



Mr Brett Tobin  
Hatzis Cusack Lawyers  
[bt@hatziscusack.com.au](mailto:bt@hatziscusack.com.au)

23 April 2018

Dear Mr Tobin

<b>Application No.</b>	1-6474080873
<b>Applicant</b>	Mr Robert James McGregor
<b>Application for</b>	Removal of a packaged liquor licence
<b>Licence name</b>	Le Pont Wine Store
<b>Licence number</b>	LIQP770016926
<b>Trading hours</b>	Monday to Saturday 10:00 am – 9:00 pm Sunday 10:00 am – 8:00 pm
<b>Current Premises</b>	Shop 2, 110 Alfred Street MILSONS POINT NSW 2061
<b>Proposed Premises</b>	Shop 1, 88 Alfred Street MILSONS POINT NSW 2061
<b>Issue</b>	Whether to grant an application for the removal of a packaged liquor licence
<b>Legislation</b>	Sections 3, 11A, 12, 29, 30, 31, 40, 45, 48 and 59 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority**  
**Application for the removal of a packaged liquor licence – Le Pont Wine Store**

The Independent Liquor and Gaming Authority (“Authority”) considered the Applicant’s application above for the removal of a packaged liquor licence (“Application”) and, pursuant to section 59 of the *Liquor Act 2007*, decided to **grant** the Application 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 premises is to be operated at all times in accordance with the Plan of Management dated November 2017 as may be varied from time to time after consultation with 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.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. No flagons, cask or RTDs are to be sold.
7. No cups or drinking vessels are to be provided to customers on 31<sup>st</sup> December.

8. A security guard is to be stationed at the entrance to the store on 31<sup>st</sup> December from 12:00 midday until close.
9.
  - 1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises ("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,
    - (b) recordings must be in digital format and at a minimum of six (6) 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, and
      - (ii) all publicly accessible areas (other than toilets) within the premises.
  - 2) The licensee must also:
    - (a) keep all recordings made by the CCTV system for at least 30 days,
    - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person 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 Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

### **Removal of the packaged liquor licence**

Notwithstanding the Authority's approval of the Application, the packaged liquor licence the subject of the Application is not to be exercised at Shop 1, 88 Alfred Street, Milsons Point NSW unless and until Liquor & Gaming NSW has been provided with evidence that the premises is complete and ready to trade.

The packaged liquor licence remains at Shop 2, 110 Alfred Street, Milsons Point NSW subject to the same conditions and trading hours that were immediately in force before this Application was approved until such time as Liquor & Gaming NSW is notified that the licence has been removed.

### **Trading on a Sunday that falls on 24 December**

Please note that in the case of any Sunday that falls on 24 December, the 6-hour closure period overrides the statutory provision that would otherwise allow the licence to commence trading from 8:00 am. In accordance with the 6-hour closure period for the current licence, the premises must not commence trading earlier than 10:00 am.

If you have any questions, please contact the case manager at [beatrice.pitpaiaac@liquorandgaming.nsw.gov.au](mailto:beatrice.pitpaiaac@liquorandgaming.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 2 November 2017, Mr Robert James McGregor (“Applicant”) lodged an application (“Application”) with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”). The Application sought the removal of a packaged liquor licence (“Licence”) from the premises at Shop 2, 110 Alfred Street, Milsons Point NSW (“Current Premises”) to the premises at Shop 1, 88 Alfred Street, Milsons Point NSW (“Proposed Premises”).
2. Pursuant to section 59 of the *Liquor Act 2007* (“Act”), the Authority has decided to grant the Application.
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, 48 and 59 of the Act, and relevant provisions of the *Liquor Act Regulation 2008* (“Regulation”).

### 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 and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
7. A list of the material considered by the Authority is set out in the Schedule.

### Legislative framework

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

### Objects of the Act

9. The key objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations, needs and aspirations 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 exercising its powers, have due regard to the need to minimise harm associated with misuse and abuse of liquor, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

### Removal of liquor licence

11. Section 59 of the Act requires the Authority to determine an application to remove a licence to another premises as if it were an application for a licence at that premises, and provides that the provisions in respect of a licence application extend to a licence removal application.
12. Section 59 also provides that the Authority must not approve the removal application unless it is satisfied that practices will be in place following the removal and remain in place to reasonably ensure the responsible service of alcohol and to prevent intoxication on the premises to which the license is proposed to be removed.

#### Trading hours and 6-hour closure period

13. Section 12 of the Act sets out the standard trading period for various 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

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

15. Section 59(2) of the Act prescribes the minimum procedural requirements for a valid application to remove a licence to another premises.

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

16. 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 required for use of the premises for the proposed business is in force.

#### Community impact statement

17. 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.

18. 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

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

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

21. 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.

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

#### **Key findings**

23. 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 hour requirements

24. The Authority is satisfied on the material before it that:

- a) the Application has been validly made and meets the procedural requirements under sections 40 and 59 of the Act,
- b) the proposed trading hours for the Proposed Premises meet the requirements under sections 11A, 12 and 29 of the Act in respect of trading and 6-hour closure periods,
- c) if the Application were to be granted, liquor will be sold in accordance with the authorisation conferred by the Licence as required by section 29 of the Act, and

- d) sections 30 and 31 of the Act do not apply to the Application, as the Proposed Premises is not intended to be used for any of the purposes specified in the sections.

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

25. Pursuant to sections 45 and 59 of the Act, the Authority is satisfied that if the Application were to be approved, practices will be in place from the commencement of licensed trading at the Proposed Premises, and will remain in place, to ensure the responsible serving of alcohol. In making this finding the Authority has had regard to the material before it, including the Plan of Management.
26. The Authority is also satisfied that, for the purposes of section 45 of the Act:
- 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, and
  - b) the requisite development consent is in force, based on the Complying Development Certificate issued by McKenzie Group on 20 October 2017 in respect of the Proposed Premises.

Community impact statement

27. 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 Proposed Premises on the local and broader communities.
28. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that:
- a) the relevant "local community" is the community within the suburb of Milsons Point, and
  - b) the relevant "broader community" refers to the community within a Local Government Area ("LGA") and in this case comprises North Sydney LGA.

Positive social impacts

29. The Authority accepts, on the material before it, the Applicant's contention that granting the removal of the Licence to the Proposed Premises would provide local residents with a new, larger, more modern and more secure packaged liquor facility compared to the Current Premises.
30. Noting that the Proposed Premises is within approximately 150 metres of, and is on the side of the same street as, the Current Premises, the Authority is also satisfied that the existing customers of the Current Premises would unlikely experience any inconvenience or reduced access to packaged liquor as a result of the proposed removal.
31. The Authority notes that one submission was received from a member of the public in support of the Application.
32. Having regard to the information available, the Authority is satisfied that approving the Application would be in line with the expectations, needs and aspirations of the local and broader communities, and contribute to the responsible and balanced development of the liquor industry.

Negative social impacts

33. The Authority notes that the density of packaged liquor outlets in Milsons Point and North Sydney LGA is considerably higher than the corresponding NSW figure. The Authority however does not consider this data to be an issue of concern for the purpose of the Application, as the proposed relocation of the Licence will be within the same LGA and suburb, and will not result in any increase in density figures.

34. The Authority notes from the BOCSAR data that, for the year to September 2017:
- a) the Proposed Premises was located within high density hotspots for incidents of alcohol related assault, non-domestic assault and malicious damage to property, and medium density hotspots for incidents of domestic assault,
  - b) the rates of alcohol related assault (domestic and non-domestic) and malicious damage to property in Milsons Point are either higher than or just below the NSW state average, and
  - c) North Sydney LGA reported lower than average rates of alcohol related domestic assault and malicious damage to property, but a higher than average rate of alcohol related non-domestic assault.
35. The Authority also notes from the most recent HealthStats NSW data available at the time of its consideration that North Sydney LGA recorded a lower than average level of alcohol attributable deaths for the period 2012-13, and a higher than average level of alcohol attributable hospitalisations for the period 2013-15.
36. Mindful of its duty under section 59(3) of the Act to deal with the Application as if it were an application for a new liquor licence at the Proposed Premises, the Authority considers that:
- a) the relevant statistics raise some concerns in respect of the prevailing level of alcohol related crime and health issues in the local and broader communities, and
  - b) there may be a risk that liquor sold or supplied at the Proposed Premises, over time, will contribute to an increase in alcohol related crime, health and other social issues in the community.
37. The Authority is nevertheless satisfied that most, if not all, of the potential harm associated with the sale or supply of liquor at the Proposed Premises will be offset by the reduction in alcohol related harm following the removal of the Licence from the Current Premises, which is in the vicinity of the Proposed Premises.
38. The Authority also considers the potential risk identified to be further mitigated by:
- a) the absence of any objections from any members of the public, or other key stakeholders such as NSW Police, NSW Health or Council, in relation to the Application, and
  - b) the practices and procedures in the Applicant's Plan of Management documents and the proposed licence conditions in respect of the responsible service of alcohol.
39. The Authority notes that NSW Police identified, in its letter dated 14 September 2017, an issue relating to the existence of another liquor licence at the Proposed Premises. The Authority notes that this issue has been resolved following a change of boundary application to limit that other licence, which is currently dormant, to an area that does not overlap with the area to which the Licence is proposed to apply.

#### Overall social impact

40. The Authority has had regard to the ABS Socio-Economic Indexes for Areas ("SEIFA") data indicating that as at 2011, Milsons Point and North Sydney LGA were among the most advantaged in comparison with other suburbs and LGAs in NSW, on the Index of Relative Socio-economic Advantages and Disadvantages. The Authority notes that this data is seven years old and does not draw any specific inferences from it, other than to note that it does not raise any concerns.
41. Having considered the positive and negative social impacts that are likely to flow from the removal of the Licence, the Authority is satisfied that the overall social impact of approving the Application would not be detrimental to the well-being of the local and broader communities.
42. The Authority is also satisfied that a decision to approve the Application 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.

43. Accordingly, the Authority has decided to grant the removal of the Licence from the Current Premises to the Proposed Premises.



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 considered by the Authority

1. ABS SEIFA data based on the 2011 Census ranking Milsons Point and North Sydney LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol attributable deaths in North Sydney LGA for the period 2012-13 and alcohol attributable hospitalisations in the LGA for the period 2013-15.
3. NSW Recorded Crime Statistics 2016 setting out the proportion of incidents by offence type, day of week and time of day in North Sydney LGA.
4. Premises plan dated 11 September 2017 for the Proposed Premises.
5. Letter from NSW Transport Roads & Maritime Services, dated 18 September 2017, in relation to the Application.
6. Letters from NSW Family & Community Services, dated 19 September and 24 November 2017, in relation to the Application.
7. Letter from Spirit of Life Unitarian Fellowship Inc, dated 26 September 2017, in relation to the Application.
8. BOCSAR Crime Hotspot Maps for the year to September 2017, indicating the location of the Proposed Premises relative to hotspots for incidents of alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
9. NSW crime statistics for the two years to September 2017, published by BOCSAR, showing the counts, rates and two year trends of alcohol related assault (domestic and non-domestic) and malicious damage to property in Milsons Point and North Sydney LGA.
10. Letter from North Sydney Council, dated 10 October 2017, in relation to the Application.
11. Email from NSW Education Aboriginal Affairs, dated 10 October 2017, in relation to the Application.
12. Complying Development Certificate No. 17/124332-1 issued by McKenzie Group on 20 October 2017 in respect of the Proposed Premises.
13. Completed application dated 1 November 2017.
14. Completed Category B CIS dated 1 November 2017 and its supporting documents.
15. Notice to local consent authority, signed on behalf of North Sydney Council, in relation to the Application.
16. Letters from NSW Police, dated 14 September and 28 November 2017, in relation to the Application.
17. Completed Certifications of Advertising Applications dated 27 and 30 November 2017.
18. Plan of Management documents dated November 2017.
19. Correspondence between L&GNSW Licensing staff and the Applicant's legal representative between 27 November and 13 December 2017 in relation to the assessment of the Application.
20. L&GNSW liquor licensing records as at 15 January 2018, outlining the density of all types of liquor licences in Milsons Point, North Sydney LGA and NSW, and listing all packaged liquor licences in Milsons Point and North Sydney LGA.
21. Evidence of approval of a change of boundary application in respect of an existing liquor licence at the Proposed Premises.



22. L&GNSW liquor licensing records as at 18 January 2018, setting out the key liquor details for the Licence held at the Current Premises.
23. Google map images extracted from the Google website on 18 January 2018, showing the location and photos of the Proposed Premises in map view, earth view and street view.
24. Information extracted from the website for the Current Premises in relation to the liquor business currently in operation.
25. An undated submission from a member of the public in relation to the Application.