



Mr Grant Cusack
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25 June 2018

Dear Mr Cusack

Application No.	APP-0003666987
Applicant	Jin Heng Feng Trading Pty Ltd
Application for	Packaged Liquor Licence
Licence name	Henlee Supa Supermarket
Trading hours	Monday to Saturday 10:00 am – 9:59 pm Sunday 10:00 am – 08:00 pm
Premises	Level 1 (Ground Floor Level) 27-31 Belmore Street Burwood NSW 2134
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 – Henlee Supa Supermarket**

The Independent Liquor and Gaming Authority considered, at its meeting on 11 April 2018, the Applicant's application for a packaged liquor licence and, pursuant to section 45 of the *Liquor Act 2007*, has decided to **grant** the licence 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 04:00 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 reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
5. The premises is to be operated at all times in accordance with the Plan of Management dated October 2017 as may be varied from time to time after consultation with NSW Police. A copy 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.
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. Closed-circuit television system

- 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.

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 earlier than 10:00 am.

Approved manager or individual licensee

Please note that the licence cannot be exercised unless and until the Authority or Liquor & Gaming NSW has been notified of the appointment of an approved manager to the licence, or the licence has been transferred to an individual licensee.

If you have any questions, please contact the case manager at wendy.yeung.wye.kong@liquorandgaming.nsw.gov.au.

Yours faithfully



David Armati
Deputy Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 8 December 2017, Jin Heng Feng Trading Pty Ltd (“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 Level 1 (Ground Floor Level) 27-31 Belmore Street Burwood NSW 2134 (‘Premises’).
2. The Authority considered the Application at its meeting on 11 April 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 relevant material before it, the legislative requirements under sections 3, 11A, 12, 29-31, 40, 45 and 48 of the Act, and the 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) if the Licence were to be granted, liquor would 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 would be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol, having regard to the Plan of Management for the Premises and the conditions to be imposed on the licence, and
- c) the requisite development consent is in force, based on the Notice of determination of a development application 89/2012 in respect of the Premises, issued by Burwood Council on 28 March 2013.

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

Positive social impacts

- 25. The Authority accepts the Applicant’s contention that the Premises will provide the convenience of a one-stop shopping facility for local residents and would enable customers of the supermarket to purchase their liquor needs at the same time as their grocery and other items.
- 26. The Authority notes that the Premises will be located within the retail area of a multi-storey complex known as ‘Emerald Square’ comprising of a mix of retail and grocery stores, food and beverage outlets and residential apartments. The Authority accepts that the Premises will increase the choice of liquor products available to shoppers and persons residing in Emerald Square.
- 27. The Authority notes that Burwood has seen an increase in new developments in recent years with a mixture of residential, commercial and light industrial developments. These developments reflect the growing population in the area and indicate a likely increase in demand for packaged liquor.
- 28. The Authority notes that Burwood LGA has a lower than average density of packaged liquor licences. The Premises will provide the community with additional access to packaged liquor.
- 29. The Authority has considered the ABS data indicating that as at 2011, Burwood ranked as a relatively advantaged suburb, and the LGA ranked as a relatively advantaged Local Government Area, in NSW on the Index of Relative Socio-economic Advantage and Disadvantage. 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 apparent concerns.
- 30. The Authority also notes that no concerns in response to the Application were raised by any of the legislated stakeholders, including NSW Police, Aboriginal Affairs, NSW Roads and Maritime Services and NSW FACS.
- 31. Accordingly, 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 impacts

32. The Authority notes from the BOCSAR Crime Maps for the year ending December 2017, that the Premises is located in a low density hotspot for alcohol related assault, in a medium density hotspot for domestic assault, and in high density hotspots for non-domestic assault and malicious damage to property.
33. The Authority also notes from the BOCSAR data that:
- a) The rates of incidents of alcohol related domestic assault and malicious damage to property are significantly lower in Burwood suburb and Burwood LGA compared to the state of NSW for the same period.
 - b) Burwood suburb recorded a higher than average rate of alcohol related non-domestic assault, while Burwood LGA recorded a lower than average rate for the same period.
34. The Authority has considered the most recent HealthStats NSW data available at the time of the Application. The data indicates that Burwood LGA recorded a lower level of alcohol attributable hospitalisations and deaths when compared to the NSW state average.
35. The Authority has considered the single submission from a member of the community objecting to the Application, in which concerns were raised regarding the potential for the Premises to attract undesirable people to the street and pose threats to the residents. The Authority notes that the concerns raised in the objecting submission were not supported by any evidence.
36. The Authority does consider 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 objective evidence considered does not establish that the prevailing alcohol related adverse social impacts being experienced in the local and broader communities are at a problematic level or raise immediate concerns.
37. The Authority believes that the risks identified above will be mitigated by:
- a) the absence of any objections from any key stakeholders such as NSW Police, NSW Health or the Council, in relation to the Application;
 - b) the location of the licensed area, being wholly within a supermarket, and the expectation that the majority of customers will be customers of the supermarket;
 - c) the relatively small scale of the liquor facility, which is smaller than many standard packaged liquor outlets and is less likely to carry a comprehensive range of liquor products; and
 - d) the practices and procedures detailed in the Applicant's Plan of Management and prescribed by special licence conditions imposed, which together mean that the likelihood of immediate consumption of packaged takeaway liquor in or around the Premises is minimal and that alcohol will be sold and supplied responsibly.

Trading hours

38. The Authority notes from the Application and community consultation material that the trading hours sought for the Premises between Monday and Saturday end at 10 pm.
39. The Authority also notes that if the Premises is authorised to trade until 10 pm, Monday to Saturday, it would in practice be authorised to also trade between 10 pm and 11 pm on those days pursuant to an exemption afforded by clause 70AB of the Regulation.

40. In the current circumstances, the Authority considers it appropriate to impose a closing time of 9:59 pm, Monday to Saturday, to prevent the unintended consequences of permitting the Premises to trade beyond the hours sought by the Applicant and represented to stakeholders, including Council and NSW Police, during the community consultation process.

Overall social impact

41. 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.
42. The Authority is also satisfied that a decision to grant the Licence would be consistent with the objects of the Act to regulate liquor supply and facilitate responsible industry development in line with community expectations and needs.
43. Accordingly, the Authority has decided to grant the Licence under section 45 of the Act.



David Armati
Deputy 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 considered by the Authority

1. ABS SEIFA data based on the 2011 Census for Burwood and the LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. Notice of determination issued by Burwood Council on 28 March 2013 approving the development application/modification of development consent 89/2012 in relation to the Premises.
3. HealthStats NSW data showing alcohol-attributable deaths in the LGA for the period 2013-15 and alcohol-attributable hospitalisations in the LGA for the period 2013-15.
4. NSW Recorded Crime Statistics 2016 outlining the proportion of offences in the LGA by day of week and time of day.
5. Submission from Transport, Roads & Maritime on 5 October 2017 in relation to the Application.
6. Submission from Aboriginal Affairs on 9 October 2017 in relation to the Application.
7. Plan of Management documents for the Premises, titled Plan of Management for the operation of a proposed liquor department to be located with the Henlee Supa Supermarket and dated October 2017.
8. ASIC business records in relation to the Applicant extracted on 30 October 2017.
9. Premises plan dated November 2017 for the Premises.
10. Submission from Burwood Council on 8 December 2017 in relation to the Application.
11. Completed Category B Community Impact Statement dated 5 December 2017.
12. Completed application dated 8 December 2017 in relation to the Application.
13. Submission from FACS on 19 December 2017 in relation to the Application.
14. BOCSAR crime maps for the year to December 2017, indicating the location of the Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
15. NSW crime statistics for the two years to December 2017, published by BOCSAR, showing the counts, rates and two year trends of alcohol related assault (domestic and non-domestic) and malicious damage to property in Burwood and the LGA.
16. Submission from Dr Moureen Wong on 15 January 2018 in relation to the Application.
17. Certification of Advertising signed and dated 18 January 2018. Attached is the public consultation site notice, police notice and local consent authority notice.
18. L&GNSW liquor licensing records as at 5 March 2018, outlining the density of all types of liquor licences in Burwood, the LGA and NSW, and listing all packaged liquor licences in Burwood and the LGA.
19. Google map images extracted from the Google website on 19 March 2018, showing the location and photos of the Premises in map view, earth view and street view
20. Correspondence between L&GNSW staff and the Applicant on 26 March 2018 in relation to the assessment of the Application.