



Mr Christopher Wilmot
c/o MRM Lawyers
9 Church Street
Maitland NSW 2320

11 October 2016

Dear Mr Wilmot,

APPLICATION NO: 1-4031533731
APPLICATION FOR: New Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Sunday 10:00AM – 5:00PM

APPLICANT: Stephen Drayton
PROPOSED LICENSED PREMISES NAME: Ivanhoe Wines

PREMISES LOCATION: 525 Marrowbone 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 – IVANHOE WINES, POKOLBIN

The Independent Liquor and Gaming Authority considered the Application at its meeting on 27 July 2016 and pursuant to section 45 of the *Liquor Act 2007* (Act), has decided to **grant** the Application number 1-4031533731 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 4:00 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.
3. Retail Sales
Good Friday Not permitted
December 24th Normal trading Monday to Saturday, 8:00AM – 10:00PM Sunday

Christmas Day Not permitted

December 31st 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 are to be operated at all times in accordance with the Plan of Management dated May 2016 as may be varied from time to time in 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 licensee must ensure that sales are restricted to wine only (including fortified wine).

If you have any enquiries about this letter please contact the case manager via email to kieran.mcsherry@ilga.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 February 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. Report to the Authority dated 17 February 2016 from the Compliance Branch of LGNSW advising that the Application was assessed using the Environment and Venue Assessment Tool (EVAT). This means that LGNSW have not performed any specific assessment of the Application.
4. Email submission from Sergeant Brett James, Licensing Supervisor of the Central Hunter Local Area Command (LAC) of NSW Police (Police) dated 19 May 2016 advising that Police have spoken to the Applicant who advised that the rationale for the Application is to maintain income streams during times of poor grape production at the related vineyard business. Police note that there is a current producer/wholesale liquor licence (LIQW824007412) attaching to the Premises and submit that the packaged liquor licence plan should not “encroach” upon the licensed area of the producer/wholesaler liquor licence. Police have no objection to the Application, but recommend that a condition be imposed upon the new licence restricting it to the sale of wine only.
5. Email from the Applicant dated 19 May 2016 providing the certificate of advertising; contending that both the packaged liquor licence and the producer/wholesaler licence are required by the business, while the new licence will be clearly defined from the existing licence; noting that the trading hours for the new licence will be from 10 am to 5 pm; attaching notices of the Application dated 21 January 2016 to Roads and Maritime Services (RMS), Mindaribba Local Aboriginal Land Council (MLALC), Cessnock Community Services Centre (CCSC) and NSW Health Hunter New England Local Health District (HNELHD); advising that the Applicant and his wife, Ms Tracy-Lynn Drayton, are trustees for Ivanhoe Wines Superannuation Fund and do not legally own the property of the Premises in any personal capacity; advising that photographs confirming that the new Premises is complete and ready to trade will be provided once the exact location of the new licence area is resolved; attaching the amended Plan of Management; advising that the new licence will be limited to the sale of wine only and

that conditions requiring the new business to not operate beyond the scope of the CIS and in accordance with the Plan of Management will apply. The Applicant also provides an Australian Securities and Investments Commission (ASIC) Record of Registration of Business Name for “Ivanhoe Wines”.

6. Email from the Applicant dated 23 May 2016 consenting to the imposition of a licence condition restricting sales made pursuant to the new licence to wine and fortified wine; attaching a copy of the diagram/plan indicating the licensed area; attaching a copy of the *House Policy* dated 25 May 2016 and submitting that the packaged liquor licence will only operate from the Ground Floor of the relevant building while the current producer/wholesale licence will only operate from the Lower Ground Floor.
7. Email from the Applicant to the Authority staff dated 15 July 2016. In this email the Applicant contends that they have wine made on their behalf at a winery located 5 kilometres from their vineyard (not related to the Applicants vineyard).
8. The Authority notes that section 33 of the Act limits the authorisation conferred by a producer wholesaler 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).
9. 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.
10. The Applicant contends that during 2012 and 2015, due to climate change and weather impacts, the yield of grapes from the relevant vineyards was “dismal” and too low to enable the Applicant to blend sufficient quantities of wine that would be available for sale in compliance with the requirements of the producer/ wholesaler licence.
11. The purpose of the proposed new packaged liquor licence will enable the Applicant to also sell a product that does not comply with the requirements of the producer wholesaler licence because the Applicant needs to source grapes from other vineyards for wine manufacture and also source already made wine from other wineries to blend sufficient product (not on their premises) in order to make their own resulting product, including wine that is blended on premises not related to the vineyard.

Legislative Framework

12. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the *Liquor Act 2007* 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.
13. 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.*
14. 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.
15. 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.
16. 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”.
17. 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

18. 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.
19. 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.

20. 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 *House Police* dated 25 May 2016 provided by the Applicant.
21. 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. 118/696/180 issued by Cessnock Council (Council) on 28 July 1997.

Social Impact – Positive Benefits

22. The Authority is satisfied, on the basis of the CIS, that the Applicant has successfully operated a wine sales facility at Ivanhoe wines for 18 years. 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 this cellar door in Pokolbin.
23. 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). 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.
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 will 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 and wine when necessary to ensure that Ivanhoe Wines can continue to manufacture its wines and the cellar door service can continue to service 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. The Authority is satisfied 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.
26. The Authority is satisfied, on the basis of the Applicant’s consent to enforceable licence condition restricting the licence to sales of wine only that the new licence will not operate as just another mainstream packaged liquor outlet and actually reinforce

the producer wholesaler business and the cellar door service provided by the Applicant on the site.

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 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 Crime by LGA and Alcohol Related Status* which indicates that Cessnock LGA has higher rates of incidents of *domestic violence related assaults* and *malicious damage to property* per 100,000 persons compared to the State. The Cessnock LGA has lower rates of *non-domestic violence*, *offensive conduct* and *assault police*.
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 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 New South Wales 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 by comparison to other LGA's in New South Wales on the Index of Relative Socio-economic Advantage and Disadvantage.
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.
33. Notably, the enforceable condition restricting the sale of liquor to wine only (including fortified wine) both reinforces the bona fide nature of the proposed packaged liquor licensed business as a cellar door style of operation. The condition reduces the scope for this business to operate in the manner of a mainstream liquor business and

reinforces that the purposes of this licence is to complement the existing producer wholesaler business.

34. The Authority is satisfied that the scale of the licensed area of the Premises (approximately 79 square metres) is relatively small. 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.

Conclusion

35. 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.
36. Having considered together the positive benefits and negative impacts that the Authority are 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.
37. The Application is granted pursuant to section 45 of the Act.
38. 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: 27 July 2016



Philip Crawford
Chairperson

SCHEDULE

Material Before The Authority

1. Application Form lodged on 3 February 2016.
2. CIS document and supporting material lodged on 3 February 2016. Briefly, the Applicant's contentions on overall social impact include the following:
 - (a) As part of its winery, Ivanhoe Wines has successfully operated a wine sales outlet facility for over eighteen years at the Premises. This cellar door is in the midst of "vast hectares of grape vines and vineyards" and is "not located within 100 metres" of any other building.
 - (b) The Premises is not located near hospitals, nursing homes, places of worship, educational facilities, facilities for homeless people, detoxification facilities, public parks, sporting grounds, alcohol free zones or any area identified by Police as being a problem area in relation to public drinking.
 - (c) The intention is to sell wine only and the Applicant accepts a condition on the licence to this effect.
 - (d) The "sole driver" for this Application is that climate change and weather patterns making drought a real threat to production mean that grapes may need to be used from other vineyards. The existing producer/wholesaler licence only permits the sale of liquor produced from fruit grown on the licensed premises or a vineyard related to the licensed premises. Nothing else changes about this DA approved cellar door business.
 - (e) This Application will address the new desired supply arrangements.
 - (f) The Applicant is committed to their community.
 - (g) ABS data and BOCSAR Crime Tools confirm that the proposed business will not cause undue concern in the local community.
 - (h) This type of operation is considered to be very low risk in terms of community impact and the business has proven that it is a low community risk and a high community benefit over many years.
 - (i) Granting this Application will deliver a net social benefit to the local community as a result of improving the long term, viability of an existing leading vineyard business operating with no negative social impacts.
 - (j) Part of the business plan includes the goal of minimising/eliminating negative impact on customers and the local community whilst also providing them the opportunity to positively remember Ivanhoe Wines as a producer wholesaler of high quality wines.
 - (k) The Applicant and his wife have been certified with respect to the Responsible Service of Alcohol (RSA) and have developed appropriate work health and safety procedures.

- (l) At all times the Applicant endeavours to produce the highest quality wine possible to enhance business reputation and maintain its high profile as an upstanding corporate citizen within the local community by supporting local charities and organisations.
3. Community Impact Assessment prepared by Key Insights Pty Ltd (Consultant) on behalf of the Applicant dated October 2015, attached to the CIS lodged on the 3 February 2016. In this twenty-seven-page document, the Consultant discusses history and existing use, site description and location, proposed use, management, managing negative social impact, the community profile, crime data, community risk factors, development approval, impact analysis and mitigation. Attached to this document are:
- (a) the qualifications and experience of the author, Ms Ellen Davis-Meehan;
 - (b) two photograph showing the site notification sign displayed at the Premises;
 - (c) DA 118/696/180 issued by Council on 28 July 1997 granting consent for a "Wine Sales Outlet Facility";
 - (d) Submission from Ms Tracy Le Brun, Senior Planning Assessment Officer on behalf of Council dated 28 October 2015 advising that Council raises no objection to the Application provided the activity is carried out in accordance with any relevant conditions of consent Council may have previously given;
 - (e) LGNSW RSA Competency Card for the Applicant and his wife Mrs Tracy-Lynn Drayton.
4. BOCSAR Crime Maps based upon data from January 2015 to December 2015 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*
5. Liquor licensing records from LGNSW indicating that the suburb of Pokolbin already has 3 full hotel licences and 31 packaged liquor licences (24 not including the licences restricted to online sales).
6. 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**.

7. Report on *Crime by LGA and Alcohol Related Status* obtained from published BOCSAR sources for calendar year 2013. This data indicates that:
 - (a) The rate of *domestic violence related assault* incidents recorded by reporting Police as *alcohol related* across the Cessnock LGA was **260** per 100,000 persons, significantly higher than the New South Wales rate of **145** per 100,000 persons.
 - (b) The rate of *non-domestic violence related assault* incidents flagged by reporting Police as *alcohol related* in the Cessnock LGA for 2013 was **165**, below the State wide rate of **191**.
 - (c) The rate of *offensive conduct* offences flagged by reporting Police as *alcohol related* across this LGA was **30** per 100,000 persons, well below the State wide rate of **83**.
 - (d) The rate of *assault police* incidents flagged by reporting Police as alcohol related across the Cessnock LGA was **20**, below the rate of **24** per 100,000 for New South Wales as a whole.
 - (e) The rate of *malicious damage to property* incidents flagged by reporting Police as alcohol related across the Cessnock LGA was **165**, higher than the rate of **122** per 100,000 for New South Wales as a whole.
8. 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).
9. Report to the Authority dated 17 February 2016 from the Compliance Branch of LGNSW.
10. Email submission from Sergeant Brett James, Licensing Supervisor of the Central Hunter LAC of Police dated 19 May 2016.
11. Email from the Applicant dated 19 May 2016 attaching the certificate of advertising, letters from the Applicant's solicitor dated 21 January 2016 distributing notice of the Application to RMS, MLALC, CCSC and HNELD, and a copy of the ASIC Record of Registration of Business Name for "Ivanhoe Wines".
12. Email from the Applicant dated 23 May 2016 attaching a copy of the diagram/plan indicating the licensed area of the Premises and a copy of the *House Policy* dated 25 May 2016.
39. Email from the Applicant to licensing staff dated 15 July 2016.