



Ms Nicole Beath
JDK Legal
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SYDNEY NSW 2000
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20 December 2016

Dear Ms Beath,

APPLICATION NO: APP-0002136949
APPLICATION FOR: New Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Friday 10:00AM – 6:30PM
Saturday 10:00AM – 3:00PM
Sunday 10:00AM – 2:00PM

APPLICANT: Mr Joseph King

**PROPOSED LICENSED
PREMISES NAME:** Two Fat Butchers

PREMISES LOCATION: 38 Lackey St
SUMMER HILL, NSW 2130 (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 – TWO FAT BUTCHERS SUMMER HILL

The Independent Liquor and Gaming Authority considered application number APP-0002136949 at its meeting on 14 December 2016 and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **grant** the application subject to the following conditions:

- 1. Trading Hours**
Monday to Friday 10:00AM – 6:30PM
Saturday 10:00AM – 3:00PM
Sunday 10:00AM – 2:00PM
- 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 and 10:00AM during each consecutive period of 24-hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.


3. 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 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.
5. The premises are to be operated at all times in accordance with the plan of management dated 14 September 2016 as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
6. The licensee or its representative must join and be an active participant in the local liquor accord.
7. The liquor sales area is to be adequately defined from the rest of the retail area by means of a fixed, solid and permanent barrier.
8. A separate sales area is to be appropriately signed "liquor to be purchased from this register only".
9. The licence is limited to the sale of wine only.

If you have any enquiries about this letter please contact the case manager, Ms Santina Causa, 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 publication of a statement of reasons, as soon as practicable, in a high-volume jurisdiction.
2. In making this decision, the Authority has considered the packaged liquor licence application lodged on 14 September 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 the 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. Ashfield Local Area Command NSW Police (Police) submission from Thomas Melia, Licencing Officer, dated 20 September 2016. Police “have no objections to the application for a packaged liquor licence”.
4. Inner West Council (Inner West Council) submission from Mr William Daskaolopoulos dated 21 October 2016. Council “advise that development consent is required and is in place and the DA number is 10.2016.0750”.
5. LGNSW Environment and Venue Assessment Tool (EVAT) reference LA16/07598 dated 28 October 2016 which states that the venue risk for the Premises is assessed as “low” and the location risk “low to moderate”.
6. Email submission from Ms Nicole Beath of JDK Legal to licensing staff dated 21 November 2016 in response to an invitation from licensing staff dated 8 November 2016 to comment on proposed standard conditions. On behalf of the Applicant Ms Beath submits that submissions from Police and Secretary are “positive in that no adverse comments were made”. The Applicant consents to the imposition of conditions including a requirement for a daily 6-hour closure period between 4:00 am and 10:00 am, a requirement that the business on the Premises not operate with a greater overall level of social impact than disclosed during the application process, a requirement that the licensee or representative join and participate in the local liquor accord, a requirement that the Premises operate in accordance with *Plan of Management* and *House Policy* dated 14 September 2016 as may be varied in consultation with the Local Area Commander, a requirement that all staff of the business must be provided with training and a copy of the *Plan of Management*, a requirement that the liquor sales area must be adequately defined by a fixed, solid and permanent barrier, that a separate sales area will have signage “liquor to be purchased from this register only”, that the licence is limited to the sale of wine only and that the licence cannot be exercised unless and until there is evidence that the Premises is complete and ready for trade.

7. Ms Beath further submits that the Applicant does not consent to a condition that the licence cannot be exercised unless and until the appointment of a manager by reason that the Applicant (licensee) “is an individual and a suitably qualified person to hold the licence” and therefore no appointment of manager is required. A copy of the Applicant’s product list was also attached to this submission.
8. Email from Ms Beath to licensing staff dated 30 November 2016. This includes a certificate of advertising for the Application and a plan or diagram of the Premises showing the licensed area and the location of current cash register in use on the Premises.

Legislative Framework

9. The legal requirements for the making of a valid application for a new liquor licence are provided by section 40 of *the Liquor Act 2007* (Act) and the *Liquor Regulation 2008* (Regulation). The power to grant an application for a 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 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.
12. 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.
13. Section 48(5) of the Act requires that the Authority must not grant an 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”.
14. 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 Summer Hill, while the broader community comprises the relevant Local Government Area (LGA), which at the time of this

decision is Inner West LGA (proclaimed on 12 May 2016 amalgamating the previous Ashfield, Leichardt Municipal and Marrickville local government areas).

Analysis of Relevant Facts

15. The Authority is satisfied, on the basis of the Application and CIS material before it, that for the purposes of section 40 of the Act the Application has been validly made and the minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
16. 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 & LGNSW.
17. 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 upon the commencement of licensed trading on the Premises. This finding is made on the basis of the Applicant's amended *Plan of Management and House Policy for the Responsible Service of Alcohol* dated 14 September 2016.
18. 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 Applicant's *Plan of Management* dated 14 September 2016 and the Development Consent 10.2016.075.2 dated 17 May 2016 issued by Ashfield Council (Ashfield Council).

Social Impact – Positive Benefits

19. The Authority is satisfied, on the basis of the Application, CIS and additional material supplied by the Applicant that granting this new licence will provide some benefit of convenience and choice to members of the local and broader community. The Premises will stock quality wines on a small scale to enhance and complement the existing business and this will "offer patrons a very convenient, flexible shopping experience".
20. Ashfield Council granted Development Approval (DA) No. 10.2016.075.2 dated 17 May 2016, consenting to the "use of part of an existing butcher shop to sell wine". Ashfield Council attached conditions related to the development, construction or demolition of the Premises and conditions related to ongoing requirements of development consent (including maximum number of employees, trading hours, wine sale hours, consumption of wine on footpath being prohibited, consumption of wine is off premises only and sale of wine only with purchase of meat).
21. The Authority accepts the Applicant's contention that it distributed the consultation notice to stakeholders and neighbouring premises and did not receive any adverse submissions. On this basis, the Authority is satisfied that granting this Application is consistent with the "expectations, needs and aspirations of the community" in respect of the local community of Summer Hill, being an object of section 3(1)(a) of the Act.
22. The Authority is satisfied, on the basis of the CIS and additional material supplied by the Applicant, that this new packaged liquor facility will provide quality wines to

compliment the current range of products available. Given the speciality nature of the associated business, the liquor sold on the Premises may reasonably develop, in the public interest, the liquor industry serving the local and broader community. The Authority is satisfied the business model involves a degree of innovation that advances the statutory object of the reasonable development of the liquor industry for the purposes of 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 the 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 packaged liquor.
24. The Authority notes that the Applicant seeks for the Premises to be licensed from 10:00AM – 6:30PM on Monday to Friday, 10:00AM – 3:00PM on Saturday and 10:00AM – 2:00PM on Sunday. The business will close considerably earlier in the evening than the latest closing time that is available for packaged liquor businesses pursuant to the standard licensed trading hours prescribed by section 12 of the Act. This is a harm mitigation factor that has been given considerable weight when assessing the likely contribution to negative alcohol related social impacts from the operation of *this* licence.
25. The Authority is satisfied, on the basis of the Application and CIS, that the scale of the licensed area of the proposed Premises (72sqm) is smaller than many stand alone liquor businesses in New South Wales. Notably, the packaged liquor licence will apply to a defined area within the existing Two Fat Butchers business and will be separated from the remainder of the store by fixed partitions. All liquor purchases will be paid for at a designated cash register within the sales area in accordance with section 30 of the Act. The specialty nature of this business, established by the information provided in the Application and CIS and reinforced by a licence condition restricting the licence to the sale of wine only, is a further factor indicating that the Premises will likely service a specialty clientele. It will not be generally attractive to the public in the manner of a typical liquor store providing the usual range of mainstream liquor products.
26. With regard to prevailing licence density, the Authority further notes, on the basis of LGNSW liquor licensing records, that the State suburb of Summer Hill currently has 2 packaged liquor licenced premises, while the former Ashfield LGA, which comprises the most proximate portion of surrounding suburbs within the new Inner West LGA, has 12 packaged liquor licenced premises.
27. With regard to prevailing crime data, BOCSAR Crime Maps for the period between July 2015 – June 2016 indicate that the Premises:
 - (a) Is located inside a low density *hotspot* for incidents of *domestic assault*.
 - (b) Is located inside a low density *hotspot* for incidents of *non-domestic assault*.
 - (c) Is located inside a medium density *hotspot* for incidents of *malicious damage to property*.
28. The Authority derives considerable reassurance from the BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015 which records that during the 2014/15

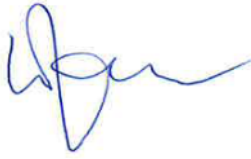
financial year the former Ashfield LGA recorded lower rates per 100,000 persons of population for the occurrence of alcohol related assault police incidents, alcohol related non-domestic violence assault incidents, alcohol related domestic violence assaults and alcohol related offensive behaviour offences than NSW as a whole. This same report indicates that the former Leichardt LGA performed relatively well by comparison to New South Wales wide alcohol related crime rates while the former Marrickville LGA recorded higher rates of incidents of alcohol related *assault police* and *non-domestic violence* compared to the NSW rate per 100,000 persons (issues that would tend to be associated with on premises, later trading venues).

29. Notably, neither Police, LGNSW nor Council raise any concerns with the Application.
30. The Authority further notes, on the basis of the ABS Socio-Economic Indexes For Areas (SEIFA) data, that both the suburb of Summer Hill and the former Ashfield LGA are advantaged compared to other local government areas and State suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage, with both Summer Hill and the former Ashfield LGA ranked in the 8th decile on the Index (with a decile ranking of 10 being the most advantaged). The Authority is aware, from frequent recourse to ABS SEIFA data, that the former Leichardt LGA and Marrickville LGA that will also form part of the Inner West LGA are on the whole relatively socio economically advantaged communities.
31. When making this decision Authority has had regard to the conditions to which the licence will be subject and the reasonably detailed measures set out in the *Plan of Management* and *House Policy* dated 14 September 2016.

Conclusion

32. 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, including Police and Council, and all other parties were consulted as required by the legislation.
33. 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.
34. The Application is granted pursuant to section 45 of the Act.
35. 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: 14 December 2016



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. Application Form for packaged liquor licence lodged 14 September 2016.
2. CIS form lodged on 14 September 2016 with the Application. The supporting material includes:
 - (a) List of stakeholders and special interest groups.
 - (b) Aerial photograph of the area surrounding the Premises.
 - (c) Public Consultation Site Notice and Local Consent Authority Notice.
 - (d) Australia Securities and Investments Commission (ASIC) Current Organisation Extract dated 12 September 2016.
 - (e) Certification of Advertising Application dated 30 November 2016.
3. Provided with the Application is a copy of development consent 10/2016.075.2 dated 17 May 2016 issued by Ashfield Council. Condition H(1), a condition regarding maximum number of employees, was amended as set out in a letter from Council's Director Planning and Environment dated 2 September 2016.
4. Also provided with the Application is a submission received by the Applicant from NSW Roads and Maritime Services dated 27 June 2016.
5. *Plan of Management* dated 14 September 2016. This six-page document provides information regarding hours of operation, staffing, security and CCTV, operational practices, implementation of the operational procedures, continual application of harm minimisation procedures, establishing a close working relationship with local Police, establishing links within the local community and about the display of drink driving educational material. The *Plan of Management* also includes the *House Policy for the Responsible Service of Alcohol*, including information on prevention of sales to juveniles, preventing intoxication, no consumption of liquor on the Premises and the erection of required signs.
6. Submission from Ashfield Local Area Command NSW Police Submission from Thomas Melia, Licencing Officer, dated 20 September 2016.
7. Inner West Council Submission received 21 October 2016.
8. LGNSW EVAT reference LA16/07598 dated 28 October 2016.
9. Email from licensing staff to Nicole Beath, JDK Legal, dated 8 November 2016.
10. Email from Ms Beath to licensing staff dated 21 November 2016. A copy of the Applicant's product list was attached to the email.
11. Email from Ms Beath to licensing staff dated 30 November 2016. Completed advertising certificate and plan showing the location of current cash register in use attached.
12. NSW Department of Health *HealthStats* Selected Reports for Ashfield dated 1 December 2016.
13. 2011 Census QuickStats information downloaded from the ABS website on 1 December 2016.

14. Google Maps of the Premises and surrounding area downloaded 1 December 2016.
15. Plan or diagram of proposed licensed Premises.
16. 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 the former Ashfield LGA was **9.0** per 100,000 persons, substantially 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 the former Ashfield LGA was **74.2** per 100,000 persons, substantially below the State-wide rate of **144.0** per 100,000 persons;
 - (c) the rate of *alcohol related domestic violence* assault incidents recorded across the former Ashfield LGA was **80.9** per 100,000 persons, substantially below the NSW rate of **122.6** per 100,000 persons; and
 - (d) the rate of *alcohol related offensive behaviour offences* recorded across the former Ashfield LGA was **18.0** per 100,000 persons, well below the State-wide rate of **88.2** per 100,000 persons.
17. This BOCSAR report also indicates that for July 2014 – June 2015:
 - (a) the rate of *alcohol related assault Police* incidents recorded by NSW Police recorded across the former Leichardt LGA was **18.9** per 100,000 persons, on par with the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of *alcohol related non-domestic violence* assault incidents recorded across the former Leichardt LGA was **108.4** per 100,000 persons, below the State-wide rate of **144.0** per 100,000 persons;
 - (c) the rate of *alcohol related domestic violence* assault incidents recorded across the former Leichardt LGA was **72.2** per 100,000 persons, substantially below the NSW rate of **122.6** per 100,000 persons; and
 - (d) the rate of *alcohol related offensive behaviour offences* recorded across the former Leichardt LGA was **67.1** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.
18. BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015 indicating that for July 2014 – June 2015:
 - (a) the rate of *alcohol related assault Police* incidents recorded by NSW Police recorded across the former Marrickville LGA was **25.2** per 100,000 persons, above the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of *alcohol related non-domestic violence* assault incidents recorded across the former Marrickville LGA was **212.3** per 100,000 persons, substantially above the State-wide rate of **144.0** per 100,000 persons;
 - (c) the rate of *alcohol related domestic violence* assault incidents recorded across the former Marrickville LGA was **112.8** per 100,000 persons, below the NSW rate of **122.6** per 100,000 persons; and

- (d) the rate of *alcohol related offensive behaviour offences* recorded across the former Marrickville LGA was **78.0** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.
- 19.** BOCSAR Crime Maps based upon data from July 2015 – June 2016 detailing hotspots for the concentration of offences near the location of the Premises. This data, which is publicly available on the BOCSAR website, indicates that the Premises is located within a low-density hotspot for incidents of *domestic assault* and for incidents of *non-domestic assault*. The Premises is located within a medium density hotspot for incidents of *malicious damage to property*.
 - 20.** LGNSW liquor licensing records indicating that the suburb of Summer Hill currently has 2 packaged liquor licensed premises, while the former Ashfield LGA has 12 packaged liquor licensed premises.
 - 21.** ABS SEIFA data prepared on the basis of the 2011 census indicating that the suburb of Summer Hill ranked in the 8th decile and the former Ashfield LGA ranked in the 8th decile, on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).