



Ms Camellia Hua

[camellia.hua@hotmail.com](mailto:camellia.hua@hotmail.com)

25 September 2018

Dear Ms Hua

<b>Application No.</b>	APP-0004320440
<b>Applicant</b>	Ms Camellia Hua
<b>Application for</b>	Packaged liquor licence
<b>Proposed licence name</b>	Unity Asian Supermarket
<b>Proposed premises</b>	Harbourside Shopping Centre Shop FF01 (No. 321) 2-10 Darling Drive SYDNEY NSW 2000
<b>Proposed trading hours</b>	Monday to Saturday 10:00 am – 9:59 pm Sunday 10:00 am – 10:00 pm
<b>Issue</b>	Whether to grant a packaged liquor licence
<b>Legislation</b>	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 – Unity Asian Supermarket**

The Independent Liquor and Gaming Authority considered the above application for a packaged liquor licence at its meeting on 15 August 2018, 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 you have any questions, please contact the case manager at [beatrice.pitpaiaac@liquorandgaming.nsw.gov.au](mailto: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 17 May 2018, Ms Camellia Hua (“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 Harbourside Shopping Centre Shop FF01 (No. 321), 2-10 Darling Drive Sydney (“Premises”).
2. At its meeting on 15 August 2018, 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 17 May 2018.

17. A Certification of Advertising signed by the Applicant and dated 5 June 2018 was provided to L&GNSW on 6 June 2018. 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. A submission was received from a commercial competitor on 15 June 2018, advising, amongst other things, that the Notice of Application (“Notice”) was not affixed to the Proposed Premises. A photograph of the entrance to the Proposed Premises was provided in support of this allegation.

19. The Applicant was invited to provide a written submission in response to the concerns raised regarding the Application’s alleged non-compliance with the requirement under clause 9 of the Regulation.

20. In an email to L&GNSW on 29 June 2018, the Applicant admitted that the Notice had been removed, and apologised. The Applicant was unable to explain how or why this had occurred, but suggested that it was “lost” or “taken away by the people walking by”.

21. The Applicant then advised that the Notice had been reaffixed to the front entrance of the Proposed Premises, and provided a photograph confirming this.

22. There is no evidence before the Authority as to the length of time during which the Notice was not displayed at the Proposed Premises.

### **Key findings**

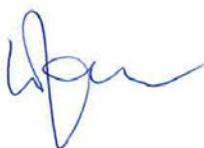
23. Having regard to the information before it, the Authority is satisfied that the Notice was not continuously on display at the Proposed Premises upon lodgement of the Application.

24. On this basis, the Authority finds that the Application has failed to comply with the advertising requirement under clause 9 of the Regulation.

25. Whilst the Authority accepts that the non-compliance may have been temporary and inadvertent, 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 her promise to ensure that it remained in place.

26. 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 is possible that the period extended to approximately six weeks in length, which is sufficiently long to constitute a real compromise of the community consultation process in respect of the Application.

27. The Authority also considers that the Applicant has failed to provide an adequate explanation to persuade the Authority to exercise its discretion to disregard this non-compliance with procedural requirements.
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 of Development Application No. D/2017/1711 issued by City of Sydney Council on 8 February 2018.
2. Completed application dated 17 May 2018.
3. Category B Community Impact Statement signed and dated 17 May 2018.
4. Certification of Advertising dated 5 June 2018.
5. Correspondence between L&GNSW Licensing staff and the Applicant between 29 May and 8 July 2018.
6. Submission from a commercial competitor received 15 June 2018.