



Mr Warwick Caisley
AMW Lawyers

wcaisley@amwlawyers.com.au

6 July 2018

Dear Mr Caisley

Application No.	APP-1-5588110438
Applicant	Harris Farm Markets Leichardt Pty Ltd
Application for	Packaged Liquor Licence
Licence name	Harris Farm Markets - Leichardt
Trading hours	Monday to Saturday 9:00 am – 9:00 pm Sunday 10:00 am – 4:00 pm
Licensed Premises	Lower Ground Floor, Norton Plaza Shop B1, 55 Norton Street LEICHHARDT NSW 2040
Issue	Whether to grant a packaged liquor licence
Legislation	Sections 3, 11A, 12, 29, 30, 31, 40, 45 and 48 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for a packaged liquor licence – Harris Farm Markets
- Leichardt**

The Independent Liquor and Gaming Authority considered application number APP-1-5588110438 at its meeting on 14 February 2018 and, pursuant to section 45 of the *Liquor Act 2007*, has decided to **approve** the application subject to the following conditions:

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 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.
2. Restricted trading & NYE (std)

Retail sales	
Good Friday	Not permitted
December 24th	Normal trading Monday to Saturday, 8:00am to 10:00pm Sunday
Christmas Day	Not permitted
December 31st	Normal trading
3. 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 be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4. The premises is to be operated at all times in accordance with the Plan of Management dated February 2017 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. CCTV condition

- 1) The licensee must maintain a closed-circuit television (CCTV) system at the supermarket/general store in accordance with the following requirements:
 - a) the system must record continuously from opening time until one hour after the supermarket/general store is required to close,
 - 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 supermarket/general store, and
 - ii. all publicly accessible areas (other than toilets) within the licensed 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.
6. The licensee will ensure the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.
7. The licensee or its representative must join and be an active participant in the local liquor accord.
8. Liquor may not be sold or supplied on public holidays.

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

Trading on a Sunday that falls on 24 December

Please note that in the case of any Sunday that falls on 24 December, the 6-hour closure period overrides the statutory provision that would otherwise allow the licence to trade from 8:00 am. In accordance with the 6-hour closure period for the current licence, the Premises must not trade any earlier than 9:00am.

If you have any enquiries about this letter, please contact the case manager via email to charles.rivers@liquorandgaming.nsw.gov.au.

Yours faithfully



Craig Sahlin
Member
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 22 February 2017, Harris Farm Markets Leichardt Pty Ltd (“Applicant”) lodged an application (“Application”) with Liquor and Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”). The Application sought the granting of a packaged liquor licence (“Licence”) for the premises at Lower Ground Floor Norton Plaza, Shop B1, 55 Norton Street, Leichhardt (Premises”).
2. The Authority considered the Application at its meeting on 14 February 2018 and decided to grant the Licence under section 45 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 29-31, 40, 45 and 48 of the Act, and relevant provisions of the Liquor Regulation 2008.

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 its 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 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 various types of 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

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, including an application for a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
15. Section 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 a packaged liquor licence

16. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.
17. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.
18. Section 30 requires a separate liquor sales area to be set up on the licensed premises if its primary business is not to sell liquor for consumption away from the premises.
19. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

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, procedural and trading hour 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 section 40 of the Act,
 - 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,
 - c) liquor will be sold and supplied in a separate liquor sales area at the Premises, and in accordance with the authorisation conferred by a packaged liquor licence as required by sections 29 and 30 of the Act, and
 - d) section 31 of the Act does not apply to the Application as the Premises is not intended to operate as is contemplated by the section.

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 proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
 - b) practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol, having regard to the Applicant's Plan of Management document, and the conditions to be imposed on the licence, and

- c) the requisite development consent is in force, based on the Notice of Development Application issued by Leichhardt Municipal Council on 18 September 1997.

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 Leichhardt, and the relevant “broader community” comprises Inner West Local Government Area (“LGA”).

Positive social impacts

25. The Authority is satisfied, on the basis of the Application, CIS and additional material provided by the Applicant, that granting the Licence will provide the convenience of a one-stop shopping facility for members of the local and broader communities who wish to conveniently purchase liquor products when shopping at the Harris Farm Supermarket at the Premises.
26. The Authority considers that any potential benefit of convenience is somewhat reduced by the small size of the liquor sales area (17.11 sqm) within the Premises. A small scale packaged liquor facility is less likely to carry a comprehensive range of liquor products, meaning that customers of the Harris Farm Supermarket might still prefer to shop at one of the packaged liquor facilities nearby.
27. The Authority is satisfied, on the basis of information provided in the CIS, that the liquor sales area within the Harris Farm Supermarket will offer liquor products that include “boutique” wine, beer and cider and non-liquor products, which are likely to be of a higher quality and not widely available in any of the nearby packaged liquor facilities in the area.
28. The Authority accepts, on the basis of the CIS and Plan of Management, the Applicant’s contention that the Premises will be operated by an experienced supermarket company and appropriate practices will be in place aimed at minimising harm associated with the use of liquor.
29. The Authority notes that there were no objections to the Application received from any stakeholders, special interest groups, occupiers of neighbouring residences or any other member of the public. Furthermore, NSW Police and Inner West Council made a submission and did not object to the Application.
30. The Authority has had regard to the ABS Socio Economic Indexes For Areas (“SEIFA”) data indicating that as at 2011, Leichhardt and the former Leichhardt LGA were advantaged in comparison to other suburbs and LGAs on the Index of Relative Socio-economic Advantage and Disadvantage, ranking in the 9th and 10th decile respectively (with a decile of 10 being the most advantaged). The Authority notes that this data is seven years old and does not draw any specific inferences from it, other than to note that it does not raise any concerns.
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.

Negative social impact

32. The Authority notes that the density of packaged liquor licences in Leichhardt and the LGA is higher than the NSW state average.
33. The Authority notes, from the BOCSAR Crime Maps for the year ending September 2017, that the Premises was located in a medium density hotspot for incidents of alcohol related assault and domestic and non-domestic assault and high density hotspot for incidents of malicious damage to property.

34. The Authority notes that incidents of alcohol related assault (domestic and non-domestic) are occurring at lower than average rates in Leichhardt and the LGA, noting that for the year ending September 2017, the suburb and LGA recorded:
- a) a rate of 51.6 and 86.4 per 100,000 persons of population for incidents of domestic alcohol related assault, which is less than the NSW rate of 114.3, and
 - b) a rate of 129.1 and 110.9 per 100,000 persons of population for incidents of non-domestic alcohol related assault, which is lower than the NSW rate of 131.9.
35. The Authority further notes from the BOCSAR data that Leichhardt recorded a higher than average rate of incidents of malicious damage to property, while the LGA recorded a lower than average rate compared to NSW for the year ending September 2017.
36. The Authority accepts, based on the most recent Healthstats NSW data available at the time of its consideration, that residents of the LGA, as represented by the former Leichhardt LGA, are being hospitalised as a result of alcohol related health problems at a higher rate to the NSW average, but notes that alcohol related attributable deaths are occurring at a lower rate than the NSW state average.
37. The Authority considers that, over time, there is a risk that liquor sold from the Premises may contribute to an increase in alcohol related crime and health issues in the local and broader community, but the evidence does not establish that the prevailing alcohol related adverse social impacts are at a problematic level or raise immediate concerns.
38. The Authority is satisfied that any potential risks of negative social impact of granting the Licence are adequately mitigated by the following:
- a) The absence of any objections from any members of the public or other key stakeholders such as NSW Police, Inner West Council and NSW Health in relation to the Application.
 - b) The small scale of the liquor facility, which is considerably smaller than many standard packaged liquor outlets and is less likely to carry a comprehensive range of liquor products.
 - c) The business will provide a range of “boutique” wine, beer, cider and non-liquor products, which are likely be of a high quality and not widely available in any of the nearby packaged liquor facilities.
 - d) The comprehensive practices and procedures in the Applicant’s Plan of Management and proposed conditions to be imposed on the Licence.
 - e) The Premises will close at 9:00pm on Monday to Saturday and 4:00pm on Sunday, which is less than the standard hours permitted under the Act. This will likely further reduce any adverse impact its operation may have on the amenity of the community.

Overall social impact

39. 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 granting the Licence would not be detrimental to the well-being of the local and broader communities.
40. Furthermore, the Authority is satisfied that a decision to grant the Licence would be consistent with the objects of the Act to regulate the supply of liquor and facilitate the responsible development of the liquor industry in line with community expectations and needs.
41. Accordingly, the Authority has decided to grant the Licence under section 45 of the Act.



Craig Sahlin
Member
For and on behalf of the Independent Liquor and 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 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. Notice of determination of development application DA No.419/96 issued by Leichhardt Municipal Council, for demolition of existing buildings and erection of a retail/commercial building and two levels of car parking, dated 18 September 1997.
2. ABS SEIFA data based on the 2011 Census ranking Leichhardt and the former Local Government Area of Leichhardt on the Index of Relative Socio-economic Advantage and Disadvantage.
3. HealthStats NSW data showing alcohol attributable deaths for the former LGA of Leichhardt for the period between 2001-02 and 2012-13.
4. HealthStats NSW data showing alcohol hospitalisations for the former LGA of Leichhardt for the period between 2001-03 and 2012-13.
5. Complying Development Certificate No. 1327 issued by Newland Wood Certification Pty Ltd, dated 12 April 2016, for rebranding and internal alterations to existing food grocery for new Harris Farm Markets.
6. Email to the Applicant from Inner West Council, dated 27 October 2016, in relation to the Application.
7. Letter from Department of Transport, Roads and Maritime Services, dated 3 November 2016, in relation to the Application.
8. ASIC Current Organisation Extracts for HARRIS FARM MARKETS LEICHARDT PTY LTD ACN 608 256 140 dated 13 January 2017.
9. Floor plan dated 13 February 2017 indicating the proposed liquor sales area within the Premises.
10. Completed Category B CIS form, signed and dated 20 February 2017, and relevant additional information.
11. Local Consent Authority Notice, Police Notice and Public Consultation Site Notice, dated 20 February 2017.
12. Completed application for a packaged liquor licence, lodged on 22 February 2017.
13. Certification of Advertising Application signed by Mr Warwick Caisley on 4 April 2017 and Mr Joshua Banks on 11 April 2017.
14. Email to the Applicant from Liquor and Gaming NSW, dated 26 July 2017, in relation to the application.
15. BOCSAR crime maps for the year to September 2017, showing the Premises' location relative to hotspots for alcohol related assault, domestic assault, non-domestic assault and malicious damage to property.
16. NSW crime statistics for the two years to September 2017, published by BOCSAR, on incidents of alcohol related assault (domestic and non-domestic) and malicious damage to property in the LGA and Leichhardt.
17. Submission from NSW Police in relation to the Application, undated.
18. Google map indicating the location of the Premises, dated 15 January 2018.
19. Liquor licensing records from L&GNSW as at 15 January 2018 listing the details of all liquor licences in Leichhardt and Inner West LGA, and setting out, as at 21 January 2018, the density of packaged liquor licences in Leichhardt, Inner West LGA and NSW.
20. Premises Plan of Management, undated.
21. Submissions prepared by the Applicant's representative in response to the submissions received in relation to the Application and supporting information, 24 January 2018.