises (including registers, managing patron behaviour and liquor promotions);
 - (c) information regarding security and safety/ amenity of the neighbourhood;

- (d) staff training details;
 - (e) available transport; and
 - (f) details regarding work with local stakeholders.
8. Email from Ms Davis-Meehan dated 4 November 2016. The Applicant provides a Plan of Management and advises consents the conditions attached to the licence including consenting to:
- (a) section 11A of the *Liquor Act 2007* applying to the licence;
 - (b) the business not operating 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 CIS, application and other information submitted;
 - (c) operating the Premises at all times in accordance with the Plan of Management dated 20 October 2016 as may be varied from time to time in consultation with the Local Area Commander;
 - (d) ensuring that the liquor sales area is adequately defined from the rest of the premises by means of a fixed, solid and permanent barrier;
 - (e) the licensee or his representative must join and be an active participant in the local liquor accord (Ellen Davis-Meehan notes that Licensee Craig Thomas is a member of the Local Liquor Accord and active participant); and
 - (f) the licence cannot be operated unless and until the Authority has been provided with evidence that the premises are complete and ready for trade (Ellen Davis-Meehan notes that the Premises has been trading under a Producers licence for many years).

Legislative Framework

9. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the *Liquor Act 2007* (Act) and the *Liquor Regulations 2008* (Liquor Regulations). The power to grant an application for a new liquor licence is provided by section 45 of the Act.
10. 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.*
11. Section 33 of the Act, which applies to the Applicant's current producer/wholesaler licence, limits the authorisation conferred by that licence to the sale of the "licensee's product" only by wholesale to persons authorised to sell liquor, or by retail for consumption away from the licensed premises only (unless a drink on premises authorisation is in force).
 12. Section 33(3)(b) defines the "licensee's product" as having been produced on the licensee's premises (or at a vineyard *related to* the licensed premises), or, in the case of wine, is a product that is "uniquely the licensee's" (or a related corporation of the licensee's) and contains not less than that percentage of wine prescribed by the regulations that has been produced either by or under the direction of the licensee/related corporation on the licensee's premises or at a vineyard related to the licensed premises.
 13. Section 48(5) of the Act requires the Authority, in certain circumstances, to consider a CIS (as well as any other matter the Authority is made aware of during the application process) in order to ensure that the overall impact of the licence, authorisation or approval being considered will not be detrimental to the local or broader community.
 14. 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.
 15. Section 48(5) of the Act requires that the Authority must not grant the Application 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".
 16. 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 Pokolbin while the "broader community" comprises the responsible Local Government Area (LGA), the Cessnock LGA.

Analysis of Relevant Facts

17. 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.
18. 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 packaged liquor licensed venue of the kind proposed in the Application material. The Authority notes that no probity issues were raised with regard to the Applicant following consultation with law enforcement agencies including Police and LGNSW.

19. 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 20 October 2016.
20. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent is in place, on the basis of Development Application (DA) No. 8/2012/22/1 issued by Cessnock Council (Council) on 22 January 2012.

Social Impact – Positive Benefits

21. The Authority is satisfied, on the basis of the CIS and additional submissions from the Applicant, that the Applicant has demonstrated that granting the licence will provide some additional benefit to members of the local and broader community who wish to be able to continue to purchase wine from the Premises in Pokolbin. The Premises supports a range of local events and activities that contribute to the social cohesion of the area, including sponsoring community events and public benefit initiatives.
22. The Authority accepts the Applicant has established that granting the Application will be consistent with the “expectations, needs and aspirations of the community” in respect of the local community of Pokolbin, being an object of section 3(1)(a) of the Act. The Authority is satisfied that the Applicant distributed notices to the surrounding community including various stakeholders without receiving any adverse submissions, with *no* adverse position taken by relevant agencies, including LGNSW, Police and Council.
23. The Authority accepts the Applicant’s contention that climate change and weather patterns making drought and severe weather conditions pose a real threat to production and that the purpose of new packaged liquor licence is to enable the Applicant to sell a product that does not comply with the requirements of the producer/wholesaler licence by reason that the Applicant needs to source grapes from other vineyards in times of drought and severe weather.
24. The Authority is satisfied, on the basis of the CIS and additional submissions made by the Applicant, that granting the Application will assist the business to remain viable in times of drought when the yield of grapes is insufficient to produce enough wine to meet demand and comply with the producer wholesaler licence alone. In this sense the Authority is satisfied that the new licence can be said to develop, in the public interest, the liquor industry that serves the local and broader community for the purposes of section 3(1)(b) of the Act. Granting this Application will ensure that the business can source grapes for production elsewhere when necessary and ensure that the Applicant can continue to manufacture its wines and provide the cellar door service for the local and broader community.
25. The Authority is satisfied on the basis of the CIS and additional material supplied by the Applicant, that Pokolbin is a vineyard area that attracts and caters for tourism and in this respect granting the Application will further contribute to the reasonable development of related industry, being the local tourism industry, which is a statutory purpose of section 3(1)(c) of the Act.

26. The Authority is satisfied on the basis of that material that the business has been operating as a cellar door and a tourist attraction to visitors to Pokolbin and will continue to provide benefits of increased convenience and choice to the local community and visitors alike. The owners have over 70 years of winemaking experience between them and this is used to run a professional and responsible cellar door. The Authority notes that the Applicant will be maintaining its current producer/wholesaler licence, and the new licence will complement that business and enable the Applicant to sell wine produced from grapes that may be sourced from another location.

Social Impact – Negative Impacts

27. On the basis of LGNSW licence density information the Authority is satisfied that the State suburb of Pokolbin currently has 24 packaged liquor licences (not including the licences restricted to online sales). This reflects the area's status as part of the Hunter Valley wine production region which is of particular importance to wine production and reflects the popularity of the area for domestic and international tourists.
28. The Authority is reassured by the LGNSW data for the broader community of Cessnock LGA, which has lower rates of *packaged liquor*, *registered club* and *full hotel* licences per 100,000 persons compared to NSW as a whole.
29. The Authority acknowledges some cause for concern arising out of the BOCSAR *Report on NSW Recorded Crime Statistics* which indicates that Cessnock LGA has higher rates of incidents of *alcohol related domestic violence assaults* and *alcohol related non-domestic violence assaults* per 100,000 persons compared to the State. The Cessnock LGA has lower rates of *alcohol related offensive behaviour offences* and *alcohol related assault police incidents*.
30. The Authority is reassured that the local community of Pokolbin is not experiencing concentrations of alcohol related crime on the basis of the BOCSAR Crime Maps based upon data from July 2015 – June 2016 which indicate that the Premises is *not* located within any hotspots for incidents of *domestic assault*, *non-domestic assault* and *malicious damage to property*.
31. The Authority is satisfied, on the basis of ABS Socio-Economic Indexes For Areas (SEIFA) data that the suburb of Pokolbin is relatively advantaged, particularly for a regional area – ranking in the 9th decile by comparison to other state suburbs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage. This local community does not demonstrate socio-demographic indicia that are typically associated in the literature (including the research noted in *Authority Guideline 6: Consideration of social impact under Section 48(5) of the Liquor Act 2007*) with adverse alcohol related social impacts. However, the broader community of the Cessnock LGA is relatively disadvantaged, ranking in the 2nd decile.
32. Nevertheless, the licensed trading hours sought by the Applicant are moderate, extending only until 5:00PM Monday through Sunday. The business will close considerably earlier in the evening than the 10:00PM closing time that is potentially available for packaged liquor businesses under the standard licensed trading hours prescribed by section 12 of the Act. This is an objective harm mitigation factor that has

been given some considerable weight when considering the likely contribution to negative alcohol related social impacts from the operation of this licence. The Applicant consents to the 6-hour closure period of between 4:00AM – 10:00AM.

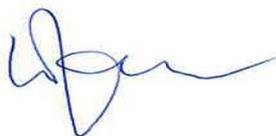
33. The Applicant consents to the condition that the liquor sales area is adequately defined from the rest of the premises by means of a fixed, solid and permanent barrier.
34. The Premises predominantly supplies wine to their 'Club 1733' members. It is anticipated that eventually produce will be sold exclusively to 'Club 1733' members, further reducing the scope for negative impact of the liquor licence to the local and broader community. There will be no changes made to the operation and function of the current cellar door operation resulting from the purchase of some grapes from outside vineyards from time to time and use of the new liquor licence.
35. The Authority is satisfied that the scale of the licensed area of the proposed new Premises (with a maximum of 30 patrons) is relatively small. Thomas Allen Wines will be available only from the cellar door, which limits the negative impact of the licence. There is no evidence from Police, LGNSW or Council as to localised crime or concerns with regard to the contribution that this style of business may make to the alcohol related impacts in the local and broader community. The Authority notes that Police were notified of the Application, but made no response. The Authority is satisfied on the material provided by the Applicant that the Premises for this licence is located on land that is somewhat removed from the towns in the local government area and not readily accessible or convenient to persons other than those visiting the Applicant's vineyard.

Conclusion

36. 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 and helped inform this decision. The interested parties include NSW Police, the Licensee, Council, RMS, neighbouring occupiers, NSW Health and Family and Community Services (FACS) and all other parties required to be consulted under the legislation.
37. 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 these local and broader communities.
38. The Application is granted pursuant to section 45 of the Act.
39. 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) – including (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, and (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.

Decision Date: 16 November 2016

A handwritten signature in blue ink, appearing to read 'Philip Crawford', with a stylized, cursive script.

Philip Crawford
Chairperson

SCHEDULE

Material Before The Authority

1. Plan or diagram of the proposed licenced area of the Premises dated 6 February 2012.
2. Notice of Determination DA 8/2012/22/1 dated 22 May 2012. This 10-page document lists the terms of consent prior to issue of construction certificate, during construction and post occupation.
3. Licence Documentation of Producer/ Wholesaler on premises LIQW880014546-MM Vineyard, licence start date being 16 October 2013.
4. Community Impact Statement (CIS) and supporting material, signed and dated 10 March 2016.
5. Community Impact Assessment prepared by Key Insights Pty Ltd (Consultant) on behalf of the Applicant dated March 2016, attached to the CIS lodged on the 10 March 2016. In this twenty-five-page document, the Consultant discusses the history and existing use of the Applicant's vineyard, the site description and location, the proposed use of the packaged liquor licence, management of the new business, managing negative social impact, the community profile, crime data for the community, community demographic risk factors, the DA, impact analysis and mitigation. Attached to this document are:
 - (a) the qualifications and experience of the author, Ms Davis-Meehan, director of the business and owner, Key Insights Pty Ltd.;
 - (b) a copy of the 'notice of intention to apply for a liquor licence or a licence authorisation' dated 10 February 2016 for the Premises;
 - (c) Cessnock Council CIS Submission from Madaline Smith, Planning Assessment Officer, dated 24 February 2016 which states that the council raises no objection to the issuing of such licence provided that all conditions of the Council's relevant Development Consent No. 8/2012/22/1 are adhered to.
6. Application Form for Liquor Licence (application number APP-0001807710) lodged 3 May 2016.
7. Tracey Le Brun, Senior Development Assessment Planner for Cessnock City Council, certified that the notice for the Application was received on 3 May 2016.
8. Email from licensing staff to the Applicant and Ms Davis-Meehan dated 5 May 2016.
9. The Environment and Venue Assessment Tool (EVAT) Assessment Report, LA16/07036, dated 20 May 2016.
10. Email from licensing staff to Ms Davis-Meehan dated 7 July 2016.
11. Email from Ms Davis-Meehan to licensing staff dated 8 July 2016.
12. Two Google Maps of the Premises dated 11 July 2016.
13. Email from licensing staff to Ms Davis-Meehan dated 8 September 2016.
14. Email from Ms Davis-Meehan to licensing staff dated 20 September 2016.

15. Email from licensing staff to Ms Davis-Meehan dated 22 September 2016.
16. Emails from licensing staff to Ms Davis-Meehan dated 18 October 2016 at 3:56PM and 4:14 PM.
17. Applicant's Plan of Management dated 20 October 2016 which provides a venue overview (including details about the licensee/ manager, trading hours, bar and service areas and food service), information regarding the Responsible Service of Alcohol at the Premises (including registers, managing patron behaviour and liquor promotions), information regarding security and safety/ amenity of the neighbourhood, staff training details, available transport and details regarding work with local stakeholders.
18. Email from Ms Davis-Meehan dated 30 October 2016.
19. Email from Ms Davis-Meehan dated 4 November 2016.
20. BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015. This report indicates that for July 2014 – June 2015:
 - (a) the rate of *alcohol related assault Police* incidents recorded by NSW Police recorded across Cessnock City Council LGA was **16.4** per 100,000 persons, slightly below the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of *alcohol related non-domestic violence* assault incidents recorded across Cessnock City Council LGA was **156.4** per 100,000 persons, slightly above the State-wide rate of **144.0** per 100,000 persons;
 - (c) the rate of *alcohol related domestic violence* assault incidents recorded across Cessnock City Council LGA was **192.8** per 100,000 persons, above the NSW rate of **122.6** per 100,000 persons; and
 - (d) the rate of *alcohol related offensive behaviour offences* recorded across Cessnock City Council LGA was **60.0** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.
21. BOCSAR Crime Maps based upon data from July 2015 – June 2016 detailing hotspots for the concentration of offences near the location of the Premises which is publically available on the BOCSAR website. This data indicates that the Premises:
 - (a) Is *not* located within any hotspot for incidents of *domestic assault*.
 - (b) Is *not* located within any hotspot for incidents of *non-domestic assault*.
 - (c) Is *not* located within any hotspot for incidents of *malicious damage to property*.
22. Liquor licensing records from LGNSW indicating that the suburb of Pokolbin already has 3 full hotel licences and 31 packaged liquor licences.
23. Liquor licence density data from LGNSW indicating that the Cessnock LGA as a whole recorded:
 - (a) A rate of **25.58** *packaged liquor licences* per 100,000 persons, which is below the NSW state wide rate of **32.85**.
 - (b) A rate of **9.84** *registered club licences* per 100,000 persons, which is well below the NSW state wide rate of **20.48**.

- (c) A rate of **19.68** *full hotel licences* per 100,000 persons, which is well below the NSW state wide rate of **30.36**.
24. Liquor licence density data from LGNSW indicating that the State suburb of Pokolbin recorded:
- (a) A rate of **13.66** *packaged liquor licences* per 100,000 persons, which is below the NSW state wide rate of **32.85**.
- (b) A rate of **10.24** *registered club licences* per 100,000 persons, which is well below the NSW state wide rate of **20.48**.
- (c) A rate of **27.32** *full hotel licences* per 100,000 persons, which is below the NSW state wide rate of **30.36**.
25. ABS SEIFA data prepared on the basis of the 2011 census indicating that the suburb of Pokolbin ranked in the 9th decile and the Cessnock LGA ranked in the 2nd decile, compared to other local government areas and state suburbs in NSW in the state on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).