

Mr Sung Min Kim
Garry Seo & Associates
solicitor.robin@gmail.com

26 March 2018

Dear Mr Kim

Applicant	MJ Trading Services Pty Ltd
Application No.	APP-0003158248
Application for	Packaged liquor licence
Proposed licence name	City Hanho
Proposed premises	15 Joseph Street LIDCOMBE NSW 2141
Proposed trading hours	Monday to Sunday 11:00 am – 6:00 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 – City Hanho**

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
beatrice.pitpaiac@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 20 November 2017, MJ Trading Services Pty Ltd (“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 15 Joseph Street, Lidcombe 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.

Relevant material considered by the Authority

4. In reaching this decision the Authority has had regard to material and submissions provided by the Applicant in support of the Application, 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, the other material before the Authority relevant to the determination of whether the other criteria for granting the Licence have been met.
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 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 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, 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.

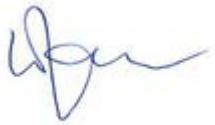
Decision making in relation to licence applications

12. 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

13. The Authority notes that the Proposed Premises comprises an Asian grocery store, and has a retail floor area of approximately 180 square metres. The Authority therefore finds, noting that the Applicant also acknowledges, that the Proposed Premises comprises a general store for the purpose of section 31 of the Act.
14. The Authority also notes that there are currently five packaged liquor licences and three full hotel licences authorised to sell packaged liquor in Lidcombe.
15. The Applicant argued that despite the presence of these licensed venues, take-away liquor service is not reasonably available to the public in the neighbourhood of the Proposed Premises, because:
 - a) the word 'neighbourhood' in section 31 of the Act should have the same meaning as the word 'neighbouring' defined in clause 6 of the *Liquor Regulation 2008* ("Regulation"), in the context of 'neighbouring premises', as 'within 100 metres of the boundary of the premises to which the application relates',
 - b) applying that definition, all of the packaged liquor outlets in Lidcombe are located outside the neighbourhood of the Proposed Premises, as there is a 160 metre walking distance between the Proposed Premises and the nearest packaged liquor outlet at Royal Oak Hotel, and
 - c) the packaged liquor products proposed to be sold at the Proposed Premises will be unique imported Asian liquor products, many of which would be exclusive to the Proposed Premises and not available elsewhere in the area.
16. The Authority does not accept the Applicant's contention that the meaning of 'neighbourhood' for the purpose of section 31 of the Act should be limited to the express and specific definition of 'neighbouring premises' in the Regulation. The Authority however does not see a need to further consider this issue, as Royal Oak Hotel sits within the 100 metre radius of the Proposed Premises when the distance is measured in a straight line, and would be in the neighbourhood of the Proposed Premises even if the definition suggested by the Applicant is adopted.
17. The Authority also does not accept that the uniqueness or exclusiveness of the liquor products proposed to be sold at the Proposed Premises is relevant to consideration of 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'.
18. The Applicant cited as precedents two previous decisions by the Authority granting a Licence to premises which the Applicant claimed to be general stores, in the presence of other take-away liquor service in their neighbourhood. The Authority finds both cases to be irrelevant, as the premises to which they related each had a retail floor space of more than 240 square metres, and were therefore not general stores for the purposes of section 31 of the Act.
19. The Authority finds that the take-away liquor service offered at Royal Oak Hotel constitutes 'other take-away liquor service' for the purposes of section 31(1) of the Act, and that this service is reasonably available to the public in the neighbourhood of the Premises, given its close proximity to the Proposed Premises and Royal Oak Hotel's authorised trading hours for take-away liquor sales.
20. For completeness the Authority also considers that the take-away liquor service offered by other nearby packaged liquor facilities, such as Juju Mart which is 270 metres from the Proposed Premises, to be other take-away liquor service reasonably available to the public in the neighbourhood of the Proposed Premises.

21. 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.
22. 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 online application dated 20 November 2017.
2. Plan of management document titled 'Alcohol Management Policy' and dated 5 December 2017.
3. Premises and floor plans for the Proposed Premises.
4. Correspondence between L&GNSW staff and the Applicant between 23 November 2017 and 1 March 2018 in relation to the assessment of the Application.