



Mr Grant Cusack
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4 September 2018

Dear Mr Cusack

Applicant	Sall and Jain Investment Pty Ltd
Application number	1-6679393773
Application for	Removal of a Packaged Liquor Licence
Proposed licence name	FoodWorks Canowindra
Licence number	LIQP724009551
Current licensed premises	Ferguson St & Tilga St CANOWINDRA NSW 2804
Proposed premises	94-96 Gaskill St CANOWINDRA NSW 2804
Proposed trading hours	Monday to Saturday 9:00am – 9:00pm Sunday 10:00am – 7:00pm
Issue	Whether to grant the removal of a packaged liquor licence
Legislation	Sections 3, 11A, 12, 29, 30, 31, 40, 45, 48 and 59 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for the removal of a packaged liquor licence – FoodWorks Canowindra**

The Independent Liquor and Gaming Authority considered the Applicant's application for the removal of a packaged liquor licence at its meeting on 18 July 2018 and, pursuant to section 59 of the *Liquor Act 2007*, decided to **refuse** the removal application.

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

If you have any enquiries about this letter, please contact the case manager via email to danielle.hatton@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 21 February 2018, Sall and Jain Investment 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 the removal of a packaged liquor licence (“Licence”) from the premises at Ferguson St & Tilga St Canowindra (“Premises”) to 94-96 Gaskill St, Canowindra (“Proposed Premises”).
2. The Authority considered the Application at its meeting on 18 July 2018 and decided to refuse the removal of the packaged liquor licence to the Proposed Premises under section 59 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, 30, 31, 40, 45, 48 and 59 of the Act, and relevant provisions of the *Liquor Regulation 2008* (“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 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.

Removal of liquor licence

11. Section 59 of the Act provides the legal requirements regarding the removal of a licence to another premises and requires that such application be dealt with and determined as if it were an application for the granting of a new licence.
12. Section 59 of the Act provides that the Authority must not approve the removal application unless it is satisfied that practices will be in place following the removal and remain in place to reasonably ensure the responsible service of alcohol and to prevent intoxication on the premises to which the licence is proposed to be removed.

Trading hours and 6-hour closure period

13. 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

14. 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

15. 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

16. 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.

17. 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

18. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.

19. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.

20. 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.

21. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

Key findings

22. 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

23. The Authority is satisfied on the material before it that:

- a) the Application has been validly made and meets the procedural requirements under sections 40 and 59 of the Act,
- b) the proposed trading hours for the Proposed Premises meet the requirements under sections 11A, 12 and 29 of the Act in respect of trading and 6-hour closure periods,
- c) if the Application were to be granted, liquor would be sold and supplied in a separate liquor sales area at the Proposed 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 Proposed Premises is not intended to operate as is contemplated by the section.

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

24. Pursuant to sections 45 and 59 of the Act, the Authority is satisfied that if the Application were to be approved, practices would be in place to ensure the responsible serving of alcohol. In making this finding the Authority has had regard to the material before it, including the Plan of Management and House Policy documents, and the conditions to be imposed on the licence if the Application were to be granted.
25. The Authority is also satisfied that, for the purposes of section 45 of the Act:
- a) the Applicant continues to be a fit and proper person to carry on the business to which the licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies, and
 - b) the requisite development consent at the Proposed Premises is in force, based on the Notice of Determination of Development Application DA 2017/188 issued by Cabonne Council on 17 August 2017.

Community impact statement

26. 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 Proposed Premises on the local and broader communities.
27. 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 Canowindra, and the relevant "broader community" comprises Cabonne Local Government Area ("LGA").

Positive social impacts

28. The Authority is satisfied that if the Application were granted, the Proposed Premises would comprise a packaged liquor facility that would be wholly located within the existing FoodWorks Supermarket and only accessible by customers of the supermarket, and that the proposed trading hours would amount to fewer hours than those that are approved in respect of the Current Premises.
29. The Authority is also satisfied that the proposed liquor sales area at the Proposed Premises is smaller in size than the licensed area at the Current Premises.
30. The Authority accepts that, if the Application were granted, the FoodWorks Supermarket would operate a modern packaged liquor facility with a high standard of fit-out.
31. The Authority accepts the Applicant's claim that granting the Application would provide an additional measure of convenience to customers at the Proposed Premises who wish to purchase liquor items along with their grocery items. The Authority notes that the convenience of "one-stop shopping" is not available at the Current Premises, nor is it currently available elsewhere in Canowindra to members of the local community.
32. The Authority also accepts that the FoodWorks Supermarket has 24 onsite car parking spaces, and is located in the main shopping precinct of Canowindra, both of which are features that further enhance the potential convenience the Proposed Premises would offer to members of the local community. The Authority notes that the Current Premises is located away from Canowindra's main shopping precinct.
33. The Authority has had regard to the evidence before it of some local support for the Application, including five letters of support from local members of the community and a petition containing numerous signatures. On the basis of this evidence, the Authority accepts that some members of the local community expect to be able to purchase liquor products at the same time as purchasing grocery items.
34. The Authority accepts that those members of the community who provided letters in support of the Application consider the operator of the FoodWorks Supermarket to currently be providing

a high standard of service to the local community, and would appreciate the convenience offered by a packaged liquor department within the Supermarket.

35. The Authority accepts that the granting of the Application would not result in any increase in the density of packaged liquor licences in Canowindra, given that it would simply authorise the relocation of an existing packaged liquor licence from one location in Canowindra to another. The Authority notes, however, that this relocation would also result in the licence operating under a very different business model when compared to its current operation.
36. The Authority notes that NSW Police, Roads & Maritime Services and Aboriginal Affairs have advised that they do not object to the Application, and that the L&GNSW Compliance Unit declined to make a submission.

Negative social impact

37. The Authority notes from the BOCSAR data that, for the year ending March 2018, the Proposed Premises was not located within any hotspots for incidents of any relevant alcohol-related offences. The Authority notes, however, that there was a low density hotspot for domestic assault located within Canowindra, located three blocks to the east of the Proposed Premises.
38. The Authority is troubled by the elevated rate of alcohol-related domestic assault for Canowindra for the same period, which was 174.3 per 100,000 of population, compared to 114.4 for NSW. The Authority notes, however, that the rate of malicious damage to property was lower than the corresponding NSW rate, at 479.3 compared to 779.5, and that there were no incidents of alcohol-related non-domestic assault in Canowindra in the relevant period.
39. The Authority is also concerned by the relevant HealthStats data relating to alcohol-attributable deaths, which suggest that members of the broader community are dying as a result of alcohol-related health issues at a higher than average rate, although notes that they are being hospitalised for alcohol-related health issues at a lower than average rate.
40. The Authority has also had regard to the ABS Socio Economic Indexes For Areas (SEIFA) data sourced from the 2016 Census for the suburb of Canowindra and Cabonne LGA, which provides a very different picture at the local and broader community levels. Whilst the LGA ranked in the 8th decile (with the 10th decile being the most advantaged) in comparison to other local government areas in NSW, the suburb only ranked in the 2nd decile. The Authority is concerned by this indication of disadvantage at the local level.
41. The Authority notes the submission received from Cabonne Council, however understands that the concerns raised in respect of the scope of the proposed liquor sales area have been adequately addressed by the Applicant by way of an amended layout plan. The Authority considers the petition provided along with this submission to be evidence of some local objection to the Application.
42. The Authority notes the submissions received from two commercial competitors, being the licensee of Canowindra Bottle Shop and the owner and operator of the IGA Supermarket in Canowindra, and the numerous concerns raised regarding the potential for the Proposed Premises to negatively impact upon the profitability of those businesses. The Authority has not given any weight to concerns of that nature. Those submissions also raise a number of technical matters relating to the Application, which the Authority believes have been adequately addressed by the Applicant.
43. The Authority does, however, share the concerns raised regarding the fact that there are already numerous facilities licensed to sell packaged liquor located within the immediate vicinity of the Proposed Premises – Royal Hotel LIQH400111746, Canowindra Bottle Shop LIQP700355816, Junction Hotel LIQH400111681, Canowindra Hotel LIQH400111649, and Canowindra Services & Citizens Club Limited are all located on or close to Gaskill Street, and within approximately 100 metres of the Proposed Premises.
44. The Authority also shares the concerns raised regarding the foreseeable change to the impact of the licence on the local and broader communities if it were to be removed as proposed,

given the very different business models of Taste Canowindra, the Current Premises to which the licence attaches, and the FoodWorks Supermarket. The Authority accepts that Taste Canowindra is situated away from Gaskill Street and is marketed towards tourists, selling local wines as part of a larger business that includes a restaurant, exhibits art for sale and holds a variety of events. Unlike the Proposed Premises, the Current Premises is not located or operated in such a way as to provide for convenient or impulsive purchases of liquor products, and is not associated with grocery shopping.

45. The Authority has considered a number of other submissions opposing the Application which were received from members of the public and special interest groups, and which largely echoed the above listed concerns.
46. The Authority notes the submission provided by the Applicant in response to the objections received, however remains concerned by the suburb's high rate of alcohol-related domestic assault, evidence of socioeconomic disadvantage at the local level, and the LGA's unfavourable health statistics. These concerns are heightened in the context of the significant shift in the business model that would apply to the licence were the Application to be granted, and the number of existing premises licensed to sell packaged liquor in the immediate vicinity of the Proposed Premises.
47. The Authority considers that it is likely that any liquor that were to be sold or supplied at the Proposed Premises would contribute to the prevailing concerning levels of alcohol-related domestic assault and alcohol-related health harms in the local and broader communities, and would have greater scope to do so when compared to the Current Premises.
48. The Authority is not satisfied that the above risks would be adequately mitigated by the imposition of special licence conditions or by the Applicant's adherence to the Plan of Management and House Policy documents lodged with the Application.

Overall social impact

49. The legislative test under section 48(5) of the Act requires the Authority to be satisfied that the overall social impact of granting the Application will not be detrimental to the well-being of the local or broader community.
50. Having considered the positive and negative social impacts that are likely to flow from granting the Application, the Authority is not satisfied on the material before it that the overall social impact of granting the Application will not be detrimental to the well-being of the local and broader communities.
51. Accordingly, the Authority has decided to refuse the Application under section 59 of the Act.



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 considered by the Authority

1. HealthStats NSW data, indicating a Smoothed Estimate of Standardised Mortality Ratio of 115.3 for Cabonne LGA for 2012-2013, along with figures for preceding periods.
2. HealthStats NSW data, indicating a Smoothed Estimate of Standardised Separation Ratio of 80.5 for Cabonne LGA for 2013-2015, along with figures for preceding periods.
3. ABS SEIFA data based on the 2016 Census ranking Canowindra suburb and Cabonne LGA on the Index of Relative Socio-economic Advantage and Disadvantage.
4. Notice of Determination of Development Application DA 2017/188 issued by Cabonne Council on 17 August 2017.
5. Submission from Timothy Slattery, dated 30 November 2017 and 20 April 2018, in relation to the Application.
6. Plan of Management and House Policy documents in respect of the Proposed Premises, dated December 2017.
7. Email from Aboriginal Affairs, Department of Education NSW, dated 1 December 2017, in relation to the Application.
8. Submission from the owner and operator of the IGA Supermarket in Canowindra, dated 1 December 2017, in relation to the Application.
9. ASIC Current Organisation Extracts for SALL AND JAIN INVESTMENT PTY LTD ACN 618 320 371 and FUTURISTIC OPTICS PTY LTD ACN 607 613 338, dated 5 and 20 December 2017, respectively.
10. Submissions from Haydn Jobson, dated 22 December 2017 and 4 April 2018, in relation to the Application.
11. Email from Bernadette Griffiths, dated 26 December 2017, in relation to the Application.
12. Submission from NSW Police, dated 27 December 2017, in relation to the Application.
13. Email from Canowindra Services & Citizens Club, dated 29 December 2017, in relation to the Application.
14. Email from Dylan Gower and Phoebe Cowdery, dated 31 December 2017, in relation to the Application.
15. NSW Recorded Crime Statistics 2017 – “Proportion of incidents by offence type, day of week and time of day”, and “Number and proportion of selected offences flagged as alcohol related by NSW Police” for Cabonne LGA and NSW.
16. Completed Category B CIS form, signed and dated 1 February 2018, and relevant additional information prepared by the Applicant’s representative.
17. Completed application for removal of a packaged liquor licence, signed and dated 1 February 2018.
18. Submission from Roads and Maritime Services, dated 13 February 2018, in relation to the Application.
19. BOCSAR crime maps for the year to March 2018, showing the Current Premises’ and Proposed Premises’ location relative to hotspots for alcohol-related assault, domestic assault, non-domestic assault and malicious damage to property.
20. NSW crime statistics for the two years to March 2018, published by BOCSAR, on incidents of alcohol-related assault (domestic and non-domestic) and malicious damage to property in the suburb and LGA.
21. Email from Assessments & Analysis Unit, L&GNSW, dated 12 April 2018, in relation to the Application.
22. Submission from Vicki Davis, dated 20 April 2018, in relation to the Application.
23. Submission from Rebecca Andrew, dated 20 April 2018, in relation to the Application.

24. Submission from Jayden Thomas, dated 3 May 2018, in relation to the Application.
25. Submission from a member of the public, dated 3 May 2018, in relation to the Application.
26. Certifications of Advertising Application signed by Grant Cusack and Aman Jain, dated 6 and 7 May 2018.
27. Submission prepared by the Applicant's representative in response to the assessment of the Application, including submissions received in relation to the Application, dated 15 May 2018.
28. Liquor licensing records from L&GNSW as at 20 May 2018 listing the details of all liquor licences in Cabonne LGA.
29. Google map indicating the location of the Proposed Premises, extracted June 2018.
30. Submission from Cabonne Council, dated 19 June 2018, in relation to the Application, including a petition opposing the Application.
31. Petition in support of the Application, provided by the Applicant, undated.
32. Proposed Premises plan indicating the proposed liquor sales area, undated.