



Mr Ian Clive Muncaster
farmershotelvacy@gmail.com

23 March 2018

Dear Mr Muncaster

Applicant	Mr Ian Clive Muncaster
Application No.	APP-0002826879
Application for	Packaged liquor licence
Proposed licence name	Vacy General Store
Proposed premises	803 Gresford Road VACY NSW 2421
Proposed trading hours	Monday to Sunday 10:00 am – 7:00 pm
Issue	Whether to grant a packaged liquor licence
Legislation	Sections 3, 31 and 45 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for a packaged liquor licence – Vacy General Store**

The Independent Liquor and Gaming Authority considered your application above for a packaged liquor licence at its meeting on 14 March 2018 and, pursuant to section 45 of the *Liquor Act 2007*, decided to **refuse to grant** the licence.

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 at
andrew.whitehead@liquorandgaming.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 1 November 2017, Mr Ian Clive Muncaster (“the Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”), an application (“Application”) for a packaged liquor licence (“Licence”), for the premises at 803 Gresford Road, Vacy NSW (“Proposed Premises”).
2. The Authority considered the Application at its board meeting on 14 March 2018 and decided to refuse to grant the Licence under section 45 of the *Liquor Act 2007* (“Act”).
3. The Authority has reached this decision on the basis that the Application does not meet the requirement under section 31 of the Act. Specifically, the Authority is not satisfied that no other take-away liquor service is reasonably available to the public in the neighbourhood of the Proposed Premises.
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 45 of the Act.
5. For the purpose of this decision, it is not necessary to consider, and the Authority has not considered, whether the other criteria for granting the Licence have been met.

Relevant material considered by the Authority

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

Legislative framework

9. The Authority has considered the Application in the context of the following legislative provisions.

Objects of the Act

10. 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.
11. 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

12. 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, and
 - 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.

Decision making in relation to licence applications

13. Section 45 of the Act provides that the Authority may, after considering an application for a licence and any relevant matters, grant or refuse to grant the licence.

Key findings

14. The Authority finds, on the basis of the Applicant's submission and the information available, that the Proposed Premises comprises a general store for the purpose of section 31 of the Act. The Authority notes that:
- a) the Proposed Premises is a mixed business shop at which groceries and other small items are sold, and has an Australian Post Office outlet and one fuel bowser, and
 - b) the retail floor area of the Proposed Premises, as indicated by the premises plan, is less than 240 square metres.
15. Although fuel and take-away food are sold at the Proposed Premises, the Authority is satisfied that these are not the primary business of the Proposed Premises, having regard to the Applicant's submission and the relevant sales data.
16. The Authority notes that take-away liquor service is available on the same road as and within less 100 metres of the Proposed Premises at Farmers Hotel, which holds a full hotel liquor licence authorising it to sell liquor for take-away from 5 am to 11 pm, Monday to Saturday, and from 10 am to 10 pm on Sundays.
17. The Applicant argued that despite the presence of Farmers Hotel, take-away liquor service is not reasonably available to the public in the neighbourhood of the Proposed Premises because the range of liquor products sold at that hotel is limited.
18. The Applicant contended that most of the liquor products proposed to be sold at the Proposed Premises would be boutique and craft liquor products not available at Farmers Hotel or anywhere else in the area. This contention is echoed in the submissions received from a local café and the current licensee of Farmers Hotel, expressing support for the Applicant's proposed supply of boutique and craft liquor products which would complement the community's existing liquor choices.
19. The Authority accepts that the Applicant intends to offer liquor products which are not currently available in the community, but does not accept that this would satisfy the specific test under section 31(1)(a) of the Act. The wording of the provision is clear and refers to the reasonable availability of 'other take-away liquor service', and does not permit a narrower or different interpretation such as the reasonable availability of 'the same or a similar type of take-away liquor service'. The Authority has no discretion under the provision to take into consideration the uniqueness of the products available at or the business model of the Proposed Premises.
20. The Authority finds that the take-away liquor service offered at Farmers Hotel 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 and authorised trading hours.
21. The Authority also notes the letter from a member of the public opposing the grant of the Licence, which stated that the community already has access to packaged liquor through Farmers Hotel.
22. 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.
23. Accordingly, the Authority refuses to grant the 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 Application and who made a submission to the Authority or the Secretary in respect of the 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. Completed Category B Community Impact Statement dated 19 October 2017.
2. Completed online application dated 1 November 2017.
3. Submission from a member of the public, dated 27 November 2017, in relation to the Application.
4. An email dated 30 November 2017 and an undated letter from the current licensee of Farmers Hotel in relation to the Application.
5. Submissions from the Applicant, between 20 January and 16 February 2018, in relation to the assessment of the Application and submissions received.
6. Plan of management dated 22 January 2018.
7. Submission from Flying Duck Café, dated 23 January 2018, in relation the Application.
8. Sales data dated 1 February 2018 for the Proposed Premises
9. Premises plan indicating the floor area of and proposed liquor sales area in the Proposed Premises.
10. List of products proposed to be sold at the Proposed Premises.