



Mr Jon Martin
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Dear Mr Martin

**Application for Removal of a Packaged Liquor Licence
Liquorland, Kellyville**

I am writing to you about an application made by you on behalf of Liquorland (Australia) Pty Limited to the Independent Liquor and Gaming Authority on 28 November 2014. The Application is in respect of a Liquorland store located at Cecily Centre Shop 1, Kellyville and seeks to remove this licence to a First Choice Liquor Superstore located at Kellyville Plaza, 90-92 Wrights Road, Kellyville, under section 59(1) of the *Liquor Act 2007* (Act).

As described in the Authority's Regulatory Delegations Manual, the Authority has delegated to the Licensing Co-ordinator the power to grant certain liquor licence applications that fall within a designated risk threshold. This Application falls within the relevant threshold enabling the matter to be determined under delegation.

The Delegate considered the Application on 24 April 2015 and has decided, pursuant to section 59 of the Act, to approve the removal of the licence.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. This letter attaches the Delegate's statement of reasons. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable. The conditions to which the licence is subject will be recorded on the OneGov record of the licence to be provided separately.

If you have any questions, please contact the case manager Ms Trudy Tafea via email at trudy.tafea@ilga.nsw.gov.au.

Yours faithfully

Micheil Brodie
Chief Executive

- 6 DEC 2015

STATEMENT OF REASONS

INTRODUCTION

1. On 28 November 2014 the Independent Liquor and Gaming Authority (Authority) received an application on behalf of Liquorland (Australia) Pty Limited (Applicant) (Authority). The application seeks the removal of a packaged liquor licence from its existing location to a new location (Application) and is made under section 59(1) of the *Liquor Act 2007 (Act)*.
2. The Application is in respect of liquor licence number LIQP700382538 for a Liquorland store located at Cecily Centre Shop 1, Kellyville 2155 (Premises) and seeks to remove this licence to a First Choice Liquor Superstore located at Kellyville Plaza, 90-92 Wrights Road, Kellyville 2155 (New Premises).
3. The Premises is currently licensed to sell or supply liquor for consumption off the Premises between 5:00am and 12:00 midnight Monday through Saturday, and between 9:00am and 9:00pm on Sunday.
4. However, while this packaged liquor store may have previously enjoyed those trading hours, amendments to the Act legislated during 2014 now prevent the sale or supply of liquor for consumption off any licensed premises in New South Wales after 10:00pm on any evening.
5. Therefore, the Premises is currently licensed to sell or supply liquor for consumption off the Premises between 5:00am and 10:00pm Monday through Saturday and between 9:00am and 10:00pm on Sunday.
6. The Application seeks a 6-hour closure period required by section 11A of the Act to be fixed at between 2:00am and 8:00am Monday to Saturday, and between 4:00am and 10:00am (the standard closure period) Sunday, in order to allow the New Premises to open for trade at the same time as surrounding shops in the plaza.

MATERIAL BEFORE THE AUTHORITY

7. Application Form and Category B Community Impact Statement (CIS) Form filed with the Authority on 28 November 2014: This form discloses that Ms Melanie Lucas has approval to execute documents on behalf of Liquorland (Australia) Pty Limited. The Premises Owner of the New Premises (a First Choice Liquor Superstore) is stated to be Coles Group Property Developments Limited.
8. The Application Form specifies the two conditions stated at paragraph 8 as *conditions to be imposed* and is signed by Ms Lucas. The submissions by the Applicant on social impact are discussed in greater detail below.
9. Annexure A to the Application Form: This is a 4-page document explaining the Applicant's proposal to change the 6-hour closure period to between 2:00am and 8:00am Monday to Saturday. The Applicant submits that this closure period will allow the New Premises to cater to "...early bird convenience shoppers looking to combine their grocery shopping with liquor purchases and who seek to avoid peak hour trading" and that no objections were received in relation to the proposed 8:00am opening time. The Applicant notes that "...other retail shops close by or in close vicinity of the premises are permitted to open from 8:00am, including the adjoining Coles Supermarket".

10. Plan of the Premises: a diagram showing the proposed licensed area as 1248 square metres, approximately one third of which comprises a stock room and staff area. One entry point from the shopping centre into the licensed area is shown on the diagram.
11. *First Choice Liquor Superstore Management Strategies*: this 3-page document outlines "...operational strategies to limit the risks associated with the proposed premises" including, *inter alia*:
 - a) the installation of a CCTV surveillance system
 - b) staff training
 - c) prohibition on the sale of alcohol to minors or intoxicated persons
 - d) ensuring that staff "...stay informed about alcohol related problems in the local community"
 - e) keeping records of all incidents of violent, threatening or offensive behaviour
 - f) displaying drink driving educational material
 - g) establishing a close working relationship with Police and the local community, including through active participation in the Local Liquor Accord.
12. *First Choice Liquor Superstore House Policy for the Responsible Service of Alcohol*: this 2-page document states that the New Premises will "...support the object of harm minimisation associated with the misuse and abuse of liquor". The House Policy addresses, *inter alia*:
 - a) prevention of sale of alcohol to persons under 18 or persons without an approved form of identification who appear to be under 25 years old
 - b) prevention of sale of alcohol to persons exhibiting signs of intoxication or to persons who are reasonably expected to supply alcohol purchased at the New Premises to an intoxicated person
 - c) prevention of consumption of alcohol on the New Premises except for tastings which will comply with provisions of the Act
 - d) provision of a range of low alcohol and non-alcoholic beverages at all times at prices which reflect the wholesale cost of those beverages
 - e) the prominent display of all mandatory signage.
13. Copies of stakeholder notices: notifying the Application.
14. OneGov liquor licence record for the licence number LIQP700382538 recorded as at 30 March 2015: This document states that the Premises has a current packaged liquor licence with trading hours between 5:00am and 12:00 midnight Monday to Saturday and between 9:00am and 9:00pm Sunday. The Business Owner is stated to be Liquorland (Australia) Pty Ltd.
15. Notice of Determination of a Development Application No. 709/2013/JP/A by The Hills Shire Council (Council) dated 20 February 2014 (DA): This document records the grant of consent for planning purposes of modification to the approved alterations and additions to an existing shopping centre at 90-92 Wrights Road, Kellyville. Consent is granted for the *Liquor Store* to trade between 8:00am and 10:00pm Monday to Saturday and between 10:00am and 10:00pm Sunday.
16. Speciality stores within the shopping centre are permitted for planning purposes to commence trade from 7:00am daily, the Coles Superstore from 6:00am daily, and the tyre and auto service from 8:00am daily.
17. Authority licensing records indicating that there is only one other packaged liquor licence (a BWS store at 48 Wrights Road) and three on-premises licences in the suburb of Kellyville.

18. Authority licensing data indicating that liquor licence density for packaged liquor licences per 100,000 persons of population in postcode 2155, which covers the State suburbs of Kellyville, North Kellyville, Beaumont Hill and Rouse Hill, is 9.09. This is significantly lower than the NSW rate of 28.76 while the rate for The Hills LGA is 11.78. The density of club licences, hotel licences and on-premises licences in both postcode 2155 and The Hills LGA is also substantially lower than the NSW average for these licence types.
19. Google Maps image: showing the Premises and the New Premises, and that the distance between them by road is 3.0 kilometres.
20. BOCSAR crime mapping data for October 2013 to September 2014: revealing that the Premises is located a ...considerable distance away from a low density hotspot for the concentration of *domestic assault* incidents and further still from a low density hotspot for the concentration *malicious damage to property* incidents.
21. BOCSAR Report on *Crime by LGA and Alcohol Related Status* for calendar year 2013. This report records *rates* of alcohol related offences which occurred in each LGA and on average across NSW. The data indicates that in calendar year 2013, the rate per 100,000 persons of *alcohol related domestic assault* incidents in The Hills LGA was 26.7, much lower than the NSW rate of 137.3 per 100,000 persons. The rate of *alcohol related non-domestic assault* incidents in the LGA was 43.9 per 100,000 persons, again much lower than the rate of 181.0 per 100,000 persons across NSW as a whole. Further, the rate of *alcohol related assault police* incidents in this LGA was 3.3 per 100,000 persons in 2013, compared with 22.6 per 100,000 persons across NSW as a whole.
22. BOCSAR *Report on Crime for The Hills Shire LGA* for calendar year 2013.
23. BOCSAR *Report on Crime for New South Wales* for calendar year 2013.
24. Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS) indicating that both the suburb of Kellyville and The Hills LGA ranked in the tenth decile within the State on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).
25. Submission to the Authority from the Office of Liquor, Gaming and Racing (OLGR) dated 31 March 2015: stating that "...the application has been categorised as lower risk and has not been referred for assessment by a Compliance Officer" and accordingly OLGR "...does not intend to carry out any further assessment of this application and has no comment at this time".
26. Letter from Senior Constable Michael Xuereb of The Hills Local Area Command (Police) to JDK Legal on behalf of the Applicant dated 19 September 2014: stating that "...Police have growing concerns about the increases in the number of licensed premises within The Hills Local Area command, particularly in the areas where there is a saturation of numerous licensed premises either within the same area or within its near vicinity". Police do not state whether the Premises or the New Premises are within such an area.
27. Submission to OLGR from Sergeant David Cowell of The Hills Local Area Command (Police) dated 24 December 2014: Police state that they do not oppose the Application. Police inquiries have been conducted and "...there is nothing of an adverse nature recorded which would raise doubt as to the integrity of the application organisation of persons to be associated with the subject licence".
28. Letter from Roads & Maritime Services (RMS) to Mr Martin dated 19 August 2014: RMS states that its focus is the relationship between alcohol consumption by all road users, including pedestrians, and road injuries and fatalities. RMS states that within The Hills

LGA during 2012, there were 26 alcohol-related crashes, resulting in 18 casualties. RMS requests that if the Application is granted, physical barriers should be installed to separate the roadway and patrons as they exit the New Premises, improved lighting and trip points should be considered, public education material from either Council or RMS focused on drink drive and pedestrian-alcohol issues should be displayed, and an Australian Standards Approved breath testing advice should be installed at the New Premises.

29. Email from JDK Legal on behalf of the Applicant, in response to the Authority's request for further information, on 1 April 2015: this email attaches the signed Certificate of Advertising and confirms that the licence is still trading at the existing premises and the new premises is due to open on 3 February 2016. The Applicant consents to the Authority's proposal to determine the 6-hour closure period for the New Premises as the period from 2:00am to 8:00am.
30. The Applicant consents to the proposed conditions that the New Premises must not "...operate with a greater overall level of social impact on the well-being of the local and broader community" than could be reasonably expected from the information provided by the Applicant, that the conditions on the licence at the Premises remain in force until such time as the Authority is notified that the licence has been moved to the New Premises, and that the licence is not to be moved until the Authority has been provided with evidence that the New Premises are complete and ready to trade.

STATUTORY OBJECTS AND CONSIDERATIONS

31. The power to grant an application to remove a packaged liquor licence is provided by section 59 of the Act, which states:

59 *Removal of licence to other premises*

- (1) *A licensee may apply to the Authority for approval to remove the licence to premises other than those specified in the licence.*
- (2) *An application for approval to remove a licence to other premises must:*
 - (a) *be in the form and manner approved by the Authority, and*
 - (b) *be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and*
 - (c) *be advertised in accordance with the regulations, and*
 - (d) *comply with such other requirements as may be approved by the Authority or prescribed by the regulations.*
- (3) *An application for approval to remove a licence to other premises is to be dealt with and determined by the Authority as if it were an application for the granting of a licence in respect of those other premises. Accordingly, the provisions of Division 1, in particular, extend to an application for the removal of a licence to other premises as if it were an application for a licence.*
- (4) *...*
- (5) *The Authority must refuse an application for approval to remove a licence unless the Authority is satisfied that:*
 - (a) *practices will, as soon as the removal of the licence takes effect, be in place at the premises to which the licence is proposed to be removed that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on those premises and that all reasonable steps are taken to prevent intoxication on those premises, and*
 - (b) *those practices will remain in place.*
- (6) *The regulations may provide additional mandatory or discretionary grounds for refusing to approve the removal of a licence.*
- (7) *The approval to remove a licence to other premises takes effect:*
 - (a) *on payment to the Authority of the fee prescribed by the regulations, and*
 - (b) *when the Authority endorses the licence to the effect that those other premises are the premises to which the licence relates.*

32. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

33. Section 48 of the Act states:

48 *Community impact*

...

(2) *In this section:*

relevant application means any of the following:

(b) *an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises.*

(3) *A relevant application must be accompanied by a community impact statement.*

...

(5) *The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*

(a) *the community impact statement provided with the application, and*

(b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),*

that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.

34. In determining the Application, the Delegate also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states:

3 *Objects of Act*

(1) *The objects of this Act are as follows:*

(a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*

(b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*

(c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*

(2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*

(a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*

(b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*

(c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

APPLICANT CASE ON SOCIAL IMPACT

35. In the CIS document and attached material, the Applicant states that "...Liquorland will maintain open lines of communication with the Local Area Command, Council and the Local Liquor Accord to ensure it can quickly resolve any specific concerns".

36. The Applicant submits that the New Premises is within the "...soon to be redeveloped Kellyville Plaza", which will include an expansion of what is "...already the major convenience shopping provider in the Kellyville area" and which will "...offer full-time, very convenient, modern and pleasant shopping facilities to service the needs of local residents and those in neighbouring communities".

37. The Applicant submits that it is anticipated that the New Premises will employ "...17 experienced personnel, comprising five full-time and 12 part-time team members who will be assisted by casual team members (as and when required)".
38. The Applicant notes that in response to the Application, Police raised the general concern that licence density in The Hills Local Area Command (LAC) is increasing, however the Applicant submits that this concern is not specific to this Application and notes that the Premises and the New Premises are within the same LAC. The Applicant also submits that licence density in The Hills Shire Council Local Government Area (LGA) is significantly lower than the NSW State average.
39. The Applicant states that based on data from the Bureau of Crime Statistics and Research (BOCSAR), the potential for an increase in alcohol related harm as a result of the Application is low, and that "...licensee management practices, including the responsible service of alcohol, will minimise the likelihood of the proposed premises contributing to crime and antisocial behaviour in the local community". The Applicant submits that First Choice Liquor Superstore "...takes its responsibilities regarding the sale of liquor extremely seriously and has a notable level of success in this regard".
40. The Applicant submits that the New Premises will have no noticeable adverse effect on neighbourhood amenity due to its management strategies and its location within a shopping centre, and that the New Premises will in fact offer the following benefits to the local and broader community:
 - a) *Convenience* – the close proximity of the New Premises to the Coles Supermarket and other outlets within the shopping centre, as well as car park facilities, will meet what patrons reasonably expect in terms of access to competitively priced liquor in the same location as other goods and services
 - b) *Increased competition* – the New Premises will compete with established retail outlets in the broader community which will benefit the public by offering more competitively priced packaged liquor products
 - c) *Increased employment* – through providing jobs and training for 17 team members, which will "...make a small but positive contribution to the skill base of the local community"
 - d) *Economic benefits* – through attracting more people to Kellyville and increased expenditure in the area
 - e) *Potential contributions to local community groups and sports* – the New Premises may respond to community needs by contributing as a successfully-run business when local organisations approach First Choice Liquor Superstore for support.

REASONS

41. In accordance with section 59(3) of the Act, the Delegate has considered the Application as if it were an application for the granting of a licence in respect of the New Premises. The Delegate has therefore had regard to, in particular, sections 40 and 45 of the Act.
42. The Delegate is satisfied, for the purposes of section 40 of the Act, that the Application material establishes that the Application has been validly made and relevant consultation and advertising requirements of the legislation were observed.
43. The Delegate is satisfied, for the purposes of section 45(3)(a), that the Applicant is a fit and proper person on the grounds that numerous other First Choice Liquor and Liquorland stores currently operate in NSW and the Applicant is therefore experienced in the service of liquor authorised by the grant of a packaged liquor licence, and that the Applicant's *House Policy* and *Management Strategies* documents disclose that a comprehensive risk mitigation regime has been devised by the Applicant and will be in place at the New Premises.

44. The Delegate is satisfied, for the purposes of both section 45(3)(b) and section 59(5), that responsible service practices will be in place with the commencement of licensed trading, on the basis of the *House Policy* and *Management Strategies* and submissions provided by the Applicant and noting an absence of adverse submission from OLGR or Police in relation to the Applicant in this regard. The Delegate is satisfied that these practices will remain in place.
45. The Delegate is satisfied, for the purposes of section 45(3)(c), that the required development consent is in place for use of a packaged liquor licence at the New Premises, on the basis of The Hills Shire Council's Development Approval provided by the Applicant.

Overall Social Impact

46. With regard to the overall social impact test prescribed by section 48(5) of the Act, the Delegate is satisfied that the local community comprises the suburb of Kellyville and the broader community comprises The Hills LGA.
47. Applying the overall social impact test requires a degree of speculation, albeit speculation informed by the particular proposal and the prevailing circumstances in the relevant local and broader community.

Positive Benefits

48. The Applicant has provided a comprehensive explanation regarding the positive benefits which will flow to the local or broader community from permitting the removal of this liquor licence to the New Premises.
49. The Delegate is satisfied that the Kellyville Plaza shopping centre which is in the process of being developed will provide a reasonably large-scale retail facility to the local and broader community. The Delegate accepts the Applicant's submission that this shopping centre is "...already the major convenience shopping provider in the Kellyville area" and that the expansion will include a 2-level car park, an outdoor dining area and children's playground. The Delegate accepts that customers of the shopping centre, particularly customers of the Coles Supermarket, will benefit from some measure of convenience in being able to purchase packaged liquor as part of regular grocery shopping trips.
50. In terms of competition, the Authority's licensing records show only one other packaged liquor outlet in the suburb of Kellyville (a BWS store at 48 Wrights Road) and 44 packaged liquor outlets within The Hills LGA. The Delegate accepts the Applicant's submission that the New Premises may to some extent encourage competitive pricing for packaged liquor products in liquor outlets in the local and particularly the broader community.
51. The Delegate is satisfied that by granting the Application, the enhanced convenience and to some extent enhanced choice for customers of Kellyville Plaza will be consistent with the expectations, needs and aspirations of the community within the meaning of section 3(1)(a) of the Act.
52. The Delegate accepts the Applicant's submission that granting the Application will, to some extent, provide employment opportunities within the local community. The Delegate is satisfied that the employment of 17 staff on a regular basis is a substantial number for a packaged liquor store, albeit a large one, and that the need for additional staff during peak periods will create some small degree of additional opportunity in the local and broader community.

53. The Delegate accepts the Applicant's submission that, to some extent, the New Premises will create economic benefits for the local community. While the Delegate is not satisfied that the New Premises will in itself attract more people to Kellyville or lead to "...increased expenditure in the community", the Delegate accepts that this large liquor store, as one of a considerable number of retail outlets which will be located within the redeveloped Kellyville Plaza, will contribute to some increase in the number of people coming from within or outside the local community to purchase goods and services available at the shopping centre.
54. The Delegate also accepts the Applicant's submission that the New Premises, as part of Wesfarmers operations, may respond to community needs by supporting local organisations. However, as that community benefit has been vaguely defined in the present circumstances it is given little weight.

Negative Impacts

55. The Delegate notes the letter from Police to the solicitors for the Applicant stating that Police are generally concerned about the increase in licensed premises in The Hills LAC. The Delegate notes that according to the Authority's licensing records, there are 44 packaged liquor licences within The Hills LGA. However, licence density statistics based on ABS 2011 census data indicates that the density of all liquor licence types in both postcode 2155 and The Hills LGA are considerably lower than the equivalent density for each licence type in NSW as a whole.
56. While the Delegate accepts that licence density in the local and broader communities may have increased since 2011, the Delegate is satisfied in light of Police's later submission stating that Police do not oppose the Application and the absence of any objection from OLGR that licence density within the local and broader community is not currently at a level to attract particular concern.
57. The Delegate accepts that over time there may be some contribution from the liquor sold at the New Premises to alcohol related crime, disturbance or impact on amenity from a minority of customers who abuse packaged liquor purchased from this store.
58. The Delegate also notes that the large scale of the New Premises, at 1248 square metres, creates some cause for concern in that effective management of the store in order to minimise the potential for alcohol related harm will be more difficult than management of a smaller packaged liquor outlet.
59. However, the Delegate is satisfied that the following aspects of the proposal and the relevant communities concerned will operate to constrain the extent of adverse social impact arising from the abuse of packaged liquor in the circumstances of the Application:
 - a) The crime data for the local and broader community does not indicate that these communities are experiencing serious rates of crime relative to the State wide averages. Rates of offences are consistently lower in The Hills LGA than average rates for NSW in general, notably including alcohol related domestic violence, much of which occurs in the home
 - b) The location of the New Premises within a shopping centre, and its accessibility being restricted to an entrance on the inside of the shopping centre, provides some level of comfort that the New Premises will be more secure than a packaged liquor store that is accessible directly from the street.
60. The *Management Strategies* and *House Policy* documents provided by the Applicant satisfy the Delegate that steps will be taken by the Applicant and staff to ensure that the extent of adverse impact arising from the abuse of liquor sold at the Premises is constrained. The strategies and policies contained in those documents, including the use

of CCTV surveillance, the procedures for ensuring that liquor is not sold to minors or intoxicated persons, the training of all staff in both statutory responsible service of alcohol requirements and current alcohol related problems in the local community, and the maintenance of close links with Police and the local community, satisfy the Delegate that harm minimisation strategies will remain in place at the New Premises.

CONCLUSION

61. Considering together the found positive benefits and taking into account the factors which are likely to constrain or minimise the extent of negative impacts arising from the operation of this business in *these* communities, the Delegate is satisfied that the overall social impact of granting this Application for the removal of a packaged liquor licence to the New Premises will not be detrimental to the well-being of the local or broader community.
62. In making this decision, the Delegate has also determined that the 6-hour closure period required by section 11A of the Act will be fixed at 2:00am to 8:00am.



Micheil Brodie
Chief Executive

DATED 6 / 12 / 2015