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by email to: zz@hatziscusack.com.au

13 October 2022

Dear Mr Zielinski

Application No.	APP-0010071542
Application for	Small bar
Application No.	APP-0010072972
Application for	Packaged liquor licence
Application date	24 June 2022
Applicant	Robert Gaskell Colman
Licence name	Frankie & Mo
Proposed trading hours	<u>Consumption on premises – small bar</u> Monday to Thursday 12:00 PM – 10:00 PM Friday to Saturday 12:00 PM – 12:00 AM Sunday 12:00 PM – 10:00 PM <u>Retail</u> Monday to Thursday 10:00 AM – 10:00 PM Friday to Saturday 10:00 AM – 12:00 AM Sunday 10:00 AM – 10:00 PM
Premises	44 Govetts Leap Rd, BLACKHEATH NSW 2785
Legislation	Sections 3, 11A, 12, 20A, 20B, 20C, 29-31, 40, 44, 45 and 48 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority
Applications for a small bar and a packaged liquor licence – Frankie & Mo**

The Independent Liquor & Gaming Authority considered the applications above, and decided on 19 September 2022 to **approve** the applications under section 45 of the *Liquor Act 2007*, subject to imposing conditions as set out in Schedule 1.

Concise statement of reasons

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

In the interest of efficient finalisation of determined matters in a high-volume liquor and gaming jurisdiction, the Authority will only produce a detailed statement of reasons for applications which are refused, partially approved or the subject of stakeholder objections.

A concise statement of reasons is produced for non-contested applications that have been approved by the Authority, in cases where a statement of reasons is required to be published for the application under section 36C of the *Gaming and Liquor Administration Act 2007*.

The concise statement of reasons briefly sets out the material considered by the Authority, the legislative requirements, and the Authority's key findings.

If you have any questions, please contact the case manager Wendy Yeung at wendy.yeung.wye.kong@liquorandgaming.nsw.gov.au

Yours faithfully



Murray Smith

Deputy Chairperson

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

Concise statement of reasons

Key facts

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Material considered by the Authority

The Authority has considered the following material in determining the applications:

- Application material, including evidence of notification to specified stakeholders and the community about the application;
- Category B community impact statement;
- Premises plan setting out the proposed boundaries of the licensed premises and any applicable authorisations;
- Plan of management for the licensed business at the premises;
- Development consent for the premises;
- Statistics sourced from Liquor & Gaming NSW, Bureau of Crime Statistics and Research, NSW Health and Australian Bureau of Statistics in respect of the socio-economic status, liquor licence density, alcohol-related crimes rates, and health issues in the relevant local and broader communities; and
- Stakeholder submissions in relation to the applications, and the applicant's response to those submissions.

Legislative requirements

The Authority has considered the applications in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018:

- Section 3: Statutory objects of the Act and relevant considerations;

- Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold;
- Section 20A-20C: Specific provisions in respect of a small bar liquor licence;
- Sections 29-31: Specific provisions in respect of a packaged liquor licence;
- Section 40: Minimum procedural requirements for a liquor licence application to be validly made;
- Section 44: Submissions to Authority in relation to licence applications;
- Section 45: Criteria for granting a liquor licence, and
- Section 48: Requirements in respect of a CIS, including a requirement that the Authority must not approve the application unless it is satisfied, having regard to the CIS and other available information, that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community.

The Authority has also had regard to its Guideline 6 in considering the overall social impact of approving the applications pursuant to section 48 of the Act.

Key findings

In accordance with its Guideline 6, the Authority finds that the relevant local community for the purposes of this decision is the suburb of Blackheath, and the broader community is the Local Government Area of Blue Mountains.

Positive social impacts

The Authority is satisfied on the material before it that the proposal set out in the applications, if approved, would likely benefit the local and broader communities through:

- both licences will be located at the same premises. The boutique wine bar will occupy the front area while the boutique liquor store will occupy the rear area of the premises;
- both applications are seeking reduced hours and the applicant has consented to all proposed conditions for each licence type;
- the provision of the packaged liquor licence will provide increased convenience and choice; and
- products sold for consumption on the premises will be sourced from local producers in the Blue Mountains and surrounding areas. This will support local business and attract visitors to the area.

Negative social impacts

The Authority accepts that the proposal may, over time, contribute to an increase in alcohol-related harm in the local and broader communities, including alcohol-fuelled violence, health problems and/or social and amenity issues, having regard to the following:

- there is a low to medium density hotspot for domestic assault located in the suburb
- the rate of alcohol attributed deaths in the LGA is slightly higher than NSW

The Authority is nevertheless satisfied that these risk factors are sufficiently mitigated by the following:

- there are no agency or public objections;
- the premises is not located near any crime related hotspot;

- the alcohol related crime rates across the local and broader community are lower compared to NSW;
- the rate of alcohol attributed hospitalisations in the broader community is lower compared to NSW;
- both licensed premises are relatively small in size; and
- the harm minimisation measures set out in the plan of management and licence conditions as set out in Schedule 1.

Overall social impacts and conclusion

Having considered the positive and negative social impacts that are likely to flow from the applicant's proposal, the Authority is satisfied that the overall social impact of approving the applications will not be detrimental to the well-being of the local or broader community.

The Authority is also satisfied that the other legislative requirements for the approval of the applications have been met.

The Authority finds, having regard to the above, that approving the applications is consistent with the statutory objects and considerations of the Act to regulate the liquor industry in line with the community's expectations, needs and aspirations, and facilitate the balanced and responsible development of the liquor industry and related industries.

Accordingly, the Authority approves the applications under section 45 of the Act.

Yours faithfully



Murray Smith
Deputy Chairperson
For and on behalf of the **Independent Liquor & Gaming Authority**

Schedule 1 – Licence conditions to be imposed Frankie & Mo

Small Bar

1. 6-hour closure period

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 04:00 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

Good Friday 12:00 noon - 10:00 PM

Christmas Day 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)

December 31st 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 after midnight into the early morning of 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. Plan of Management

The premises is to be operated at all times in accordance with the Plan of Management dated November 2021 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,
- b) recordings must be in digital format and at a minimum of ten (10) 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,

ensure that the CCTV system is accessible at all times the system is required to operate pursuant to sub-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 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. Crime Scene Preservation

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:

- 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,
- 3) make direct and personal contact with NSW Police to advise it of the incident, and
- 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.
- 5) 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.

Packaged liquor licence

1. 6-hour closure period

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 04:00 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 & NYE (std)

Retail sales

Good Friday Not permitted

December 24th Normal trading Monday to Saturday 8:00 AM to 12 midnight Sunday

Christmas Day Not permitted

December 31st Normal trading Monday to Saturday 8:00 AM to 12 midnight Sunday

3. Social Impact

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. Plan of Management

The premises is to be operated at all times in accordance with the Plan of Management dated November 2021 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. Liquor Accord

The licensee or its representative must join and be an active participant in the local liquor accord.

6. Closed-circuit television system

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 ten (10) 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 sub-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.

6. Specialised Liquor products

1. The licensee must ensure that only the following liquor products are sold or supplied by the licensed business (“Business”), except as provided by clause 2:

- a) craft beer
- b) craft cider
- c) craft spirits
- d) boutique wines (including sparkling wines and champagnes)
- e) organic and natural liquor products
- f) liquor products packaged under labels owned by the Business

2. Other complementary liquor products, provided that those other products do not exceed more than 10% of the total product lines or 10% of the total products stocked on the premises at any one time, are also permitted.

3. The licensee must ensure that a list of the product lines and products stocked by the Business at any one time is kept at the premises and made available for inspection on the request of a police officer, Liquor & Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

4. For every liquor product (except products packaged under labels owned by the Business) that is available for sale under sub-clause 1, the licensee must maintain and make available for inspection on the premises documentation from the supplier confirming that the product meets the relevant definition specified in this condition.

Definitions

For the purposes of this condition:

1. Craft beer is defined as beer that is not generally considered to be mainstream beer, and is produced by a craft brewer:

which is located in Australia and produces less than 40 million litres of beer per annum, or located overseas and produces less than 6 million barrels of beer per annum.

- b) where not more than 25 percent of the brewery is owned or controlled (or equivalent economic interest) by an industry participant that is not itself a craft brewer; and
 - c) which will certify that the majority of its total beverage alcohol volume is in beers whose flavour derives from traditional or innovative brewing ingredients and their fermentation (flavoured malt beverages are not considered beers).
2. Craft cider is defined as cider that is not generally considered to be mainstream cider, and is produced by a craft producer:
 - a) which is located in Australia and produces less than 40 million litres of cider per annum, or located overseas and produces less than 6 million barrels of cider per annum.
 - b) where not more than 25 percent of the producer is owned or controlled (or equivalent economic interest) by an industry participant that is not itself a craft cider producer; and
 - c) which will certify that the cider is made from liquid consisting only of juice (no concentrates).
 3. Craft spirits are defined as spirits that are not generally considered to be mainstream spirits and are:
 - a) the product of a distillery that has maximum annual sales of less than 100,000 proof gallons or 52,000 cases, or in the case of blended spirits, the product of an independently owned and operated facility that uses any combination of traditional and innovative techniques such as fermenting, distilling, re-distilling, blending, infusing or warehousing to create products with a unique flavour profile; and
 - b) distilled at a distillery where the spirit has either been run through a still by a craft distiller, or in the case of a blended spirit, the spirit has been distilled originally by a craft distiller.
 4. Boutique wine is defined as wine (other than sparkling wine or champagne) that is manufactured by or on behalf of a boutique wine company which crushes and bottles 250 tonnes or less annually under its own label and is independently owned (i.e. not owned by a larger wine company at the time wine is supplied to the Business).
 5. Boutique champagne and sparkling wine is defined as champagne or sparkling wine that is not generally considered to be mainstream champagne or sparkling wine, that is, champagne or sparkling wine that is not commonly sold by major liquor retailers.
 6. Organic and natural liquor products are defined as:
 - a) Organic liquors (including organic wines) that bear a recognised organic certification logo;
 - b) Wine that is labelled or marketed as organic wine, and is produced from vineyards and farms that are farmed organically or to organic standards, typically with little or no additions in winemaking (whether or not the wine is certified as organic);

- c) Wine that is labelled or marketed as natural wine, and is produced from vineyards that are farmed organically or bio-dynamically, and then produced with no additions (additives) in winemaking, including MegaPurple, tartaric acid, enzymes, malabugs, and bottled with lower levels of sulphur or without sulphur (preservative 220); and
- d) Boutique wines that are marketed as organic, biodynamic or natural wines (including sparkling wine), and manufactured by or on behalf of a boutique wine company which crushes and bottles 250 tonnes or less annually under its own label and is independently owned (i.e. not owned by a larger wine company at the time the licensee purchases wine wholesale from the supplier).