



Mr Jonathan Martin
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20 April 2018

Dear Mr Martin

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| Application No. | 1-5853291089 |
| Applicant | Liquorland (Australia) Pty Ltd |
| Application for | Packaged liquor licence |
| Proposed licence name | Liquorland |
| Proposed premises | Ropes Crossing Central Village T14, 8 Central Place ROPES CROSSING NSW 2760 |
| Proposed trading hours | Monday to Wednesday 8:00 am – 8:00 pm Thursday to Saturday 9:00 am – 9:00 pm Sunday 10:00 am – 8:00 pm |
| 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 – Liquorland**

The Independent Liquor and Gaming Authority has considered the above application for a packaged liquor licence, and decided to **refuse** to grant the Application under section 45 of the *Liquor Act 2007*.

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

If the Applicant wishes to lodge a fresh application in order to redress the deficiencies in the consultation process as identified in the statement of reasons, please be advised that the Authority will consider it acceptable that the application be accompanied by the Community Impact Statement dated 14 June 2017.

If you have any questions, please contact the case manager at andrew.whitehead@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 14 June 2017, Liquorland (Australia) Pty Ltd (“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 a packaged liquor licence for the premises at Ropes Crossing Central Village T14, 8 Central Place Ropes Crossing (“Premises”).
2. The Authority decided to refuse to grant the Application under section 45 of the *Liquor Act 2007* (“Act”), on the basis that the Application has failed to meet the procedural requirements listed under section 40(4) of the Act.
3. In reaching this decision, the Authority has had regard to the relevant material before it, and the legislative provisions in sections 3, 40 and 45 of the Act, and clauses 9 and 9C of the *Liquor Regulation 2008* (“Regulation”).
4. For the purpose of this decision, it was not necessary to, and the Authority did not, consider whether the other criteria for granting the Application have been met.

Material considered by the Authority

5. The Authority has considered the Application and the information and submissions in relation to the publication of notices of the Application.
6. The Authority is satisfied that procedural fairness was afforded to the Applicant regarding this decision, as the Applicant has been provided with the opportunity to respond to and address all of the issues of concern in respect of the Application.
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 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 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.

Minimum procedural requirements

11. Section 40 of the Act prescribes procedural requirements for a liquor licence application to be validly made to the Authority.
12. Specifically, section 40(4)(c) requires an application for a licence to be advertised in accordance with the Regulation.
13. The advertising requirements are set out in division 1 of the Regulation.
14. Relevantly, clause 9 of the Regulation requires a notice relating to the application to:
 - a) be fixed to the premises to which the application relates, in such a position that is legible to members of the public passing the premises, within two working days of the application being lodged, and

- b) remain fixed to the premises until such time as the application is determined by the Authority.

15. Clause 9C of the Regulation further provides that:

- a) an applicant is taken to have complied with the advertising requirements if the Authority is satisfied that the applicant has made all reasonable efforts to comply with the requirement, and
- b) the Authority may disregard a failure to comply with the advertising requirement if it is satisfied that the failure is of a minor or technical nature.

Relevant facts

16. The Application was lodged on 14 June 2017.

17. A Certification of Advertising signed on behalf of the Applicant and dated 17 August 2017 was provided to L&GNSW on 28 September 2017. The Certification attested to a copy of the completed relevant notice from the application form having been affixed to the Proposed Premises in such a position that it is legible to members of the public passing by. The Certification also promised that the Applicant would “ensure that it remains in place until such time as the [A]pplication is determined by the Authority”.

18. The Application was first presented to the Authority before its meeting on 13 December 2017. On the basis of the considerable interest in the Application on the part of legislated stakeholders and members of the local community, the Authority resolved to defer consideration of the Application pending a public meeting to further consult the views of the local and broader communities.

19. A public meeting was held on 7 February 2018 at Lethbridge Park Community Centre.

20. A number of persons with a variety of interests in the outcome of the Application spoke at the meeting and shared their views as to the likely social impact of the granting of the Application.

21. One of the speakers, Mr Joe Jasinski, alleged that the Notice of Application (“Notice”) had only been affixed to the site of the Proposed Premises at 5:30pm on the evening that the public meeting was held.

22. Having regard to this allegation, the Applicant was invited to provide a written submission in respect of:

- a) the Application’s alleged non-compliance with the requirement under clause 9 of the Regulation, and
- b) any reasons for which the Authority should consider exercising its discretion under clause 9C of the Regulation to treat the requirement as met or disregard the non-compliance.

23. On 9 February 2018, the legal representative for the Applicant provided a written submission in response to the claims made regarding the Applicant’s non-compliance with legislated consultation requirements. In that submission, it was revealed that:

- a) the Notice was affixed to the site of the Proposed Premises on 16 June 2017,
- b) it is likely that the Notice remained affixed until sometime during the period between 18 and 22 December 2017,
- c) unbeknownst to the Applicant, the Notice was removed from the site when the glass doors it had been affixed to were replaced, and the Notice was not reaffixed to the replacement doors, and
- d) the Notice was reaffixed to the site on 7 February 2018 after the Applicant became aware that the Notice had been inadvertently removed.

Key findings

24. Having regard to the information before it, the Authority is satisfied that the Notice was not affixed to the site of the Proposed Premises for at least the period between 18-22 December 2017 and 7 February 2018.
25. On this basis, the Authority finds that the Application has failed to comply with the advertising requirement under clause 9 of the Regulation.
26. Whilst the Authority accepts that the non-compliance was only temporary, it is not satisfied that the Applicant has made all reasonable efforts to comply with the requirement under clause 9 of the Regulation. The evidence before the Authority indicates that the Applicant did not have any processes in place to check its ongoing compliance with the requirement, despite being a particularly sophisticated, experienced and well-resourced applicant for a liquor licence. The submission provided by the Applicant's legal representative indicates that the Applicant was relying on third parties to ensure that the Notice remained in place, which the Authority considers to be a risky practice.
27. The Authority also does not consider the Applicant's failure to comply with the requirement to be of a minor or technical nature. While the exact length of the period of the non-compliance is unclear, it would appear that the period extended to approximately seven weeks in length, which is sufficiently long to constitute a real compromise of the community consultation process in respect of the Application. This is particularly problematic in the context of a highly contested application that has drawn significant interest from members of the local community.
28. In these circumstances, the Authority considers that exercising its discretion under the Regulation to overcome the non-compliance would be inconsistent with the objects of the Act and would not be in line with the expectations of the community.
29. The Authority therefore refuses to exercise its discretion under clause 9C of the Regulation to find that the Applicant has made all reasonable efforts to comply with the clause 9 requirement, or that the Applicant's non-compliance with the requirement is of a minor or technical nature.
30. Accordingly, the Authority refuses to approve the Application as it is not satisfied that the Application meets the advertising requirement under clause 9 of the Regulation.



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. Notice of determination issued by Blacktown City Council on 16 November 2016 approving expansion and alterations to the ground floor retail space to provide for seven additional tenancies, amongst other things.
2. Completed application dated 14 June 2017.
3. Category B Community Impact Statement signed and dated 14 June 2017.
4. Certification of Advertising dated 17 August 2017.
5. Correspondence between L&GNSW Licensing staff and the Applicant's legal representative between 15 August and 4 December 2017.
6. Verbal submissions made at the public meeting held at Lethbridge Park Community Centre on 7 February 2018.
7. Letter from the Applicant's legal representative dated 9 February 2018, attaching, amongst other things, statutory declarations of Melissa-Jane Armstrong and Steven Stamateris dated 9 February 2018.