

Mr Tony Brenton
tony.brenton@hotmail.com

18 December 2017

Dear Mr Brenton

Application No.	APP-0003192493
Application for	On-premises liquor licence with an extended trading authorisation
Trading hours	<u>Consumption on premises</u> Monday 4:00 pm – 12:00 midnight Tuesday to Saturday 1:00 pm – 12:00 midnight Sunday 1:00 pm – 10:00 pm
Applicant	Mr James Wing Simpson
Licence name	Empire K
Premises	Shop 2 11-15 Deane Street BURWOOD NSW 2134
Issue	Whether to grant an on-premises liquor licence and whether to grant an extended trading authorisation
Legislation	Sections 3, 11A, 12, 21-28, 40, 45, 48, 49 and 51 of <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for an on-premises licence with an extended trading authorisation
Empire K**

The Independent Liquor and Gaming Authority (“the Authority”) considered, at its meeting on 15 November 2017, the Applicant’s application for an on-premises liquor licence with an extended trading authorisation.

Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority has decided to **grant** the on-premises liquor licence subject to the following conditions. The Authority has also decided to **refuse** to grant the extended trading authorisation under section 49 of the Act.

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 4:00 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
Consumption on premises

Good Friday	12:00 midday to 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
Christmas Day	12:00 midday to 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
December 31 st	Normal opening time until normal closing time or 2:00AM on New Year’s Day, whichever is the later

Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day.

3. 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.

4. The premises is to be operated at all times in accordance with the Plan of Management dated 9 September 2017 as may be varied from time to time after consultation with the Local Area Commander of NSW Police. A copy of 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.
5. The licence is authorised for the trading hours fixed by the Authority or such lesser hours as may be approved by the consent authority from time to time.
6. No drinks designed to be consumed rapidly, for example 'shots', 'shooters', 'slammers' or 'bombs', are to be sold or supplied at the premises.
7. Only liquor sold or supplied under the authority of the licence is permitted on the licensed premises. The licensee must not permit patrons to bring liquor onto the premises (no BYO).
8. The licensee must ensure that bottles of spirits or liqueurs are not served, sold or supplied on the licensed premises.
9. The licensee must ensure that containers of liquor are opened prior to serving.
10. Liquor must not be sold, supplied or consumed in any karaoke room in which a minor is present, unless the minor is accompanied and in the presence of a responsible adult as defined under the *Liquor Act 2007*.
11. The door to each individual karaoke room must have a glass insert placed in it and kept clear at all times for the purposes of supervision of persons using the room.
12. The licensee must ensure signs are permanently displayed in each karaoke room stating 'Liquor must not be sold or supplied to persons under the age of eighteen (18) years'.
13. The licensee must ensure that staff wears name tags and/or uniforms identifying themselves to patrons and authorities that they are working at the premises.
14. The licensee must ensure that there is a public display in the reception area clearly identifying the manager on duty, with the name and photograph of the person in charge of the venue at any given time.
15. The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz -8kHz inclusive) by more than 5dB between 07:00 AM and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz -8kHz inclusive) between 12:00 midnight and 07:00 AM at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 AM. Interior noise levels which, although restricted in accordance with the above condition, still exceed safe hearing levels, are in no way supported or condoned by the Independent Liquor and Gaming Authority.

16. Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:
 - (a) take all practical steps to preserve and keep intact the area where the act of violence occurred,
 - (b) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police, as published from time to time on the Liquor & Gaming NSW website,
 - (c) make direct and personal contact with the NSW Police Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
 - (d) comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

In this condition, “staff member” means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (e.g. crowd controller or bouncer) on or about the premises.

17. The licensee or its representative must join and be an active participant in the local liquor accord.
18. Closed-circuit television system
 - (1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of premises that is not required to cease trading, continuously at all times),
 - (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 on the premises,
 - (ii) the footpath immediately adjacent to the premises, and
 - (iii) all publicly accessible areas (other than toilets) on the 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 & Gaming NSW inspector within 24 hours of any request by a police officer or Liquor & Gaming NSW inspector to provide such recordings.

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 via email at wendy.yeung.wye.kong@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 28 July 2017, Mr James Wing Simpson (“Applicant”) lodged an application (“Application”) with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”). The Application sought the granting of an on-premises (karaoke class) liquor licence (“Licence”) and an extended trading authorisation (“Authorisation”), for the premises at Shop 2, 11-15 Deane Street, Burwood NSW (“Premises”).
2. The Authority considered the Application at its meeting on 15 November 2017 and decided to grant the Licence under section 45 of the *Liquor Act 2007* (“Act”), and refuse to grant the Authorisation under section 49 of the 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, 21-28, 40, 45, 48 and 51 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 the Authority’s 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”), HealthStats NSW, and Australian Bureau of Statistics (“ABS”).
7. A list of the material before 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 and needs 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 alcohol-related harm, 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.

13. Section 51 of the Act prescribes the minimum procedural requirements for a valid application for a licence related authorisation.

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

14. 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

15. Section 48 of the Act requires certain applications, including an application for an extended trading authorisation in relation to an on-premises licence which if granted will result in trading after midnight, to be accompanied by a CIS prepared in accordance with the relevant requirements.

16. 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 brought to its attention.

Provisions specific to an on-premises liquor licence

17. Further legislative provisions specific to an on-premises liquor licence are set out in sections 21-28 of the Act.

Provisions specific to an extended trading authorisation

18. The Authority's power to grant an extended trading authorisation for certain types of licences, including on-premises licences, is set out in section 49 of the Act.

19. Subsection 49(8) provides that the Authority may only grant the authorisation if it is satisfied that:

- a) practices are and will remain in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
- b) the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the premises.

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 sections 40 and 51 of the Act, and
- 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.

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
- c) the requisite development consent is in force, based on the notice of determination of development application 170/2016 issued by Burwood Council on 25 May 2017.

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 notes that the Premises is currently operating as a karaoke venue without a liquor licence, and customers are required to bring their own liquor if they wish to consume liquor on the Premises.
26. The Authority also notes, based on a proposed licence condition and the Applicant’s consent to it, that if the Licence were to be granted, only liquor sold or supplied under the authorisation of the Licence will be permitted on the Premises.
27. The Authority accepts that approving the Application will provide:
- a) additional convenience to customers who wish to purchase liquor at the Premises for consumption on the Premises,
 - b) the local and broader communities with an additional licensed entertainment venue for the enjoyment of night life.
28. The Authority further considers that the community will benefit from the regulation of the Premises’ operation under the Act. Following the granting of the Licence, for example, the Premises will be subject to a number of prescribed licenced conditions and other legislative requirements to prevent or minimise the risks of harm arising from liquor consumption on the Premises. Additionally, L&GNSW and other law enforcement agencies will be able to monitor and enforce the Premises’ compliance with these conditions and requirements, in a more effective manner than if the Premises continues to operate as an unlicensed venue where liquor can be consumed.
29. The Authority nevertheless notes that most of the benefits identified above can be achieved by granting the Licence, and that the benefit of granting the Authorisation is limited to the convenience of liquor purchase on premises during the two additional trading hours sought for every day of the week.

Negative social impact

30. The Authority notes from the BOCSAR data that:
- a) for the year to June 2017, the Premises was located within a medium density hotspot for incidents of domestic assault, but high density hotspots for incidents of non-domestic assault, alcohol related assault and malicious damage to property,
 - b) for the two years to June 2017:
 - i. Burwood recorded a lower rate of alcohol related domestic assault and malicious damage to property, but a higher rate of alcohol related non-domestic assault, in comparison with the NSW state average, and

- ii. the LGA recorded a significantly lower rate of alcohol related assault (domestic and non-domestic) and malicious damage to property than the NSW state average.
31. The Authority also notes from the most recent HealthStats NSW data available at the time of its consideration that the LGA recorded relatively low levels of alcohol attributable deaths and hospitalisations compared to the corresponding NSW figures.
32. The submissions received in relation to the Application were from NSW Police and L&GNSW Compliance Operations. Police did not support the Application, citing concerns in respect of the extensive types and volume of liquor proposed to be sold at the Premises, inadequacy of the food menu, and proposed Bring Your Own (BYO) policy. These concerns were echoed in the submission from L&GNSW Compliance Operations.
33. In response, the Applicant updated its food menu to increase the number and variety of food choices, confirmed that only liquor sold at the Premises will be permitted on the Premises following the granting of the Licence, and consented to all of the conditions proposed by NSW Police and L&GNSW Compliance Operations.
34. The Authority accepts that there may be a risk that if the Licence were to be granted, liquor sold or supplied at the Premises will, over time, contribute to an increased level of alcohol related crime and health issues in the local and broader communities.
35. The Authority is nevertheless satisfied that this risk is adequately mitigated by the following:
 - a) Liquor is currently allowed to be brought into and consumed on the Premises, which will continue even if the licence is not granted. The grant of the Licence will, among other things, impose enforceable obligations on the Applicant as the licensee to ensure the responsible service of liquor and minimise harm associated with misuse and abuse of liquor on the Premises.
 - b) Apart from the submission from NSW Police, no objection was received from any of the other stakeholders consulted, including the public.
 - c) The concerns raised by NSW Police and L&GNSW Compliance Operations were largely addressed by the Applicant's response and the proposed licence conditions.
 - d) The Applicant has committed to a number of measures, as set out in the Plan of Management and the proposed licence conditions, to minimise harm arising from the consumption of liquor on the Premises.
36. The Authority nevertheless considers it necessary to take a more cautious approach in assessing the potential social impact of granting the Authorisation, which would authorise the Premises to trade between 12 midnight and 2 am, Monday to Saturday, and between 10 pm and 12 midnight on Sundays.
37. The Authority notes from the available information, including the submission from NSW Police, that karaoke venues are often associated with higher incidents of alcohol related violence and anti-social behaviour, patron safety issues, and disturbances to the amenity of the community. Allowing the Premises to operate as a late trading licensed venue, where patrons may consume liquor on the Premises over a prolonged period of time at night, would likely, in the Authority's view, exacerbate such risks.
38. The Authority also notes that neither of the two other licensed karaoke premises in Burwood, located less than 600 metres from the Premises, has the authorisation to sell or supply liquor after 12 midnight, Monday to Saturday, or after 10 pm on Sundays.
39. The Authority further notes that the Applicant has no prior experience as a licensee or approved manager of a licensed venue.
40. Having regard to the above, the Authority finds that granting the Authorisation has the potential to expose the community to an increased risk of alcohol related harm which

would not be adequately mitigated by the Applicant's willingness to adhere to specific licence conditions or the measures set out in the Plan of Management.

Overall social impact

41. The Authority has had regard to the ABS data indicating that as at 2011, Burwood and the LGA were relatively advantaged in NSW on the Index of Relative Socio-economic Advantage and Disadvantage. The Authority notes that this data is six years old and does not draw specific inference from it, other than to note that it does not raise any apparent concerns.
42. 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.
43. However, the Authority is not satisfied that the overall social impact of granting the Authorisation would not be detrimental to the well-being of the local and broader communities.
44. Accordingly, the Authority has decided to grant the Licence but refuse to grant the Authorisation.



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 before 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. HealthStats NSW data showing alcohol attributable deaths in the LGA for the period 2012-13 and alcohol attributable hospitalisations in the LGA for the period 2013-15.
3. Notice of determination issued by Burwood Council on 25 May 2017 approving development application 170/2016 in relation to the Premises.
4. Floor plan dated 25 May 2017 indicating the Premises' proposed licensed area.
5. BOCSAR crime maps for the year to June 2017, indicating the location of the Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
6. NSW crime statistics for the two years to June 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.
7. ASIC Record of Registration for Business Name dated 9 June 2017, and ASIC company details dated 31 May 2017 in relation to Empire K Pty Limited, the owner of the business of the Premises.
8. Copy of the notice of intention to apply for a liquor licence, dated 20 June 2017, public consultation site notice, and local consent authority notice.
9. Category B Community Impact Statement signed and dated 24 July 2017.
10. Completed online application dated 28 July 2017.
11. L&GNSW liquor licensing records as at 28 August 2017, 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.
12. Submission from NSW Police on 6 September 2017 in relation to the Application.
13. Certification of Advertising signed by the Applicant and dated 7 September 2017.
14. Submission from L&GNSW Compliance Operations on 8 September 2017 in relation to the Application.
15. Plan of Management for the Premises dated 9 September 2017.
16. Correspondence between L&GNSW and the Applicant's representative between 10 and 12 September 2017 in relation to the Application.
17. Google map images extracted from the Google website on 25 October 2017, showing the location and photos of the Premises in map view, earth view and street view.
18. Copy of the Applicant's identity documents, National Police Certificate, and current Responsible Service of Alcohol competency card.
19. Original and revised food and drink menus proposed for the Premises.