



Mr Jon Martin
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29 October 2018

Dear Mr Martin

Application No.	1-6736496170
Applicant	Liquorland (Australia) Pty Ltd
Application for	Packaged liquor licence
Proposed licence name	Liquorland (Mount Hutton)
Proposed premises	Shop T66, Lake Macquarie Fair 46-56 Wilsons Road MOUNT HUTTON NSW 2290
Proposed trading hours	Monday to Saturday 9:00 AM – 9:00 PM Sunday 10:00 AM – 5:00 PM
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 (Mount Hutton)**

The Independent Liquor and Gaming Authority considered the application above for a packaged liquor licence at its meeting on 12 September 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 6 April 2018, Liquorland (Australia) Pty Ltd (“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 T66, Lake Macquarie Fair, 46-56 Wilsons Road, Mount Hutton (“Proposed Premises”).
2. The Authority considered the Application at its meeting on 12 September 2018 and decided to refuse to grant the Licence under section 45 of the *Liquor Act 2007* (“Act”), on the basis that it was not satisfied under section 48(5) of the Act that the overall social impact of granting the Licence will not be detrimental to the wellbeing of the local or broader community.
3. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the Act and 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”), NSW 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 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.

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.

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

13. 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

14. 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.
15. 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 wellbeing of the local or broader community, having regard to the CIS and any other matter brought to its attention.

Provisions specific to a packaged liquor licence

16. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.
17. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.
18. 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.
19. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

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 that:
- a) the Application has been validly made and meets the procedural and trading period requirements under sections 11A, 12 and 40 of the Act,
 - b) if the licence were to be granted, liquor would be sold and supplied in accordance with the authorisation conferred by the Licence pursuant to section 29 of the Act, and
 - c) sections 30 and 31 of the Act do not apply to the Application as the Proposed Premises is not intended to operate as is contemplated by the sections.

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

22. The Authority is satisfied that, for the purposes of section 45 of the Act:
- 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) if the licence were to be granted, practices would be in place from the commencement of licensed trading at the Proposed Premises to facilitate the responsible service of alcohol, having regard to the plan of management documents submitted by the Applicant, and
 - c) the requisite development consent is in force, based on the development consent issued by Lake Macquarie City Council on 27 April 2017 in respect of the Proposed Premises.

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 minimum procedural 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.
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 Mount Hutton, and the relevant “broader community” comprises the Local Government Area (“LGA”) of Lake Macquarie.

Positive social impacts

25. The Authority notes that the Proposed Premises will be located within a shopping mall currently under construction, and operate under the brand name Liquorland adjacent to a Coles Supermarket.
26. The Authority accepts that if the Licence were granted, the Proposed Premises would provide some measure of convenience to shoppers who wish to purchase liquor products with grocery and other household items, particularly those who prefer to shop at Coles and utilise its loyalty program. The Authority also accepts that the Proposed Premises would provide consumers with access to a large range of liquor products.
27. The Authority further accepts that the Applicant is an experienced operator of packaged liquor outlets, and has a range of procedures in place to facilitate the responsible service of alcohol.
28. However, the Authority notes that the density of packaged liquor licences in Mount Hutton is considerably higher than the NSW state average, which suggests that there is already an adequate supply, if not oversupply, of packaged liquor in the local community.
29. The Authority considers the potential benefits of the Proposed Premises to be significantly limited by the existing availability of packaged liquor in its vicinity, noting that there are two take away liquor stores within 50 metres of the Proposed Premises, one in the shopping mall and the other adjoining the mall.
30. The Authority further notes and has had regard to the absence of any substantive evidence of community support for the Application.

Negative social impact

31. The relevant BOCSAR data indicates that, for the two years to March 2018:
 - a) the rates of alcohol-related assault (both domestic and non-domestic) in Mount Hutton were considerably higher than the NSW average,
 - b) the suburb of Windale which adjoins Mount Hutton recorded very high rates of alcohol-related assault, ranging from 2.8 to 5.1 times the NSW average,
 - c) the rates of alcohol-related assault in the Lake Macquarie LGA were similar to or lower than the corresponding NSW figures, and
 - d) the rates of malicious damage to property in the Lake Macquarie LGA, Mount Hutton and Windale were all considerably higher than the NSW average.
32. The BOCSAR hotspot maps for the year to March 2018 show that the Proposed Premises was located on the edge of low density hotspots for alcohol-related assault and non-domestic assault, in a high density hotspot for malicious damage to property, and not within any hotspot for domestic assault.
33. The most recent HealthStats NSW data available at the time of the Authority’s decision indicates that the Lake Macquarie LGA recorded a higher than average rate of alcohol attributable deaths for the period 2012-13, and a lower than average rate of alcohol attributable hospitalisations for the period 2013-15.

34. The ABS Socio-Economic Indexes for Areas (“SEIFA”) data as at 2016 indicates that Mount Hutton was among the more disadvantaged suburbs in NSW, ranking in the bottom 30 percent on the Index of Relative Socio-economic Advantage and Disadvantage. The Lake Macquarie LGA was relatively advantaged compared to other LGAs in NSW, ranking in the top 40 percent on the same index.
35. A total of 43 submissions were received opposing the granting of the Licence, one from NSW Police Force (“Police”) and the rest from members of the local and broader communities. The concerns raised in these submissions include:
- a) the lack of substantive social benefit associated with granting the Licence, as there is already sufficient local availability of packaged liquor through four liquor stores within two kilometres of the shopping mall, two of which within 50 metres of the Proposed Premises,
 - b) the high rates of alcohol-fuelled domestic violence and other social issues in the community, particularly in the neighbouring suburb of Windale which is close to the shopping mall,
 - c) the presence of disadvantaged and vulnerable members of the community who are more susceptible to alcohol-related harm,
 - d) that granting the Licence when the existing local licence density is so high would increase risks of domestic and personal violence, secondary supply to minors and anti-social behaviour in the community,
 - e) the potential adverse effect the competitive pricing strategy of Coles branded outlets may have on liquor consumption and alcohol-related harm, and
 - f) the absence of adequate community consultation in respect of the social impact of the Licence should it be granted.
36. The Authority has had regard to the local information provided by Police and the expert report provided by an objector in support of the concerns raised. The Authority notes and has taken into consideration the fact that the public submissions were lodged through one law firm, and that one of the submitters is a commercial competitor.
37. The Authority has also had regard to the expert reports produced by the Applicant in support of the Application and in response to the submissions received.
38. The Authority does not accept the Applicant’s contention that the local impact of granting the Licence should be limited to a one kilometre radius around the Proposed Premises. Consistent with its policy position outlined in Guideline 6, the Authority considers the local community for the purpose of assessing the potential social impact of granting the Licence to be the suburb of Mount Hutton.
39. The Authority notes that granting the Licence would result in a density of 85 packaged liquor licences per 100,000 persons in Mount Hutton, which would be 2.5 times the state average. The Authority also notes the relevant BOCSAR research, which was referred to in Guideline 6 and submissions from the Applicant and objectors, identifying a substantial increase in domestic violence if the concentration of packaged liquor licences exceeds a “tipping point” of 75 licences per 100,000 persons.
40. The Authority acknowledges that the research is based on statistics at the LGA level, and that the density of packaged liquor licences in the Lake Macquarie LGA would remain below the state average and the “tipping point” if the Licence were granted.
41. The Authority nevertheless considers the high local density to be a relevant risk factor in light of the BOCSAR research and other research showing a relationship between high liquor outlet density and alcohol-related harm, including alcohol fuelled domestic violence.
42. The assessment of the potential social impact of granting a Licence, in the Authority’s view, is more complex than a pure mathematical exercise relying on a fixed threshold, and requires findings to be made on a case by case basis having regard to the individual circumstances of each matter.

43. Having regard to the local circumstances in this matter, including the high density of packaged liquor licences and the concerns expressed by Police and the public, the Authority finds that there is a real risk that granting the Licence would, over time, contribute to an increase in alcohol-related harm in the community in the form of violence and other social and amenity issues. The Authority notes the Applicant's own acknowledgement that "there will always be some level of potential risk of social harm from the sale of liquor".
44. The Authority further finds on the information before it that the local community and parts of the broader community are experiencing high levels of alcohol-related crime and health issues, and other social and amenity disturbances. The Authority also accepts that the Proposed Premises is close to and accessible by disadvantaged groups of the community whose members may be vulnerable when exposed to the risk of harm associated with misuse and abuse of liquor.
45. In this context and having regard to the objects of the Act, the Authority considers a cautious approach to be warranted, and that any exacerbation of the prevailing level of alcohol-related harm may be detrimental to the wellbeing of the local and broader communities.
46. In the current circumstances, the Authority is not satisfied that the risk of alcohol-related harm associated with granting the Licence can be sufficiently mitigated by the Applicant's adherence to licence conditions and management procedures, or experience as a large operator.

Overall social impact

47. The Applicant argued that there is insufficient evidence to conclude that the social impact of one additional Licence will be detrimental to the community's wellbeing. The relevant test under section 48(5) of the Act, however, requires the Authority to be satisfied that the overall social impact of the licence being granted will not be detrimental to well-being of the local or broader communities. This involves a future-focused exercise which necessarily includes a degree of speculation, albeit speculation that is informed by the available information about the nature of the licensed business proposed by an applicant and the prevailing circumstances in the relevant communities.
48. In accordance with the Authority's Guideline 6, the Authority takes a risk-based approach to performing that assessment – one that includes consideration of the licence type, the scale of licensed business, the proposed trading hours and the location of the proposed licensed premises (which incorporates consideration of relative crime rates, licence density and any known sensitivities with the location). Having applied this risk-based approach, the Authority is not satisfied that the overall social impact of the Licence being granted will not be detrimental to the well-being of the local or broader communities in this instance.
49. Accordingly, the Authority finds that the statutory test under section 48(5) of the Act is not met, and refuses to grant the Licence under section 45 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 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. HealthStats NSW data showing that the Lake Macquarie LGA recorded, compared to a state benchmark of 100:
 - a. a smoothed standardised mortality ration of 109.5 for the period 2012-13, and
 - b. a smoothed standardised separation ratio of 84.8 for the period 2013-15.
2. ABS SEIFA data based on the 2016 Census indicating that, on the Index of Relative Socio-economic Advantage and Disadvantage for NSW on a scale of 1 to 10, with the 10th decile being the most advantaged and 1st decile the most disadvantaged, Mount Hutton ranked in the 3rd decile and the Lake Macquarie LGA in the 7th decile.
3. Notice of determination issued by Lake Macquarie City Council on 27 April 2017, approving development application DA731/2016 in relation to the Proposed Premises.
4. Premises plan dated June 2017 for the Proposed Premises.
5. BOCSAR NSW Recorded Crime Statistics 2017 in respect of crime data in the Lake Macquarie LGA compared to NSW.
6. Completed application form dated 23 March 2018 and the relevant notices of application, ASIC and other probity documentation attached to the form.
7. Completed Category B CIS form dated 23 March 2018 and its supporting attachments, including a report prepared by BBC Consulting Planners, titled "Redevelopment of Lake Macquarie Fair, Mount Hutton", and a report prepared by the University of Technology Sydney Institute of Public Policy and Governance, titled "Social Impact Assessment – Supplementary Report".
8. Completed certifications of advertising dated 23 March 2018.
9. BOCSAR Crime Hotspot Maps for the year to March 2018, indicating the location of the Proposed Premises relative to hotspots for incidents of alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
10. NSW crime statistics published by BOCSAR indicating that:
 - a. for the year to March 2017, the rates of:
 - i. alcohol-related domestic assault in the Lake Macquarie LGA, Mount Hutton and Windale were 105.0, 138.2 and 581.7 respectively, compared to the NSW average of 113.2,
 - ii. alcohol-related non-domestic assault in the Lake Macquarie LGA, Mount Hutton and Windale were 92.7, 221.1 and 378.1 respectively, compared to the NSW average of 132.8,
 - iii. malicious damage to property in the Lake Macquarie LGA, Mount Hutton and Windale were 925.8, 1326.3 and 4188.5 respectively, compared to the NSW average of 805.1,
 - iv. alcohol-related offensive conduct in the Lake Macquarie LGA, Mount Hutton and Windale were 12.3, 27.6 and 0 respectively, compared to the NSW average of 46.3,
 - b. for the year to March 2018, the rates of:
 - i. alcohol-related domestic assault in the Lake Macquarie LGA, Mount Hutton and Windale were 114.9, 193.4 and 320.0 respectively, compared to the NSW average of 114.4,
 - ii. alcohol-related non-domestic assault in the Lake Macquarie LGA, Mount Hutton and Windale were 93.7, 193.4 and 378.1 respectively, compared to the NSW average of 130.4,
 - iii. malicious damage to property in the Lake Macquarie LGA, Mount Hutton and Windale were 955.9, 1436.9 and 4624.8 respectively, compared to the NSW average of 779.5, and
 - iv. alcohol-related offensive conduct in the Lake Macquarie LGA, Mount Hutton and Windale were 9.9, 0 and 29.1 respectively, compared to the NSW average of 41.2.

11. Submission from Police on 10 May 2018 in relation to the Application.
12. Submissions from 42 members of the public on 11 May 2018 in relation to the Application, including a report titled “Review of the BBC SIA for the Coles DA Mount Hutton” and dated December 2016, and a report titled “Review of Community Impact Statement; BBC SIA and UTS Supplementary Report for Liquorland, Mount Hutton” and dated May 2018, both prepared by Key Insights Pty Ltd.
13. Submission from L&GNSW Compliance on 6 July 2018 in relation to the Application.
14. L&GNSW liquor licensing records as at 1 August 2018 setting out the number and density (in terms of licences per 100,000 persons of the population) of all types of liquor licences in Mount Hutton, the Lake Macquarie LGA and NSW. The density of packaged liquor licences is 33.92 in NSW, 28.88 in the Lake Macquarie LGA, and 56.67 in Mount Hutton.
15. L&GNSW liquor licensing records as at 1 August 2018 listing all packaged liquor licences and full hotel licences in Mount Hutton.
16. Google map images extracted from the Google website on 21 August 2018, showing the location and photos of the Proposed Premises in map view and earth view.
17. Images of the proposed re-developed shopping mall in which the Proposed Premises will be located, extracted from the website of Lake Macquarie Fair on 21 August 2018.
18. Correspondence between L&GNSW staff and the Applicant’s legal representative between 14 May and 26 July 2018 in relation to the assessment of the Application and the submissions received, including a report titled “Response to Submissions for Liquor and Gaming Application I-673649170”, prepared by the University of Technology Sydney Institute of Public Policy and Governance.
19. Plan of management documents titled “Coles Liquor NSW Management Strategies” and “Coles Liquor House Policy for the Responsible Service of Alcohol”.