



Mr Gong Xue
jerryxuegong@yahoo.com.au

24 July 2017

Dear Mr Xue

Application No.	1-5630100880
Application for	Packaged liquor licence
Trading hours	Monday to Sunday 10:00 am – 8:00 pm
Applicant	Mr Gong Xue
Licence name	Sylvania Cellars
Premises	Shop 8, 262 Box Road SYLVANIA NSW 2224
Issue	Whether to grant or refuse an application for a packaged liquor licence
Legislation	Sections 3, 11A, 29, 30, 31, 40, 45 and 48 <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for a packaged liquor licence – Sylvania Cellars**

The Independent Liquor and Gaming Authority (“the Authority”) has considered your application for a packaged liquor licence (“the Application”). Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority 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 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. Restricted trading and NYE (std)
Retail Sales
Good Friday Not permitted
December 24th Normal trading Monday to Saturday,
8:00 am to 10:00 pm Sunday
Christmas Day Not permitted
December 31st Normal trading
3. The licensee or its representative must join and be an active participant in the local liquor accord.
4. 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 at premises at Shop 8, 262 Box Road, Sylvania NSW 2224.

5. The premises are to be operated at all times in accordance with the Plan of Management dated April 2017.
6. 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 premises that is not required to cease trading, continuously at all times),
 - (b) recordings must be in digital format and at a minimum of 15 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,
 - (ii) the footpath immediately adjacent to the premises, and
 - (iii) all publicly accessible areas (other than toilets) on the premises.
 - (2) The licensee must also:
 - (a) keep all recordings made by the CCTV system for at least 30 days,
 - (b) ensure that at least one member of staff is on the premises at all times the system is operating who is 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 inspector within 24 hours of any request by a police officer or inspector to provide such recordings.

If you have any questions, please contact the case manager via email to michael.fabits@justice.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 10 March 2017 the Independent Liquor and Gaming Authority (“the Authority”) received from the Applicant, through Liquor and Gaming NSW (“L&GNSW”), an application for a packaged liquor licence (“the Application”).
2. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority has decided to grant the licence.
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 29, 30, 31, 40, 45 and 48 of the Act, and relevant provisions of the *Liquor Act Regulation 2008* (“the 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, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, obtained by L&GNSW staff from publicly available sources.
7. The material considered by the Authority is listed in the Schedule, with a summary where appropriate.

Legislative framework

8. The Authority has considered the Application in accordance with 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 and needs 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 alcohol-related harm, 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 different 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:

- the applicant is a fit and proper person to carry on the proposed business,
- practices will be in place to ensure the responsible service of alcohol, and
- the applicable development consent (“DC”) 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 brought to its attention.

Provisions specific to 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 liquor is to be sold or supplied.

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 restrictions for granting 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 requirements

21. The Authority finds that:

- the Application has been validly made and meets the procedural requirements under section 40 of the Act,
- the proposed trading hours for the Premises meet the requirements under sections 11A, 12 of the Act in respect of trading and 6-hour closure periods, and
- the proposed use of the Premises as a bottle shop satisfies the requirements in section 29 of the Act, and renders sections 30 and 31 not applicable.

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

22. Pursuant to section 45 of the Act, the Authority is satisfied that:

- the Applicant is a fit and proper person to carry on the proposed business, given that no concerns regarding the Applicant’s probity were raised upon consultation with relevant law enforcement agencies,
- practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible service of alcohol, having regard to the Applicant’s:

- i. valid responsible service of alcohol (“RSA”) competency card,
 - ii. Plan of Management (“POM”) dated April 2017,
 - iii. record of operating another bottle shop for eight years without issues, and
 - iv. willingness to comply with the proposed conditions.
- the requisite DC for use of the Premises as a bottle shop is in force, based on the notice of determination issued by Sutherland Shire Council on 29 June 2016 approving development application DA16/0479.

Community impact statement

23. Pursuant to section 48 of the Act, the Authority is satisfied 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 Sylvania, and the relevant “broader community” comprises Sutherland Shire Local Government Area (“the LGA”).

Positive social impacts

25. L&GNSW’s liquor licensing records indicate that:
- as at 2 May 2017, there were three packaged liquor licences in Sylvania, and
 - the density of packaged liquor outlets in Sylvania and the LGA, reflected by licences per 100,000 persons of the population, is approximately 15 percent below the NSW state average.
26. The Authority accepts, based on the information available, the Applicant’s contention that the primary focus of the Premises is to sell boutique wine, cognac, brandy and rare spirits”.
27. The Authority also accepts that the Applicant has extensive experience in managing a liquor outlet, and is familiar with the local and broader communities, noting his possession of a valid RSA competency card, residence in Sylvania, and management of a bottle shop in the neighbouring suburb of Oyster Bay for eight years.
28. There was no opposition from Sutherland Shire Council or NSW Police after they were notified of the Application. The Applicant has consented to the conditions proposed by NSW Police and in the relevant DC.
29. On the basis of the above, the Authority is satisfied that:
- the Premises will provide additional convenience and choices to local consumers wishing to purchase liquor, and
 - its offer of a specialised range of liquor, overseen by experienced management, will contribute to the balanced and responsible development of the liquor industry.

Negative social impacts

30. The Authority notes from the BOCSAR data (see Schedule, item 4) that:
- for the year ending in December 2016, the Premises was not located in any hotspot for incidents of domestic, non-domestic or alcohol-related assault, or malicious damage to property,

- the rate of alcohol-related assault and malicious damage to property per 100,000 persons of the population in Sylvania was considerably lower than the corresponding NSW rate for both 2015 and 2016, and
 - while there was an increase in the rate of alcohol-related domestic assault in Sylvania in 2016, the change resulted from a relatively small increase in incident counts from 9 to 12.
31. The Authority also notes from the HealthStats NSW data that for the period 2012-13, alcohol attributable deaths and hospitalisations in the LGA were between 12 and 15 percent below the NSW state average.
32. The Authority is satisfied, on the basis of these statistics, that the level of alcohol-related crime and health issues in Sylvania and the LGA does not give rise to any immediate concern, or indicate that an additional packaged liquor licence would exacerbate any existing social problems attributable to alcohol.
33. One submission was received from a local resident opposing the grant of the licence, citing potential risks for increased youth intoxication, noise levels and anti-social behaviour in the community. The resident was also concerned that deliveries to the Premises may block public access to the adjacent laneway, and that the Premises may attract break-ins and disturb the community should its alarm system be triggered.
34. Having regard to the Applicant's response to the submission and other available information, the Authority is satisfied that the risks identified are adequately mitigated by the following:
- The range of liquor offered at the Premises does not include low cost beers and pre-mixed drinks, and is less likely to appeal to the young and more vulnerable customers.
 - The Premises is very small in size (approximately 31 square metres) and will close by 8:00 pm on all trading days, which is the same time as the other liquor outlet in the complex. Stock deliveries to the Premises will be in small quantities and will not block the adjacent laneway.
 - A silent back-to-base alarm system will be installed on the Premises to minimise disturbance to the neighbourhood.
 - Apart from one public submission, no objection was received from any other relevant parties in relation to the Application. The Applicant has consented to all of the conditions proposed by NSW Police and Sutherland Shire Council.
 - The Applicant has operated a larger bottle shop in the neighbouring suburb for eight years without any issue, and has outlined in the POM ongoing measures to minimise alcohol-related harm. These measures are complemented by the conditions to be imposed on the licence.

Overall social impact

35. The Authority has had regard to the ABS data indicating that as at 2011, Sylvania was considerably advantaged in comparison with other suburbs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage.
36. Having considered the positive and negative 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.

37. The Authority is also 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.

38. Accordingly, the Authority has decided to grant the packaged liquor licence.



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 before the Authority

1. ABS SEIFA data based on the 2011 Census indicating that the suburb of Sylvania ranked in the 8th decile within NSW on the Index of Relative Socio-Economic Advantage and Disadvantage, with a decile ranking of 10 being the most advantaged.
2. HealthStats NSW data showing alcohol-related deaths and hospitalisations in the LGA for the period 2012-13, reflected by a Smoothed Estimate of Standardised Mortality Ratio of 87.4, and a Smoothed Estimate of Standardised Separation Ratio of 85.2.
3. BOCSAR crime maps for the year ending December 2016, indicating that the Premises is not located within any hotspots for alcohol-related assault, domestic assault, non-domestic assault, and malicious damage to property.
4. NSW crime statistics for the year to December 2016, published by BOCSAR, indicating the following:
 - a. The rate of alcohol-related domestic assault incidents was:
 - i. 113.6 per 100,000 persons for the suburb of Sylvania
 - ii. 83.1 per 100,000 persons for the LGA
 - iii. 116.9 per 100,000 persons for NSW.
 - b. The rate of alcohol-related non-domestic assault incidents was:
 - i. 18.9 per 100,000 persons for the suburb of Sylvania
 - ii. 117.7 per 100,000 persons for the LGA
 - iii. 136.5 per 100,000 persons for NSW.
 - c. The rate of malicious damage to property incidents was:
 - i. 463.8 per 100,000 persons for the suburb of Sylvania
 - ii. 580.3 per 100,000 persons for the LGA
 - iii. 834 per 100,000 persons for NSW.
5. Site and floor plans for the Premises, dated 21 April 2016.
6. A DC issued by Sutherland Shire Council on 29 June 2016 for application DA16/0479, approving the use of the Premises as a bottle shop, and sets out a number of conditions.
7. Submission from a member of the public, dated 2 August 2016, opposing the grant of the licence.
8. A completed Category B CIS form, signed by the Applicant and dated 17 February 2017. In the form the Applicant provided details of the parties consulted and outcome of the consultation.
9. A completed application form signed by the Applicant and dated 10 March 2017.
10. A POM for the Premises dated April 2017.
11. A Certificate of Advertising Application signed by the Applicant and dated 30 April 2017.
12. Liquor licensing records from L&GNSW as at 2 May 2017, listing all packaged liquor licences in Sylvania and the LGA.

13. Submission from NSW Police, dated 2 May 2017, proposing to impose a number of conditions on the licence, should it be granted.
14. Emails between the L&GNSW case officer processing the Application and the Applicant between 2 and 3 May 2017 in relation to the Application.
15. Google maps showing the location of the Premises, extracted from the Google website on 8 May 2017.
16. Email from the Compliance Unit of L&GNSW, dated 1 June 2017, advising that L&GNSW does not intend to carry out any further assessment of the Application.