



Grant Cusack
c/o Hatzis Cusack Lawyers
Level 9, 68 Pitt Street
Sydney NSW 2000

15 September 2016

Dear Mr Cusack,

APPLICATION NO: 1-4156904835
APPLICATION FOR: New Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Saturday 9:00AM – 9:00PM
Sunday 10:00AM – 9:00PM

APPLICANT: Yan Gu
**PROPOSED LICENSED PREMISES
NAME:** Orange Supermarket, Rhodes

PREMISES LOCATION: Shop 1, 7 Rider Bvd
Rhodes, NSW 2138 (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 – ORANGE SUPERMARKET, RHODES**

The Independent Liquor and Gaming Authority considered the Application at its meeting on 17 August 2016 and pursuant to section 45 of the *Liquor Act 2007* (Act), has decided to **grant** the Application number 1-4156904835 subject to the following conditions:

1. Trading Hours
Monday to Saturday 9:00AM – 9:00PM
Sunday 10:00AM – 9:00PM
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 3:00 AM and 9:00 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 licence cannot be exercised unless and until the Independent Liquor & Gaming Authority has been provided with evidence that the premises is complete and ready to trade.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. 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.
7. The premises are to be operated at all times in accordance with the Plan of Management dated January 2016 as may be varied from time to time after consultation with the Local Area Commander.
8. The licensee is only permitted to sell wine, spirits, beers or other alcoholic beverages imported from Korea, Japan and China from the licensed premises.
9. The licensee will ensure that the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.

If you have any enquiries about this letter, please contact the case manager via email to santina.causa@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 publication of a statement of reasons, as soon as practicable, in a high volume jurisdiction.
2. In making this decision, the Authority has considered the packaged liquor licence application lodged on 9 March 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) data pertaining to the local and broader communities sourced by licensing staff from publicly available sources. That material is listed and briefly summarised in the Schedule.

Summary of Further Submissions

3. Submission from Leading Senior Constable Evva Christofi of the Burwood Local Area Command (LAC) of NSW Police (Police) dated 18 April 2016. Police advise that they have no objections to the Application but propose that the six conditions consented to by the Applicant in the attachment to the CIS be imposed upon the licence in addition to a further condition requiring the Plan of Management document to be produced upon request by Police or any other authorised person.
4. Submission from Aboriginal Affairs, Department of Education NSW dated 7 March 2016 advising that Aboriginal Affairs has no objection to the Application provided that the Applicant has also notified the New South Wales Aboriginal Land Council and the Local Aboriginal Land Council of the Application.
5. Submission from Mr Brett Tobin of Hatzis Cusack Lawyers on behalf of the Applicant dated 21 June 2016. In this ten-page submission, the Applicant responds to an email from licensing staff dated 10 June 2016 and consents to the imposition of six conditions specifying the daily six-hour closure period, requiring that the business not operate with greater overall social impact than reasonably expected from the Application and CIS, requiring the licensee to join the local liquor accord, requiring operation of the business in accordance with the Plan of Management and not exercising the licence until the Authority has been provided with evidence that the Premises is complete and ready to trade and the liquor sales area is adequately defined. The Applicant proposes a condition restricting the business to selling liquor products from “Asian countries “including but not limited to” Korea, Japan and China.
6. The Applicant responds to the submissions received from various stakeholders, submitting that the Applicant consents to the conditions proposed by licensing staff and a variation of the condition regarding the Plan of Management; that the required local leaders of the Aboriginal community were consulted with no response and that the “usual form of response” was made by Roads and Maritime Services (RMS).

7. The Applicant also discusses the scale of the Premises, the restricted manner of the operation of the proposed business, the location in Rhodes, the contended positive benefits and public expectations, growth in the local community of Rhodes, perceived licence density, ABS SEIFA scores for Canada Bay LGA and the suburb of Rhodes, the rates of alcohol-related hospitalisations for the Canada Bay LGA reported by Health Statistics NSW between 2001 and 2014 and BOCSAR crime data for the year ending March 2016 for the suburb of Rhodes. Also attached is a petition in support of granting the Application signed by approximately 48 people from the local community.

Legislative Framework

8. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the *Liquor Act 2007* (Act) 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.
9. 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.*
10. 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.
11. 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.
12. 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”.

13. 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 Rhodes while the “broader community” comprises the responsible local government area, the Canada Bay Local Government Area (LGA).

Analysis of Relevant Facts

14. The Authority is satisfied, on the basis of the Application and CIS before the Authority that, for the purposes of Section 40, the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
15. The Authority is also satisfied, on the basis of the Application material, plans and conditions consented to by the Applicant in further submissions, that additional requirements for packaged liquor businesses under sections 30 and 31 of the Act have been satisfied.
16. 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 licenced venue of the kind proposed in the Application material. No probity issues were raised with regard to the Applicant following consultation with NSW Police.
17. 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 *Management Plan* dated January 2016, the *House Policy* and submissions provided by the Applicant.
18. 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) 287/2013 issued by Canada Bay Council (Council) on 13 August 2013.

Social Impact – Positive Benefits

19. The Authority is satisfied, on the basis of the CIS and further submissions made by the Applicant, that granting this licence will provide a discrete benefit to members of the local and broader community who wish to conveniently purchase imported liquor from Korea, Japan and China whilst grocery shopping.
20. The Authority is satisfied, on the basis of the Application, the CIS, the petition from local residents provided in support of the Application and the lack of any local opposition, that granting the Application will be consistent with the “expectations, needs and aspirations of the community” in respect of the local community of Rhodes, being an object of section 3(1)(a), particularly with regard to demand for products from Korea, China and Japan.
21. The Authority is satisfied a *specialised* packaged liquor licensed business, operating within a supermarket that specialises in supplying Korean, Chinese and Japanese groceries, would diversify the range of options available to the local community seeking to purchase imported packaged liquor within the local community of Rhodes.

This 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.

Social Impact – Negative Impacts

22. Having reviewed all the material, the Authority is satisfied that over time there will likely be some contribution from the liquor sold at the licensed business to alcohol related crime, disturbance or impact on amenity from a minority of customers who abuse packaged liquor purchased from the Premises.
23. The Authority is satisfied that the licensed trading hours sought are reasonably extensive. This is a factor that objectively extends the scope for adverse impact from the operation of this business over time.
24. However the Authority is satisfied, on the basis of the additional information supplied with the CIS by the Applicant, that the scale of the licensed area is very small occupying approximately 10 square metres.
25. The Authority notes that there is some cause for concern arising from the BOCSAR crime maps for the period between April 2015 and March 2016 which indicate that the Premises *is located within a high density hotspot* for incidents of *domestic assault* and *malicious damage to property* and *within a low density hotspot* for incidents of *non-domestic assault*.
26. However, the Authority is reassured by the BOCSAR crime data presented by the Applicant in their submission dated 21 June 2016 which indicates that for the year ending March 2016, the suburb of Rhodes had:
 - (a) a rate of **98.2** for *alcohol-related assault* per 100,000 persons of population, well below the corresponding NSW rate of **275.5**;
 - (b) a rate of **98.2** for alcohol-related domestic violence assault per 100,000 persons, compared to the NSW rate of **120.2**
 - (c) a rate of **0.0** for *alcohol-related non-domestic violence* assault compared to **137.4** for NSW.
27. The Authority is further reassured by the BOCSAR Report on *Crime by LGA and Alcohol Related Status* as at June 2015, with which the Authority is familiar, which indicates that the broader community of Canada Bay LGA has lower rates for incidents of *domestic violence related assault*, *non-domestic violence related assault*, *offensive behaviour* and *assault police* per 100,000 persons compared to NSW as a whole.
28. Liquor licence density data derived by licensing staff from data that is publicly available from LGNSW indicates that Canada Bay LGA has lower rates of *packaged liquor licences*, *registered club licences* and *full hotel licences* per 100,000 persons than the rate for NSW as a whole. The Authority does not consider that prevailing licence density *per se* gives rise to any particular cause for concern with regard to the relevant communities.
29. The Authority is satisfied, on the basis of the ABS Socio-Economic Indexes For Areas (SEIFA) data provided by the Applicant with the CIS, that both the local and broader communities are very advantaged, with the broader community of Canada Bay LGA

raking in the 9th decile and the state suburb of Rhodes ranking in the most advantaged 10th decile on the Index of Relative Socio-Economic Advantage and Disadvantage.

30. Notably, the enforceable condition restricting the sale of liquor to alcoholic beverages to those imported from Korea, China and Japan both reinforces the positive speciality benefits of the business while reducing the scope for this business to operate in the manner of a mainstream liquor business with a broader range of products. The Applicant's proposed wording of a condition confining the sale of liquor products to those imported from "Asia" was considered by the Authority to be too broad and uncertain. The final version of the condition, as imposed by the Authority, restricts the business to selling products from these three countries.
31. The Authority has also had regard to the reasonably detailed harm minimisation measures in the *House Policy and Management Plan* dated January 2016.

Conclusion

32. 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 and all other parties required to be consulted under the legislation.
33. 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.
34. The Application is granted pursuant to section 45 of the Act.
35. 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 (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: 17 August 2016



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 in the liquor and gaming website

<https://www.liquorandgaming.justice.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 Before The Authority

1. Application Form lodged on 9 March 2016.
2. CIS document and supporting material dated 9 March 2016. Briefly, the Applicant's contentions on overall social impact include the following:
 - (a) The proposed licensed Premises will be a "small defined area" of approximately 10 square metres within the "existing Orange Supermarket";
 - (b) Orange Supermarket (Supermarket) is an Asian grocer which offers an extensive range of packaged Asian food items;
 - (c) Only a limited range of Asian liquor products including sake, rice wine and Asian beers and spirits will be sold;
 - (d) The proposed licensed area will be adequately separated from the remainder of the Supermarket and the proposed licensed area will include display shelving, counter area and cash register;
 - (e) The proposed trading hours are within the trading hours of the Supermarket;
 - (f) There will be a "clear and firm" commitment to Responsible Service of Alcohol (RSA) principles and a detailed House Policy will be in place;
 - (g) All staff involved in the sale and supply of liquor will complete an approved RSA course and measures will also be in place to ensure that minors do not gain access to liquor, as well as security measures such as CCTV surveillance of the Store and the proposed licensed area;
 - (h) Customers will principally comprise existing customers of the Supermarket, who will have the convenience of being able to purchase a limited range of Asian liquor products to complement their other purchases.
3. Geographical Map depicting the radius in which notification of the Application was distributed.
4. List of special interest groups notified of the Application.
5. Additional information about the proposed 6-hour closure period attached to the CIS dated 9 March 2016. In this five-page document the Applicant discusses (relevantly) the proposed 6-hour closure period, the "proposed mode of operation of the Liquor Store", the "demonstrated or likely needs of patrons", the "interests of the local community towards the proposal", the "need to minimise harm associated with misuse and abuse of liquor", the "need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor", the "need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life" and "granting of previous similar applications by the Authority".
6. Additional Information about the Application and CIS attached to the CIS dated 9 March 2016. In this eight-page document, the Applicant provides information about the

Application, the location of the Premises, the manner of operation and facilities to be provided, compliance with section 30 of the Act, the position with Council, suitability of the site for a liquor store, responsible service of liquor, access to liquor by minors, the location of nearby community buildings, facilities and places, conditions consented to being endorsed on the licence, issues raised by stakeholders during the consultation period and the contended “benefits” of granting the Application.

7. The Applicant also discusses (by apparent reference to the social impact factors identified in Authority Guideline 6) the type of licensed business proposed, scale of the business, licensed trading hours sought, location of the Premises, prevailing licence density, meeting the needs of the community and ABS SEIFA scores for Canada Bay LGA and the suburb of Rhodes.
8. The Applicant contends that granting the Application will result in the following “substantial” public interest benefits:
 - (a) Convenience/need;
 - (b) Choice and introduction of new product lines;
 - (c) Avoidance of special trips;
 - (d) Reduce escape expenditure;
 - (e) Reduction in traffic;
 - (f) Economic spin-offs
9. List of conditions consented to by the Applicant being imposed upon the licence.
10. *Management Plan* dated January 2016 and Orange Supermarket *House Policy* for the responsible service of liquor.
11. Notice of Application to Council signed by Ms Shannon Anderson, Coordinator, Statutory Planning dated 14 March 2016 noting that “development consent is not required to permit the proposed activity”.
12. Submission from RMS dated 17 December 2015 advising, inter alia, that data for the Canada Bay LGA indicates that during 2013 there were 13 alcohol-related crashes.
13. DA number 287/2013 granted by Council on 13 August 2013 consenting to the “Fitout and use of tenancy 1 as a supermarket”. The DA is granted with a condition restricting trading to between 7:00am and 10:00pm Monday through Saturday and between 9:00am and 10:00pm Sunday.
14. Google geographical maps depicting an aerial view of the location of the Premises.
15. Plan or diagram of the proposed licensed area on the Premises.
16. BOCSAR Crime Maps based upon data from April 2015 to March 2016 detailing hotspots for the concentration of offences near the location indicating that the Premises:
 - (a) Is located *within a high density hotspot* for incidents of *domestic assault*
 - (b) Is located *within a low density hotspot* for incidents of *non-domestic assault*

- (c) Is located *within a high density hotspot* for incidents of *malicious damage to property*.
17. Liquor licensing records indicating that the suburb of Rhodes already has 6 packaged liquor licences.
 18. Liquor licence density data obtained by the Authority from licensing records that are publicly available from LGNSW indicate that the Canada Bay LGA as a whole recorded:
 - (a) A rate of **17.16 packaged liquor licences** per 100,000 persons, which is well below the NSW state wide rate of **32.85**.
 - (b) A rate of **6.60 registered club licences** per 100,000 persons, which is well below the NSW state wide rate of **20.48**.
 - (c) A rate of **13.20 full hotel licences** per 100,000 persons, which is well below the NSW state wide rate of **30.36**.
 19. BOCSAR Report on *Crime by LGA and Alcohol Related Status* as at June 2015 with which the Authority is familiar provides the following comparison of alcohol related crime in the Canada Bay LGA and New South Wales as a whole:
 - (a) The rate of *domestic violence related assault* incidents recorded by reporting Police as *alcohol related* across the Canada Bay LGA was **38.9** per 100,000 persons, significantly less than the rate for New South Wales rate of **122.6** per 100,000 persons.
 - (b) The rate of *non-domestic violence related assault* incidents flagged by reporting Police as *alcohol related* in the Canada Bay LGA for 2013 was **27.4**, significantly less than the State wide rate of **144.0**.
 - (c) The rate of *offensive behaviour* offences flagged by reporting Police as *alcohol related* across this LGA was **5.7** per 100,000 persons, significantly less than the State wide rate of **88.2**.
 - (d) The rate of *assault police* incidents flagged by reporting Police as alcohol related across the Canada Bay LGA was **2.3**, less than the rate of **18.2** per 100,000 for New South Wales as a whole.
 20. ABS SEIFA data prepared on the basis of the 2011 census which indicates that:
 - (a) The Canada Bay LGA ranked in the 9th decile, compared to other local government areas in the state on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).
 - (b) The state suburb of Rhodes ranked in the 10th decile, compared to other state suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage.
 21. Submission from Leading Senior Constable Evva Christofi of the Burwood LAC on behalf of Police dated 18 April 2016.

22. Submission from Aboriginal Affairs, Department of Education NSW dated 7 March 2016.
36. Submission from Brett Tobin c/o Hatzis Cusack Lawyers on behalf of the Applicant dated 21 June 2016. Attached to this submission is a petition in support of granting the Application signed by approximately 48 people from the local community.