



Mr Andrew Bobb  
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28 September 2020

Dear Mr Bobb

<b>Application No.</b>	1-7724091941
<b>Applicant</b>	Australian Liquor Marketers Pty Limited
<b>Application for</b>	Removal of a packaged liquor licence
<b>Licence number</b>	LIQP700350245
<b>Current licence name</b>	Cellarbrations in the Hills
<b>Current premises</b>	351-353 Windsor Road Baulkham Hills NSW 2153
<b>Current trading hours</b>	Monday to Saturday 5:00 am – 11:00 pm Sunday 10:00 am – 10:00 pm
<b>Proposed licence name</b>	Mint Fresh Supermarket Arthur Street
<b>Proposed premises</b>	Shop 1-4, 30-32 Arthur Street Baulkham Hills NSW 2153
<b>Proposed trading hours</b>	Monday to Saturday 8:00 am – 8:00 pm Sunday 10:00 am – 8:00 pm
<b>Legislation</b>	Sections 3, 31, and 59 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority  
Application for the removal of a packaged liquor licence  
Mint Fresh Supermarket Arthur Street**

The Independent Liquor & Gaming Authority considered the application above at its meeting on 15 July 2020 and, pursuant to section 59 of the *Liquor Act 2007*, decided to **refuse** the application.

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, Andrew Whitehead, at [andrew.whitehead@liquorandgaming.nsw.gov.au](mailto:andrew.whitehead@liquorandgaming.nsw.gov.au).

Yours faithfully

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

## STATEMENT OF REASONS

### DECISION

1. On 6 May 2020, Australian Liquor Marketers Pty Limited (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), an application (“Application”) for determination by the Independent Liquor & Gaming Authority (“Authority”).
2. The Application sought to remove packaged liquor licence LIQP700350245 (“Licence”) from 351-353 Windsor Road, Baulkham Hills (“Current Premises”) to Shop 1-4, 30-32 Arthur Street, Baulkham Hills (“Proposed Premises”), to be known as Mint Fresh Supermarket Arthur Street.
3. The Authority considered the Application at its meeting on 15 July 2020 and decided to refuse to approve the Application under section 59 of the Liquor Act 2007 (“Act”).
4. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under sections 3, 31 and 59 of the Act.

### MATERIAL CONSIDERED BY THE AUTHORITY

5. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
6. 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.
7. A list of the material considered by the Authority is set out in Schedule 1.

### LEGISLATIVE FRAMEWORK

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

### Objects of the Act

9. The 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 determining a liquor licence application, 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.

### Restrictions on granting a packaged liquor licence for a general store

11. Section 31 of the Act provides that:
  - a) the Authority must not grant a packaged liquor licence for premises comprising a general store unless, among other things, it is satisfied under section 31(1)(a) that no other take-away liquor service is reasonably available to the public in the neighbourhood of the premises concerned
  - b) a general store means a convenience store, mixed business store, corner shop or milk bar which primarily sells groceries or associated small items by retail within a retail floor area of not more than 240 square metres.

### Removal of licence to other premises

12. Section 59 of the Act sets out the requirements for an application to remove a liquor licence to another premises and the determination of such an application.
13. An extract of sections 3, 31 and 59 is set out in Schedule 2.

## KEY FINDINGS

14. The Authority notes that the Proposed Premises comprises of an 'IGA X-press' supermarket with a retail floor area of 198m<sup>2</sup>. Having regard to characteristics of the store, the Authority finds that the Proposed Premises comprises a general store for the purpose of section 31 of the Act, on the basis that it has a retail floor area of less than 240m<sup>2</sup>, and is used primarily for the retail sale of groceries.
15. The Authority notes that the Applicant acknowledges that the Proposed Premises is a general store as defined by the Act, however, contends that take-away liquor services are not reasonably available to the public in the neighbourhood of the Proposed Premises.
16. The Authority notes that the word 'neighbourhood' is not defined in the Act. The Authority has had regard to the Applicant's submission on how the relevant neighbourhood of the Proposed Premises should be defined. The Applicant submits:
  - a) the ordinary meaning of 'neighbourhood' denotes a sense of close proximity and immediacy
  - b) the immediately surrounding streets (i.e. within a short walking distance) of the Proposed Premises should therefore be considered to be the "neighbourhood" for the purposes of the Act
  - c) a short walking distance means a distance capable of being walked to with ease, for example a distance of up to 400 metres
  - d) Mint Fresh IGA customers consist almost entirely of local residents in the immediately surrounding streets and the neighbouring vicinity, and this is the neighbourhood to which it sells, markets, and advertises its products and that to which it performs a delivery service of groceries for its customers
  - e) the presence of certain features in the locality of the Proposed Premises, such as schools, churches, childcare facilities, transport routes, parks and recreation centres, and commercial centres, might conclude that it is a neighbourhood.
17. Accordingly, the Applicant submits that the relevant neighbourhood for the purposes of the Proposed Premises comprises the part of Baulkham Hills that is west of Arthur Street to Copley Drive and south of Seven Hills Road to Watkins Road.
18. The Authority notes that the Applicant has not provided any expert environmental planning advice in support of its formulation of the relevant 'neighbourhood'.
19. The Authority also notes that a review of the Mint Fresh IGA website (<https://mintfreshiga.com.au/>) reveals that IGA X-press Arthur Street operates a delivery service for the entire suburb of Baulkham Hills, not just to the residents in the "immediate surrounding streets" and "neighbouring vicinity" as implied in a submission from the Applicant.
20. Furthermore, the Authority notes that the Applicant has excluded facilities such as the nearby pub, Bull and Bush Inn Hotel (500 metres walking distance from the Proposed Premises) and the major local shopping centre, Stockland Baulkham Hills Shopping Centre (800 metres walking distance from the Proposed Premises), from its formulation of the relevant 'neighbourhood'.
21. The Authority notes that the Applicant submits that "a person whose intention it is to purchase one item of take-away liquor from Stockland is inconvenienced such that take-away liquor is not reasonably available to that person", noting that a person is required to:
  - a) travel by car across Seven Hills Road and Windsor Road (two major roads/intersections)
  - b) enter the shopping centre carpark, park their vehicle and exit the vehicle

- c) make the purchase of take-away liquor from a shop located in a shopping complex consisting of approximately 80 stores.
22. In relation to the Bull and Bush Inn Hotel, the Authority notes that the Applicant submits that it should be excluded from the formulation of the relevant 'neighbourhood' on the basis that:
- a) it is not situated within a "short walking distance" to the Proposed Premises
  - b) customers intending to purchase packaged liquor are required to access the hotel, and as such it can be considered not to be reasonably available (for example a customer with an underage child is prohibited from accessing the premises).
23. The Authority notes that Bull and Bush Inn Hotel has a dedicated LIQUOR STAX drive-through bottle shop, and that minors are permitted to be in the company of an adult both in the hotel premises and bottle shop facility. Accordingly, the Authority finds that the take-away liquor service offered at Bull and Bush Inn Hotel and ancillary LIQUOR STAX drive-through bottle shop constitutes 'other take-away liquor service' for the purpose of section 31(1)(a) of the Act, and that this service is reasonably available to the public in the neighbourhood of the Proposed Premises, given its close proximity to the Proposed Premises.
24. Furthermore, whilst the Authority recognises that a "neighbourhood" may comprise a geographical area that is less than an entire suburb, the Authority notes that there are a large number of packaged liquor outlets in walking and driving distance of the Proposed Premises, including:
- a) Bull and Bush Inn Hotel with ancillary LIQUOR STAX drive-through bottle shop – 378 Windsor Road, Baulkham Hills (500 metres walking distance/750 metres driving distance)
  - b) The Hills District Bowling Club Ltd – 6-12 Jenner Street, Baulkham Hills (650 metres walking/driving distance)
  - c) Liquorland – Stocklands Mall Shopping Centre, Shop 70-71, 373-383 Windsor Road, Baulkham Hills (800 metres walking/driving distance)
  - d) Cellarbrations at Stockland Baulkham Hills – Stockland Mall Shopping Centre, Shop 103, 373-383 Windsor Road, Baulkham Hills (800 metres walking/driving distance)
  - e) ALDI Baulkham Hills - Stockland Mall Shopping Centre, Shop 46, 373-383 Windsor Road, Baulkham Hills (800 metres walking/driving distance)
  - f) Hills Winehouse and Supermarket – Part 34-36 Baker Crescent, Baulkham Hills (2 kilometres walking distance/ 2.3 kilometres driving distance)
  - g) Baulkham Hills Sports Club – 11 Renown Road, Baulkham Hills (2 kilometres walking distance/2.3 kilometres driving distance)
  - h) Liquorland – 368 Glanmire Road, Baulkham Hills (2.9 kilometres walking distance/3.3 kilometres driving distance)
25. Having regard to the material before it, the Authority is not satisfied that the requirement under section 31(1)(a) of the Act has been met, as it is not satisfied that no other take-away liquor service is reasonably available to the public in the neighbourhood of the Proposed Premises.
26. Accordingly, the Authority refuses to approve the removal of the Licence from the Current Premises to the Proposed Premises.



Philip Crawford  
**Chairperson**

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

**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 & Gaming NSW 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 1 – Material considered by the Authority Mint Fresh Supermarket Arthur Street**

### **Application material**

1. Completed application form, dated 15 April 2020.
2. Completed application notices, dated 15 April 2020.
3. Completed Category B Community Impact Statement, dated 15 April 2020.
4. Statement of Impact, dated 15 April 2020.
5. Submission from the Applicant in relation to the scale of the Proposed Premises, dated 17 June 2020.
6. Submission from the Applicant in relation to section 31(1) of the Act, dated 25 June 2020.
7. L&GNSW liquor licensing records as at 10 July 2020 listing all packaged liquor, full hotel, and club licences in Baulkham Hills.
8. Google map images extracted from the Google website on 10 July 2020, showing the location of the Proposed Premises relative to nearby packaged liquor outlets.
9. Floor plan for the Proposed Premises indicating the proposed liquor sales area.

## Schedule 2 – Relevant extracts from the *Liquor Act 2007*

### Mint Fresh Supermarket Arthur Street

#### 3 Objects of Act

- (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.

#### 31 Restrictions on granting packaged liquor licences

- (1) A packaged liquor licence must not be granted for premises that comprise a general store unless the Authority is satisfied that:
  - (a) in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and
  - (b) the grant of the licence would not encourage drink-driving or other liquor-related harm.
- (2) A packaged liquor licence must not be granted for premises comprising a service station or take-away food shop.
- (3) In this section:

**general store** means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.

**service station** means premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.

**take-away food shop** means premises that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises).

#### 59 Removal of licence to other premises

- (1) A licensee may apply to the Authority for approval to remove the licence to premises other than those specified in the licence.
- (2) An application for approval to remove a licence to other premises must:
  - (a) be in the form and manner approved by the Authority, and
  - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
  - (c) be advertised in accordance with the regulations, and
  - (d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.
- (3) An application for approval to remove a licence to other premises is to be dealt with and determined by the Authority as if it were an application for the granting of a licence in respect of those other premises. Accordingly, the provisions of Division 1, in particular, extend to an application for the removal of a licence to other premises as if it were an application for a licence.
- (4) The Authority may refuse an application for approval to remove a hotel licence if the Authority is satisfied that the removal of the licence would adversely affect the interest of the owner or a lessee or mortgagee of the premises from which it is proposed to remove the hotel licence, or a sublessee from a lessee or sublessee of those premises.
- (5) The Authority must refuse an application for approval to remove a licence unless the Authority is satisfied that:
  - (a) practices will, as soon as the removal of the licence takes effect, be in place at the premises to which the licence is proposed to be removed that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on those premises and that all reasonable steps are taken to prevent intoxication on those premises, and
  - (b) those practices will remain in place.
- (6) The regulations may provide additional mandatory or discretionary grounds for refusing to approve the removal of a licence.
- (7) The approval to remove a licence to other premises takes effect:

- (a) on payment to the Secretary of the fee prescribed by the regulations, and
- (b) when the Authority endorses the licence to the effect that those other premises are the premises to which the licence relates.