



Mr Ki Dong Lee
KDL Legal

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3 August 2018

Dear Mr Lee

Applicant	Mr Kwang Rok Seo
Application No.	1-6667605198
Application for	Packaged liquor licence
Proposed licence name	Kwon Mart Green Hills
Proposed premises	Shop 1081, Stockland Green Hills 1 Molly Morgan Drive EAST MAITLAND NSW 2323
Proposed trading hours	Monday to Wednesday 10:00 am – 8:00 pm Thursday 10:00 am – 9:00 pm Friday to Sunday 10:00 am – 8:00 pm
Issue	Whether to grant a packaged liquor licence
Legislation	Sections 3, 30, 31 and 45 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for a packaged liquor licence – Kwon Mart Green Hills**

The Independent Liquor and Gaming Authority considered your application above for a packaged liquor licence at its meeting on 13 June 2018 and, pursuant to section 45 of the *Liquor Act 2007*, decided to **refuse to grant** the licence.

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

If you have any questions, please contact the case manager at
beatrice.pitpaiaac@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 22 January 2018, Mr Kwang Rok Seo (“the Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”), an application (“Application”) for a packaged liquor licence (“Licence”), for the premises at Shop 1081, Stockland Green Hills 1 Molly Morgan Drive EAST MAITLAND NSW (“Proposed Premises”).
2. The Authority considered the Application at its board meeting on 13 June 2018 and decided to refuse to grant the Licence under section 45 of the *Liquor Act 2007* (“Act”).
3. The Authority has reached this decision on the basis that the Application does not meet the requirement under sections 30 and 31 of the Act. Specifically, the Authority is not satisfied that:
 - a) liquor would be sold in an area of the Proposed Premises that is adequately separated from those parts of the store in which other activities are carried out, or
 - b) that no other take-away liquor service is reasonably available to the public in the neighbourhood of the Proposed Premises.

Relevant material considered by the Authority

4. In reaching this decision the Authority has had regard to material and submissions provided by the Applicant in support of the Application, and the legislative requirements under sections 3, 30, 31 and 45 of the Act.
5. For the purpose of this decision, it is not necessary to consider, and the Authority has not considered, the other material before the Authority relevant to the determination of whether the other criteria for granting the Licence have been met.
6. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
7. A list of the material considered by the Authority is set out in the Schedule.

Legislative framework

8. The Authority has considered the Application in the context of the following legislative provisions.

Objects of the Act

9. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations, needs and aspirations of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
10. In the pursuit of these objectives, section 3 requires the Authority to, in determining a liquor licence application, have due regard to the need to minimise harm associated with misuse and abuse of liquor, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Provisions specific to a packaged liquor licence where a bottle shop is part of another business activity

11. Section 30(1) requires that liquor only be sold in a separate liquor sales area to be set up on the licensed premises, if the primary purpose of the business is not the sale of liquor for consumption away from the premises. The liquor sales area is required to be adequately separated from those parts of the premises in which other activities are carried out.
12. Section 30(2) requires that the principal activity carried out in any such liquor sales area be the sale or supply of liquor for consumption away from the premises.

Restrictions on granting a packaged liquor licence for a general store

13. Section 31 of the Act provides that:

- a) the Authority must not grant a packaged liquor licence for premises comprising a general store unless, among other things, it is satisfied under section 31(1)(a) that no other take-away liquor service is reasonably available to the public in the neighbourhood of the premises concerned, and
- b) a general store means a convenience store, mixed business store, corner shop or milk bar which primarily sells groceries or associated small items by retail within a retail floor area of not more than 240 square metres.

Decision making in relation to licence applications

14. Section 45 of the Act provides that the Authority may, after considering an application for a licence and any relevant matters, grant or refuse to grant the licence.

Key findings

Liquor sales area

15. The Authority notes that the Application relates to a Proposed Premises that operates as an Asian grocery store, with the proposed liquor component only forming one part of a larger business. That the Proposed Premises is appropriately defined as a general store (within the meaning of the term in the context of the Act) is dealt with below.
16. The Authority also notes that the Applicant has proposed a 'liquor licence area' of approximately 11.25 square metres to be situated towards the back of the Proposed Premises.
17. The Authority further notes the Applicant's confirmation that, whilst liquor is intended to be displayed for sale within this defined area, liquor transactions will take place at the cash register located at the entry to the store, outside and well away from the boundary of the proposed 'liquor licence area'.
18. The Authority understands that, in the case of a supermarket or general store wherein a bottle shop is to be located, the licensee is required to establish a liquor sales area that is adequately separated from those parts of the premises in which other activities (such as the sale of grocery items) is carried out. It is within this defined area that liquor sales are required to take place.
19. The Authority finds that the requirement to adequately separate liquor sales from the other activities of the business, namely, the sale of grocery and other items by retail, is not met in this instance, given that sales are to take place within the parts of the premises in which those other activities are carried out. The display of liquor within a defined area, as is proposed in this case, does not meet the requirements of section 30.
20. This finding is made on the basis of the Application, CIS material and, plan of the proposed 'liquor licence area' and further submissions provided by the Applicant.

Reasonable availability of packaged liquor in the neighbourhood

21. The Authority notes that the Proposed Premises comprises an Asian grocery store, and has a retail floor area of approximately 175 square metres. The Authority therefore finds that the Proposed Premises comprises a general store for the purpose of section 31 of the Act.
22. The Authority also notes that there are currently six packaged liquor licences and four full hotel licences authorised to sell packaged liquor in East Maitland.
23. Furthermore, of these six packaged liquor licences, two are located within the Stockland Green Hills Shopping Centre itself (within which the Proposed Premises is located), being a BWS – Beer Wine Spirits store (located 20 metres from the Proposed Premises) and a Dan Murphy's store (located 400 metres from the Proposed Premises).
24. The Authority finds that the co-location of the Proposed Premises with two other existing packaged liquor facilities within the Stockland Green Hills Shopping Centre indicates that packaged liquor is already reasonable available to the public in the neighbourhood of the

Proposed Premises, and that the BWS – Beer Wine Spirits and Dan Murphy's stores constitute 'other take-away liquor service' for the purpose of section 31(1) of the Act.

25. The Authority does not accept the Applicant's argument that, despite the presence of these licensed venues, take-away liquor service is not reasonably available to the public in the neighbourhood of the Proposed Premises on the basis that the packaged liquor products proposed to be sold at the Proposed Premises will be Asian liquor products, many of which will not be available elsewhere in the area.
26. The Authority does not accept that the uniqueness or exclusiveness of the liquor products proposed to be sold at the Proposed Premises is relevant to the consideration of the specific test under section 31(1)(a) of the Act. The wording of the provision is clear and refers to the reasonable availability of 'other take-away liquor service', and does not permit a narrower or different interpretation such as the reasonable availability of 'the same or a similar type of take-away liquor service'.
27. Having regard to the material before it, the Authority is not satisfied that the requirements under sections 30 and 31(1)(a) of the Act have been met, as it is not satisfied that liquor will be sold in an area of the Proposed Premises that is adequately separated from the remainder of the Proposed Premises, or that no other take-away liquor service is reasonably available to the public in the neighbourhood of the Proposed Premises.
28. Accordingly, the Authority refuses to grant the Licence.



Philip Crawford
Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the Application and who made a submission to the Authority or the Secretary in respect of the Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

Schedule

Material considered by the Authority

1. Completed online application signed 19 January 2018.
2. Plan of management document dated 16 April 2018.
3. Premises and floor plans for the Proposed Premises.
4. Correspondence between L&GNSW staff and the Applicant between 12 March 2018 and 25 May 2018 in relation to the assessment of the Application.