



Mr Jon Martin
JDK Legal
j.martin@jdklegal.com.au

5 October 2018

Dear Mr Martin,

Application No.	1-6660179134
Applicant	Liquorland (Australia) Pty Ltd
Application for	Removal of a packaged liquor licence
Current licence name	The Heights Fine Wines
Licence number	LIQP700301058
Current premises	67 Warrangarree Drive WORONORA HEIGHTS NSW 2233
Proposed licence name	Liquorland
Proposed premises	South Village, 566-594 Princes Highway KIRRAWEE NSW 2232
Proposed trading hours	Monday to Saturday 9:00 am – 9:00 pm Sunday 10:00 am – 9:00 pm
Legislation	Sections 3, 11A, 12, 29, 30, 31, 40, 45, 48 and 59 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for the removal of a packaged liquor licence – Liquorland**

The Independent Liquor and Gaming Authority considered, at its meeting on 16 May 2018, the Application above and, pursuant to section 59 of the *Liquor Act 2007*, has decided to **approve** the Application subject to the following conditions:

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 3:00 AM and 9:00 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 (std)
Retail Sales
Good Friday Not permitted
December 24th Normal trading Monday to Saturday
8:00 AM to 10:00 PM Sunday
Christmas Day Not permitted
December 31st Normal trading
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 licensee or its representative must join and be an active participant in the local liquor accord.
5. The licensee will ensure the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.
6. The premises is to be operated at all times in accordance with the Coles Liquor NSW Management Strategies and House Policy for the Responsible Service of Alcohol documents, as submitted to the Independent Liquor and Gaming Authority ("the Authority") in support of the application and as may be varied from time to time after consultation with the Authority. A copy these documents 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 Authority.

7. Closed-circuit television system

- 1) The licensee must maintain a closed-circuit television (CCTV) system at the supermarket/general store in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the supermarket/general store is required to close,
 - (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 to the supermarket/general store, and
 - (ii) all publicly accessible areas (other than toilets) within the licensed 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 and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

The Authority also decided to revoke the following condition from the liquor licence:

Condition 3010

The licence is to be held in a dormant capacity and subject to the condition that it not be exercised until transferred to a suitably qualified nominee/licensee that has been approved the Independent Liquor and Gaming Authority.

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

Trading on a Sunday that falls on 24 December

Please note that in the case of any Sunday that falls on 24 December, the 6-hour closure period overrides the statutory provision that would otherwise allow the licence to trade from 8:00 AM. In accordance with the 6-hour closure period for the current licence, the Proposed Premises must not trade earlier than 9:00 AM.

Removal of the packaged liquor licence

Notwithstanding the Authority's approval of the Application on 16 May 2018, the packaged liquor licence the subject of the Application is not to be exercised at South Village, 566-594 Princes Highway, Kirrawee NSW 2232, unless and until Liquor & Gaming NSW has been:

- provided with evidence that the Proposed Premises is complete and ready to trade, and
- notified of the appointment of an approved manager to the licence or the transfer of the licence to an individual licensee.

The packaged liquor licence remains at 67 Warrangaroo Drive, Woronora Heights NSW 2233, subject to the same conditions and trading hours that were immediately in force before the approval of this Application, until such time as Liquor & Gaming NSW is notified that the licence has been removed.

If you have any questions, please contact the case manager at beatrice.pitpaiaac@liquorandgaming.nsw.gov.au.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'P. Crawford', enclosed in a thin black rectangular border.

Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 23 January 2018, 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 approval of the removal of a packaged liquor licence (“Licence”) from the premises at 67 Warrangarree Drive, Woronora Heights (“Premises”) to the premises at South Village, 566-594 Princes Highway, Kirrawee (“Proposed Premises”).
2. The Authority considered the Application at its meeting on 16 May 2018 and decided to approve the removal of the packaged liquor licence to the Proposed Premises under section 59 of the *Liquor Act 2007* (“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, 29, 30, 31, 40, 45, 48 and 59 of the Act, and the relevant provisions of the *Liquor Regulation 2008* (“Regulation”).

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 its 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 Department of 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 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.

Removal of liquor licence

11. Section 59 of the Act provides the legal requirements regarding the removal of a licence to another premises and requires that such application be dealt with and determined as if it were an application for the granting of a new licence.
12. Section 59 of the Act provides that the Authority must not approve the removal application unless it is satisfied that practices will be in place following the removal and remain in place to reasonably ensure the responsible service of alcohol and to prevent intoxication on the premises to which the licence is proposed to be removed.

Trading hours and 6-hour closure period

13. 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

14. 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

15. 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

16. Section 48 of the Act requires certain applications, including an application for the removal of a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.

17. Section 48(5) provides that the Authority may only approve the removal 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 before it.

Provisions specific to a packaged liquor licence

18. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.

19. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.

20. 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.

21. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

Key findings

22. 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

23. The Authority is satisfied on the material before it that:

- a) the Application has been validly made and meets the procedural requirements under section 40 and 59 of the Act,
- b) the proposed trading hours for the Proposed Premises meet the requirements under sections 11A, 12 and 29 of the Act in respect of trading and 6-hour closure periods,
- c) if the removal were to be approved, liquor would be sold and supplied in a separate liquor sales area at the Proposed Premises, and in accordance with the authorisation conferred by a packaged liquor licence, as required by sections 29 and 30 of the Act, and

- d) section 31 of the Act does not apply to the Application as the Proposed Premises is not intended to operate as is contemplated by the section.

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

24. 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 Proposed Premises to ensure the responsible serving of alcohol, having regard to the Coles Liquor NSW Management Strategies and House Policy for the Responsible Service of Alcohol documents and the conditions to be imposed on the licence, and
- c) the requisite development consent is in force, based on the approval to modify Development Consent No. DA15/1134, in respect of the Proposed Premises, issued by Sutherland Shire Council on 28 March 2017.

Community impact statement

25. 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 Proposed Premises on the local and broader communities.

26. 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 Kirrawee, and the relevant "broader community" comprises Sutherland Shire Local Government Area ("the LGA").

Positive social impacts

27. The Authority notes that the density of packaged liquor licences in Kirrawee and the LGA is lower than the NSW state average, and accepts the Applicant's contention that Kirrawee is undergoing development which is expected to result in population growth and an increase in demand for packaged liquor.

28. Accordingly, the Authority accepts that the Proposed Premises will provide the growing local community with additional access to packaged liquor.

29. The Authority notes that the Proposed Premises will be situated within a new retail and commercial development, "South Village", occupying 15,000 square metres, and will adjoin a Coles Supermarket. The Authority accepts that the Proposed Premises will provide a measure of convenience to customers of the supermarket who wish to engage in "one stop shopping" by purchasing liquor items together with grocery and other items from a store in close proximity.

30. The Authority notes that the Proposed Premises will offer a diverse range of liquor, and the fitout will be modern and customer friendly.

31. The Authority considers the proposed social benefits above to be somewhat limited by the lack of evident community support for the Application. The only indication of any such support is the fact that no submissions in opposition to the Application were received from the community.

32. Having regard to the benefits noted above, Authority is satisfied that the approval of the Application would be in line with the expectations, needs and aspirations of the community, and contribute to the balanced and responsible development of the liquor industry.

Negative social impact

33. The Authority notes that, according to BOCSAR Crime Maps for the year to December 2017, the Proposed Premises was located on the border of low-density hotspots for incidents of

alcohol-related assault, and domestic assault; and a medium-density hotspot for incidents of malicious damage to property. The concerns that such mapping raises, however, are somewhat alleviated by the rates of crime recorded for Kirrawee suburb for that period, which were lower than, or similar to, the NSW average.

34. BOCSAR crime data for the two years to December 2017 indicates that the rates of alcohol-related domestic and non-domestic assault, malicious damage to property and alcohol-related disorderly conduct (offensive conduct) in Kirrawee were lower than the corresponding NSW rates, however, that the rate of alcohol-related domestic assault increased slightly above the corresponding NSW rate in 2017.
35. Similarly, BOCSAR crime data for the LGA for the same period indicates that the rates of alcohol-related domestic and non-domestic assault, and malicious damage to property were lower than the corresponding NSW rates, however, that the rate of alcohol-related disorderly conduct (offensive conduct) was higher than the corresponding NSW rate.
36. The Authority notes from the most recent HealthStats NSW data available at the time of its consideration that the LGA recorded a lower than average level of alcohol attributable deaths for the period 2012-13, and a lower than average level of alcohol attributable hospitalisations for the period 2013-15.
37. The Authority notes that two submissions were received in respect of the Application, from NSW Police Force ("Police") and L&GNSW Compliance, neither of which objected to the Application, although the Police did raise concerns regarding licensed premises saturation in the local community and the correlation between increased availability of alcohol and increased alcohol-related crime. Police proposed a number of licence conditions intended to mitigate alcohol-related harms arising from the introduction of a further packaged liquor facility in Kirrawee, the majority of which have been consented to by the Applicant.
38. The Authority has had regard to the ABS data indicating that as at 2016, Kirrawee was amongst the most advantaged suburbs, and the LGA amongst the most advantaged Local Government Areas, in NSW on the Index of Relative Socio-economic Advantage and Disadvantage.
39. Accordingly, the Authority notes that there are no immediate concerns regarding socio-economic disadvantage in the broader community which may increase vulnerability to alcohol-related harms.
40. Whilst the information before the Authority gives rise to some concerns, the Authority is nevertheless satisfied that the risk associated with the granting of the Licence will be adequately mitigated by the following:
 - a) the fact that the removal of the Licence within the LGA will not increase the density of packaged liquor licences in the broader community;
 - b) the fact that the approved trading hours at the Proposed Premises are less than those that apply to the Premises;
 - c) the applicant's experience of managing licensed premises;
 - d) the imposition of special licence conditions; and
 - e) the Applicant's adherence to the Coles Liquor NSW Management Strategies and House Policy for the Responsible Service of Alcohol documents lodged with the Application.

Overall social impact

41. Having considered the positive and negative social impacts that are likely to flow from granting the Application, the Authority is satisfied that the overall social impact of granting the removal of the Licence would not be detrimental to the well-being of the local and broader communities.
42. The Authority is also satisfied that a decision to approve the removal of the Licence would be consistent with the objects of the Act to regulate liquor supply and facilitate responsible industry development in line with community expectations and needs.
43. Accordingly, the Authority has decided to approve the Application pursuant to section 59 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 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. HealthStats NSW data showing that Sutherland Shire LGA recorded:
 - a. for the period 2012-13, a smoothed standardised mortality ratio of 87.40 compared to the state benchmark of 100, and
 - b. for the period 2013-15, a smoothed standardised separation ratio of 85.20 compared to the state benchmark of 100.
2. ABS SEIFA data based on the 2016 Census indicating that, on the Index of Relative Socio-Economic Advantage and Disadvantage on a scale of 1 to 10, with the 10th decile being the most advantaged and 1st decile the most disadvantaged, both Kirrawee and the Sutherland Shire LGA ranked in the 9th.
3. Premises plan dated March 2017 for the Proposed Premises.
4. Submission from NSW Police Force on 27 November 2017 in relation to the Application.
5. BOCSAR crime maps for the year to December 2017, indicating the location of the Premises and Proposed Premises relative to hotspots for alcohol-related assault, domestic assault, non-domestic assault, and malicious damage to property.
6. NSW crime statistics published by BOCSAR indicating that:
 - a. for the year to December 2016, the rate of:
 - i. alcohol-related domestic assault in the Sutherland Shire LGA and Kirrawee were 82.7 and 94.2 respectively, compared to the NSW average of 113.9,
 - ii. alcohol-related non-domestic assault in the Sutherland Shire LGA and Kirrawee were 118.1 and 83.7 respectively, compared to the NSW average of 133.7,
 - iii. malicious damage to property in the Sutherland Shire LGA and Kirrawee were 579.1 and 638.4 respectively, compared to the NSW average of 811.6,
 - iv. alcohol-related disorderly conduct (offensive conduct) in the Sutherland Shire LGA and Kirrawee were 62.8 and 10.5 respectively, compared to the NSW average of 47.3,
 - b. for the year to December 2017, the rate of:
 - i. alcohol-related domestic assault in the Sutherland Shire LGA and Kirrawee were 79.6 and 115.1 respectively, compared to the NSW average of 114.4,
 - ii. alcohol-related non-domestic assault in the Sutherland Shire LGA and Kirrawee were 106.2 and 104.7 respectively, compared to the NSW average of 130.7,
 - iii. malicious damage to property in the Sutherland Shire LGA and Kirrawee were 558.3 and 554.7 respectively, compared to the NSW average of 788.7,
 - iv. alcohol-related disorderly conduct (offensive conduct) in the Sutherland Shire LGA and Kirrawee were 46.5 and 0.0 respectively, compared to the NSW average of 42.8,
7. NSW Recorded Crime Statistics 2017 outlining the proportion of offences in the LGA by day of week and time of day.
8. Completed application dated 22 January 2018, and additional information in support of the application.
9. Copy of the public consultation site notice, police notice and local consent authority notice signed by the Applicant on 22 January 2018.
10. Completed Category B Community Impact Statement dated 22 January 2018.

11. Key liquor licence details recorded as at 6 March 2018 for LIQP700301058.
12. Certification of Advertising Application signed and dated 15 March 2018.
13. Submission from L&GNSW Compliance on 19 March 2018 in relation to the Application.
14. S.96 Modification Application No. MA16/0352, modifying Development Consent No. DA15/1134, in relation to the Proposed Premises, issued by Sutherland Shire Council on 28 March 2017.
15. Submission from NSW Police Force on 29 March 2018 in relation to the Application.
16. Correspondence between L&GNSW staff and the Applicant between 6 March 2018 and 12 April 2018 in relation to the assessment of the Application.
17. L&GNSW liquor licensing records as at 19 April 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 Kirrawee, the Sutherland Shire LGA and NSW. The density of packaged liquor licences is 34.16 in NSW, 29.30 in the Sutherland Shire LGA, and 21.56 in Kirrawee.
18. Google map images extracted from the Google website on 26 April 2018, showing the location and photos of the Proposed Premises in map view, earth view and street view.
19. ASIC business records in relation to the Applicant and Proposed Premises owner.
20. Plan of Management documents for the Proposed Premises, titled Coles Liquor NSW Management Strategies and House Policy for the Responsible Service of Alcohol.