



Mr Michael Marr  
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30 May 2018

Dear Mr Marr

<b>Application No.</b>	APP-0003746959
<b>Applicant</b>	Mr Warren Paul Wheeler
<b>Application for</b>	On-premises liquor licence for a public entertainment venue Minors functions authorisation
<b>Licence name</b>	Servo Food Truck Bar
<b>Trading hours</b>	Sunday to Thursday 10:00 AM – 10:00 PM Friday to Saturday 10:00 AM – 12:00 midnight
<b>Premises</b>	6-8 Wentworth Street PORT KEMBLA NSW 2505
<b>Issue</b>	Whether to grant an on-premises liquor licence, and a minors functions authorisation
<b>Legislation</b>	Sections 3, 11A, 12, 21-28, 45, 48, 51, 122 and 123 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority  
Application for an on-premises liquor licence and a minors functions authorisation  
Servo Food Truck Bar**

The Independent Liquor and Gaming Authority (“Authority”) considered, at its meeting on 11 April 2018, the Applicant’s application for an on-premises liquor licence for a public entertainment venue (“Licence”) and a minors functions authorisation (“Authorisation”) in relation to the Licence.

Pursuant to section 45 of the *Liquor Act 2007*, the Authority has decided to **grant** the Licence subject to the following conditions. The Authority has also decided to **refuse** to grant the Authorisation under section 122 of the Act.

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 six (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. Consumption on premises – other public entertainment venue

Good Friday	12:00 noon to 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
Christmas Day	12:00 noon to 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
December 31 <sup>st</sup>	Normal opening time until normal closing time or 2:00 AM on New Year’s Day, whichever is the later

Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.

3. The premises is to be operated at all times in accordance with the Plan of Management dated 11 May 2018 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.
4. Closed-circuit television system

- 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
  - (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
  - (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 to the premises,
    - (ii) the footpath immediately adjacent to the premises, and
    - (iii) 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.
5. Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:
  - (a) take all practical steps to preserve and keep intact the area where the act of violence occurred,
  - (b) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police, as published from time to time on the Liquor & Gaming NSW website,
  - (c) make direct and personal contact with NSW Police to advise it of the incident, and
  - (d) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.

In this condition, "staff member" means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (e.g. crowd controller or bouncer) on or about the premises.

6. The licensee must join and be an active participant in the local liquor accord.
7. Liquor may only be sold or supplied on the licensed premises if food of a nature and quantity consistent with the responsible sale, supply and service of alcohol is made available.
8. The licensed premises must not be themed or operated as a nightclub or ticketed dance party. No DJ styled booth, no disco lighting systems and no dance floor area are to be utilised at any time in the premises.
9. From 10:00 pm until at least 30 minutes after closing time, licensed security personnel must be onsite to ensure patrons exit the premises in a discreet manner that does not affect the amenity of the neighbourhood.
10. Declared organisations
  - 1) The licensee must not permit any person to enter the premises, or to remain on the premises, if the person is wearing or carrying any clothing, jewellery or accessory displaying:
    - (a) the name of any of the following motorcycle-related and similar organisations: Bandidos, Black Uhrlans, Coffin Cheaters, Comanchero, Finks, Fourth Reich, Gladiators, Gypsy Jokers, Hells Angels, Highway 61, Life & Death, Lone Wolf, Mongols, Mobshitters, Muslim Brotherhood Movement, Nomads, Notorious, Odin's Warriors, Outcasts, Outlaws, Phoenix, Rebels, Rock Machine, Satudarah, Scorpions, or any "declared organisation" within the meaning of the *Crimes (Criminal Organisation Control) Act 2012*,
    - (b) the colours, club patch, insignia or logo of any such organisation,

- (c) the “1%” or “1%er” symbol, or
  - (d) any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, any of the organisations specified in clause 1(a).
- 2) Any incident where a person is refused entry or removed from the premises in relation to this condition must be recorded in the incident register.

A statement of reasons for this decision is attached at the end of this letter.

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 31 December 2017, Mr Warren Paul Wheeler (“Applicant”) lodged an application (“Application”) with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”). The Application sought an on-premises liquor licence for a public entertainment venue (“Licence”), and a minors functions authorisation (“Authorisation”), for the premises at 6-8 Wentworth Street, Port Kembla NSW (“Premises”).
2. The Authority considered the Application at its board meeting on 11 April 2018 and decided to:
  - a) grant the Licence pursuant to section 45 of the *Liquor Act 2007* (“Act”), and
  - b) refuse to grant the Authorisation under section 122 of the Act.
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 21-28, 45, 48, 51, 122 and 123 of the Act, and relevant provisions of the Liquor 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 under the Act, 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.

### Trading hours and 6-hour closure period

11. Section 12 of the Act sets out the standard trading period for 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 for a licence application

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

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

13. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
- a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
  - b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
  - c) the applicable development consent required for use of the premises for the proposed business is in force.

### Community impact statement

14. Section 48 of the Act requires certain applications, which according to clause 10(3)(d) of the Regulation includes an application for a Licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
15. Subsection 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 before it.

### Provisions specific to an on-premises licence

16. Further legislative provisions specific to on-premises licences are set out in sections 21-28 of the Act.

### Provisions specific to a minors functions authorisation

17. Section 51 of the Act prescribes the minimum procedural requirements for a licensee to make a valid application for a licence related authorisation. The section also provides that when determining an application for a licence related authorisation, the Authority has the same powers in relation to the application as it has in relation to an application for a licence.
18. Section 123 of the Act relevantly provides that a minor must not enter or remain in a licensed public entertainment venue unless the minor is in the company of a responsible adult or a function is being held in the venue in accordance with an Authorisation.
19. The Authority's power to grant an Authorisation is set out in section 122 of the Act.

### **Key findings**

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

### Validity and procedural requirements

21. 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 51 of the Act, and
  - b) the proposed trading hours for the Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods.

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

22. Pursuant to section 45 of the Act, the Authority is also satisfied that:
- a) the Applicant is a fit and proper person to carry on the business to which the Licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
  - b) practices would be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol and prevent intoxication on the premises, having regard to the Plan of Management dated 11 May 2018 for the Premises and the conditions to be imposed on the licence, and

- c) the requisite development consent is in force, based on the Notice of Determination of Development Application DA-2017/1359, issued by Wollongong City Council on 21 December 2017.

#### Community impact statement

23. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Premises on the local and broader communities.
24. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the suburb of Port Kembla, and the relevant “broader community” comprises Wollongong Local Government Area (“the LGA”).

#### Positive social impacts

25. The Authority notes that the density of on-premises liquor licences in Port Kembla and the LGA is considerably lower than the NSW state average.
26. The Authority also notes that the Premises is currently operating without a liquor licence, and patrons wishing to consume liquor are required to bring their own liquor under the Premises’ BYO policy.
27. The Authority accepts, on the available information, that the entertainment and food services provided at the Premises bring distinct positive benefits to the community by increasing the diversity of leisure activities available in the area, particularly during night time.
28. The Authority notes the acknowledgement by a local Member of Parliament and Wollongong City Council of the Premises’ contribution to the ongoing transformation of Port Kembla into a safer and more vibrant community. The Authority also notes the media articles provided about the positive social contribution of the Premises, and the letter of support from Live Music Office about the contribution the Premises can make to the community and the live music industry.
29. The Authority also accepts the Applicant’s contention that granting the Licence would:
- a) provide additional convenience to patrons who wish to consume liquor while they enjoy music and entertainment at the Premises, and
  - b) strengthen the sustainability of the Premises’ business model.
30. Additionally, the Authority considers that granting the Licence would benefit the community by subjecting the Premises to express and enforceable obligations under the Act. For example, licence conditions can be attached to the Licence to require certain measures to be put in place to ensure the responsible service of alcohol and minimisation of alcohol-related harm. These measures can be monitored and enforced by L&GNSW and other law enforcement agencies in a more effective manner than if the Premises continues to operate as an unlicensed entertainment venue where liquor can be consumed.
31. Having regard to the above, the Authority is satisfied that granting the Licence would be in line with the expectations, needs and aspirations of the community, and contribute to the balanced and responsible development of the liquor industry and the related music and entertainment industries.
32. However, the Authority considers the benefit of granting the Authorisation, which would permit unaccompanied persons under the age of 18 to attend functions at the Premises, to be much more limited. Noting the types of events and entertainment facilitated at the Premises, and the fact that the Authorisation is not required for minors to attend the Premises in the company of adults, the Authority is not satisfied that there is any substantial benefit in granting the Authorisation.

### Negative social impacts

33. The relevant BOCSAR data indicates that, for the year to December 2017:
- a) the Premises was:
    - i) located within a low density hotspot for incidents of domestic assault, and a medium density hotspot for incidents of malicious damage to property, and
    - ii) not located within any hotspots for incidents of alcohol-related assault or non-domestic assault,
  - b) Port Kembla recorded higher than average rates of alcohol-related domestic assault and malicious damage to property, and a lower than average rate of alcohol-related non-domestic assault, in comparison with the corresponding NSW figures, and
  - c) the LGA recorded higher than average rates of alcohol-related non-domestic assault and malicious damage to property, and a lower than average rate of alcohol-related domestic assault.
34. The most recent HealthStats NSW data available at the time of the Authority's consideration of the Application indicates that the LGA recorded:
- a) for the period 2012-13, a level of alcohol attributable deaths above the NSW state average, and
  - b) for the period 2013-15, a level of alcohol attributable hospitalisations lower than but close to the NSW state average.
35. NSW Police opposed the granting of the Licence and the Authorisation, expressing strong concerns over the Applicant's proposal to allow unaccompanied minors on the Premises. Police submitted that the proposal targets minors and creates a significant risk to public safety, noting the Premises' location in a high risk area and the lack of adequate public transport at night.
36. An objection was also received from a local hotelier who owns two hotels in Port Kembla. The hotelier noted the high level of drug and alcohol related criminal activities in the community and expressed concerns over the lack of CCTV or security requirements for the Premises' operation. The hotelier also submitted that the Applicant did not properly notify the relevant stakeholders and the community of the Application as required by the Act.
37. The Authority further notes the ABS Socio-Economic Indexes for Areas ("SEIFA") data indicating that as at 2011, Port Kembla ranked among the most disadvantaged suburbs, and the LGA among the relatively advantaged Local Government Areas, in NSW on the Index of Relative Socio-economic Advantage and Disadvantage. While this data is seven years old, the Authority accepts that it raises concerns about the significant degree of social disadvantages in the local community.
38. Having regard to the relevant statistics and the submissions received, the Authority accepts that the local and broader communities have been experiencing an undesirable level of alcohol-related crime, health and social issues. The Authority also accepts that there may be a risk that granting the Licence and Authorisation will, over time, contribute to an increase in these issues.
39. In the circumstances, the Authority agrees with NSW Police that granting the Authorisation would likely create an unacceptable risk to the safety of unaccompanied minors who attend the Premises during night time, and have a significantly negative social impact on the well-being of the community.
40. The Authority considers that most of the concerns expressed by NSW Police can be addressed by not granting the Authorisation, so that unaccompanied minors are not allowed to attend the Premises.

41. In respect of the submission by the local hotelier, the Authority notes that the hotelier is a commercial competitor of the Premises, and on balance of the available evidence accepts the Applicant's contention that adequate notification in respect of the Application did take place. The Authority also considers that the hotelier's concern about the lack of CCTV and security requirements can be resolved through the imposition of licence conditions.
42. The Authority finds that the risk of alcohol-related harm associated with granting the Licence is sufficiently mitigated by the following:
- a) Liquor consumption on the Premises will continue regardless of whether a Licence is granted, and granting the Licence would impose additional legislative obligations on the licensee in respect of the supply and consumption of alcohol on the Premises.
  - b) The Applicant has set out in the Plan of Management document detailed procedures and practices in respect of the responsible service of alcohol and prevention of intoxication. These measures are reinforced and complemented by an extensive list of licence conditions to which the Applicant consented, including conditions to install a CCTV system and engage security personnel after 10 PM.
  - c) The Premises will not trade beyond 12 midnight, which further reduces the risk of alcohol-related harm arising from its operation during night time. The Authority notes from the NSW Recorded Crime Statistics for 2016 that a substantial proportion of alcohol-related offences in the LGA took place between 12 midnight and 6 AM, particularly on Sunday mornings.
43. The Authority nevertheless finds that the risk of alcohol-related harm associated with granting the Authorisation is high, and cannot be adequately mitigated by the factors above, or the Applicant's willingness to adhere to additional licence conditions or management measures.

#### Overall social impact

44. Having considered the positive and negative social impacts that are likely to flow from granting the Licence, the Authority is satisfied that the overall social impact of the Licence will not be detrimental to the well-being of the local or broader community.
45. The Authority is also satisfied that granting the Licence would be consistent with the objects of the Act to regulate liquor supply and facilitate responsible industry development in line with the community's expectations, needs and aspirations.
46. However, the Authority is not satisfied that the overall social impact of the Authorisation, if granted, will not be detrimental to the well-being of the local or broader community.
47. Accordingly, the Authority has decided to grant the Licence and refuse to grant the Authorisation.



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 Port Kembla and the LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol attributable deaths in the 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 the LGA.
4. Completed Category B CIS dated 21 November 2017.
5. Notice of Determination issued by Wollongong City Council on 21 December 2017 approving development application DA-2017/1359 in relation to the Premises.
6. Completed online application lodged on 31 December 2017, with attachments including the signed declaration and notice of application, the Applicant's identity documents and national police certificate, and ASIC business documents in respect of the company Servo Food Truck Bar Pty Ltd.
7. BOCSAR Crime Hotspot Maps for the year to December 2017, indicating the location of the Premises relative to hotspots for incidents of alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
8. NSW crime statistics for the two years to December 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 Port Kembla and the LGA.
9. Completed certification of advertising dated 20 January 2018.
10. Submission from L&GNSW Compliance Operations Unit, dated 7 February 2018, in relation to the Application.
11. Submission from NSW Police, dated 9 February 2018, in relation to the Application.
12. Submission from Paul Scully MP, Member for Wollongong, dated 9 February 2018, in relation to the Application.
13. Submission from JDK Legal on behalf of Despotovski Hotels Pty Limited, dated 9 February 2018, in relation to the Application.
14. Submission from Live Music Office, dated 12 February 2018, in relation to the Application.
15. L&GNSW liquor licensing records as at 5 March 2018, outlining the density of all types of liquor licences in Port Kembla, the LGA and NSW, and listing all hotel, club and on-premises liquor licences in Port Kembla.
16. Media articles dated between 17 November 2017 and 8 March 2018 in relation to the Premises.
17. Correspondence between L&GNSW staff and Wollongong City Council between 6 and 8 March 2018 in relation to the Application.
18. Google map images extracted from the Google website on 7 March 2018, showing the location and photos of the Premises in map view, earth view and street view.
19. Plan of Management for the Premises dated 11 May 2018.
20. Correspondence between L&GNSW staff and the Applicant between 17 January and 14 May 2018 in relation to the assessment of the Application.
21. Undated premises plan for the Premises.