



Mr Grant Cusack
c/o Hatzis Cusack Lawyers
Level 9, 68 Pitt Street
Sydney NSW 2000
5 December 2016

Dear Mr Cusack

APPLICATION NO: APP-1-4473142836
APPLICATION FOR: New Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Saturday 9:00AM – 10:00PM
Sunday 10:00AM – 8:00PM

APPLICANT: Mr Petar Lujic

**PROPOSED LICENCED
PREMISES NAME:** IGA Drummoyne Plus Liquor

PREMISES LOCATION: Shop 1, 36-52 Lyons Road, Drummoyne,
NSW 2047 (Premises)

ISSUE: Whether to grant or refuse an application
for a new packaged liquor licence.

LEGISLATION Sections 3, 29, 30, 31, 40, 45, 48 *Liquor
Act 2007*

INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR NEW PACKAGED LIQUOR LICENCE – IGA DRUMMOYNE PLUS LIQUOR

The Independent Liquor and Gaming Authority considered the Application at its meeting on 16 November 2016 and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **grant** the Application number APP-1-4473142836 subject to the following conditions:

- 1. Trading Hours**


Monday to Saturday	9:00AM – 10:00PM
Sunday	10:00AM – 8:00PM
- 2.** Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licenced premises for a continuous period of 6 hours between 3:00AM and 9:00AM 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.
- 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 be reasonably expected from the information contained in the community impact statement, application and other information submitted in the process of obtaining this licence.

4. The premises must be operated at all times in accordance with the Plan of Management and House Policy dated April 2016, as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
5. The licensee must ensure that the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.
6. The licensee or its representative must join and be an active participant in the local liquor accord

The licence is granted subject to a requirement, pursuant to section 47(2) of the Act, that it cannot be exercised unless and until the Authority has been notified of the appointment of an approved manager to the licence and evidence that the premises is complete and ready to trade.

If you have any enquiries about this letter please contact case manager via email to santina.causa@ilga.nsw.gov.au

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

Philip Crawford
Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

STATEMENT OF REASONS

Material before the Authority

1. The following is a summary only of the material and submissions before the Independent Liquor and Gaming Authority (Authority) for the purposes of publication of a statement of reasons, as soon as practicable, in a high-volume jurisdiction.
2. In making this decision, the Authority has considered the packaged liquor licence application filed on 27 May 2016 (Application), the accompanying community impact statement (CIS) and all submissions received in relation to the Application. As foreshadowed in Authority *Guideline 6*, the Authority has also had regard to relevant liquor licensing records and licence density data maintained by Liquor and Gaming NSW (LGNSW), Bureau of Crime Statistics and Research (BOCSAR) crime data and Australian Bureau of Statistics (ABS) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. That material is listed and in some cases briefly summarised in the Schedule.

Summary of Further Submissions

3. Report to the Authority dated 10 June 2016 from Compliance Branch of the Office of Liquor and Gaming NSW (LGNSW) advising that the Application was assessed using the Environment and Venue Assessment Tool (EVAT). This means that LGNSW have not performed any specific assessment of the Application.
4. The EVAT report identifies certain risk factors for the Application applying to the type of licence, the local environment and other factors. These risk factors range from “low” to “moderate” risk.
5. Submission from Senior Constable Angela Halteh, Burwood Local Area Command (Police) dated 1 July 2016. This submission notes that Police support the imposition of licence conditions consented to by the Applicant.
6. The Authority notes information in the CIS that no response was received by the Applicant from the local Aboriginal community, the Department of Health, the Department of Community Services or from the occupier of any neighbouring premises.
7. Email submission from the Applicant dated 20 October 2016. In this thirteen-page submission the Applicant addresses many of the topics covered in the CIS. This email also includes the observations of the Applicant in response to the letter received by the Drummoyne Baptist Church. The Applicant contends that having observed the Church on 22-24 April, 29 April, 1 May, 6-8 May, and 13-15 May (after 9pm on Fridays, around 10pm on Saturday evenings and around 7 am on Saturday and Sunday mornings) he did not see any person consuming liquor in or near the Church, nor evidence of the consumption of liquor. This email includes a signed statement of the Applicant’s observations as well as a petition in support of the Application with approximately 160 signatures.

Legislative Framework

8. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the *Liquor Act 2007* and the *Liquor Regulations 2008* (Liquor Regulations). The power to grant an application for a new liquor licence is provided by section 45 of the Act.
9. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
 - (1) *The objects of this Act are as follows:*
 - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
 - (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
 - (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*
10. Section 48(5) of the Act requires the Authority, in certain circumstances, to consider a CIS (as well as any other matter the Authority is made aware of during the application process) in order to ensure that the overall impact of the licence, authorisation or approval being considered will not be detrimental to the local or broader community.
11. An application for a new packaged liquor licence is a “relevant application” within the meaning of section 48(2) of the Act for which a CIS is required.
12. Section 48(5) of the Act requires that the Authority must not grant an application unless satisfied that “the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community”.
13. For the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Drummoyne.
14. Consistent with the Authority’s long standing policy to find that the broader community comprises the relevant local government area, the Authority is satisfied that the broader community is, at the time of this decision, the area of the City of Canada Bay.

Analysis of Relevant Facts

15. The Authority is satisfied, on the basis of the Application and CIS material before it, that for the purposes of Section 40 of the Act, the Application has been validly

made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.

16. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a packaged liquor licenced venue of the kind proposed in the Application material. The Authority notes that no probity issues were raised with regard to the Applicant following consultation with law enforcement agencies, including Police and LGNSW.
17. The Authority is satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service of alcohol practices will be in place with the commencement of licenced trading. This finding is made on the basis of the *House Policy and Management Plan* dated April 2016.
18. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed use of the Premises falls within the scope of development consent. This finding is made on the basis of submission by Canada Bay Council dated 11 May 2016.

Social Impact – Positive Benefits

19. The Authority is satisfied, on the basis of the Application, CIS and additional material supplied by the Applicant that granting the licence will provide some additional benefit to those members of the local and broader community who wish to conveniently purchase liquor products when shopping at the Sutton Place Shopping Centre.
20. The Authority notes, on the basis of LGNSW liquor licensing records, that the suburb of Drummoyne currently has 4 packaged liquor licences, 4 registered club licences and 0 full hotel licences. The incumbent packaged liquor licensed businesses diminish the extent of convenience and development of the industry that is otherwise presented by granting this Application, but there are nevertheless some modest benefits apparent particularly for the *local community* in this regard.
21. The Authority does not accept the Applicant's contention that there is necessarily a "need" for a packaged liquor licence on the Premises. However, based on the absence of any other supermarkets within the suburb offering this kind of one-stop-shopping facility and the petition provided by the Applicant, the Authority is satisfied that the Applicant has demonstrated some level of demand for this IGA to include a packaged liquor department.
22. On this basis (noting that support within the community is not unanimous, as discussed below) the Authority is satisfied that granting this Application is broadly consistent with the "expectations, needs and aspirations of the community" in respect of the local community of Drummoyne, being an object of section 3(1)(a) of the Act.
23. The Authority is also satisfied, on the basis of the CIS and additional material supplied by the Applicant, that the packaged liquor facility will operate in a supermarket comprising one of nine retail shops inside a converted warehouse building. It will provide a range of premium wines, beers, ciders and spirits in addition to a range of low alcoholic and non-alcoholic wines and beers will increase

awareness, choice and availability to shoppers and in this sense may reasonably develop, in the public interest, the liquor industry serving the local and broader community, for the purposes of section 3(1)(b) of the Act.

24. The Authority gives little weight to the Applicant's contention that there would be a reduction in escaped expenditure, the Authority can give this benefit little weight as the Applicant has not provided any data or analysis to substantiate this claim.
25. The Authority gives little weight to the Applicant's contention that granting the Application will enable the local and broader community to access liquor products that are difficult to obtain, by reason that the LGNSW information indicates that there are other hotel and packaged liquor licensees in the local and broader community and the Applicant has not specified which products will be available at this new business that are not stocked by the incumbent retailers.
26. The Authority gives little weight to the Applicant's contention that some small measure of public safety may be garnered through reduced travel between stores, by reason that this benefit has not been supported with any evidence or analysis explaining the nature and extent of this purported benefit.

Social Impact – Negative Impacts

27. Having reviewed all of the material before it, the Authority considers that over time there is a risk that liquor sold from this new licenced business will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse packaged liquor.
28. The Authority notes that the licensed trading hours sought by the Applicant are extensive, trading until 10:00 pm Monday to Saturday, which is the latest that packaged liquor may be sold in NSW. This is a factor that objectively extends the scope for adverse impact from the operation of this business over time.
29. A mitigating factor is the size of the proposed liquor department, which the Authority notes, on the basis of the plan of the Premises provided will be 59 square metres. This is smaller in size than many standard packaged liquor outlets and is an objective factor in reducing the scope of this business to contribute to prevailing social impacts over time.
30. When considering the cumulative impact of adding another licence, LGNSW liquor licence density data satisfies the Authority that the Canada Bay LGA has lower rates of *packaged liquor licences*, *registered club licences* and *full hotel licences* per 100,000 persons compared to New South Wales as a whole. The Authority does not consider that prevailing licence density *per se* gives rise to any particular cause for concern.
31. The Authority takes considerable comfort from the BOCSAR *Report on Crime by LGA and Alcohol Related Status* for July 2010 to June 2015 which records that the Canada Bay LGA had rates of *alcohol related assault police* and *assault (domestic and non-domestic)* that are well below those for New South Wales as a whole.

- 32.** At the local community level, the BOCSAR Crime Maps between July 2015 and June 2016 indicate that the Premises is located inside of the suburb hotspots for incidents of malicious damage to property and outside but very near the suburb hotspot for incidents of domestic assault. The presence of these hotspots is a matter of concern, but those concentrations are derived by reference to *very low overall rates of crime in the LGA*. No concerns have been raised by Council, LGNSW or Police as to the proposed location of the new business or problems with alcohol related crime or offences in the local and broader community.
- 33.** The Authority is further satisfied, on the basis of the ABS SEIFA data, that both the suburb of Drummoyne and the City of Canada Bay LGA are very advantaged communities. Drummoyne ranks in the 10th decile of the Index of Relative Socio-Economic Advantage and Disadvantage, while Canada Bay LGA ranks in the 9th decile (with a decile ranking of 10 being the most advantaged).
- 34.** The Authority notes that only one objection was received for this Application. This objection was from the Drummoyne Baptist Church and related to the potential for increased consumption of alcohol, including amongst minors, as well as the disturbance to the amenity of the area surrounding the Church.
- 35.** This submission was made by a representative group (the Church) not simply an isolated individual. The Authority finds it generally credible that the Church is exposed from time to time to incidents of nuisance from alcohol related litter and/or alcohol related conduct and this impacts local amenity. The Authority has nevertheless accepted the Applicant's submission that this new business is located some 350 metres away from the Church and LGNSW information indicates that the local community already has access to packaged liquor from several other incumbent licensed premises capable of selling takeaway liquor.
- 36.** There is insufficient evidence or material currently before the Authority specifying the nature, frequency and extent of the problems reported by the Church to warrant refusal of the Application. There is no evidence from Council, LGNSW or Police (all of whom have enforcement capacities) of any prior complaints having been made to those agencies. The Authority notes that it would be open to the Church, or nearby residents, to make a complaint to the Secretary under section 79 of the Act alleging undue disturbance to the quiet and good order of the neighbourhood should patron misconduct involving the abuse of packaged liquor drive adverse amenity impacts. Alternatively, local residents may seek the imposition by the Secretary of a licence condition under section 54 of the Act to mandate a litter collection by a business or business who may be the proximate cause of takeaway alcohol litter if the evidence warrants such action. On the material before the Authority, there is insufficient evidence of minors consuming liquor or public drinking in the locality to move the Authority to refuse this Application on this basis.
- 37.** Finally, while accepting that licensing this supermarket will in a practical sense increase the exposure of children in these communities to alcohol products, there are now many supermarkets across New South Wales that are licensed with a liquor department. The Authority is not satisfied that licensing supermarkets per se is inconsistent with community expectations. Absent some objective data or material establishing that the location of the Premises is problematic in this instance, the Authority is not persuaded to refuse the Application on that basis.


38. With regard to the Church's contention that the new licence would increase alcohol availability and consumption in the general community or amongst minors, the increase in availability is accepted but there is insufficient evidence or analysis before the Authority to determine whether this business will increase alcohol consumption at the level of the local or broader community. New South Wales does not mandate the collection of wholesale liquor sales data that has enabled researchers in other jurisdictions to identify a link between volumes of liquor sold and assaults in local government areas.
39. The Authority considers it likely that the new business will *contribute*, along with incumbent retailers, to the levels of alcohol consumption to which these communities are currently exposed – but the evidence does not establish that licence density or other prevailing alcohol related adverse social impacts are at problematic levels compared to New South Wales as a whole.
40. When assessing the scope of negative impacts likely to flow from granting the Application, the Authority has taken into account the scale of this liquor department and the additional measures proposed by the Applicant in the Application, CIS and submissions to reduce harm, including security features to prevent alcohol product related theft and the sale of alcohol to minors and measures to separate the liquor section from the rest of the supermarket.
41. The Authority has also had regard to the reasonably detailed harm minimisation measures set out in the *Management Plan* dated April 2016, the licence conditions to which the Applicant has consented, the additional harm minimisation measures such as CCTV and the location of the department within a supermarket development.

Conclusion

42. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision. The interested parties include NSW Police, the Applicant, Council, RMS, neighbouring occupiers, NSW Health and Department of Community Services and all other parties required to be consulted under the legislation.
43. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the Act that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.
44. The Application is granted pursuant to section 45 of the Act.
45. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) – including (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour); (b) the need to encourage responsible attitudes

and practices towards the promotion, sale, supply, service and consumption of liquor; and (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Decision Date: 16 November 2016



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.justice.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 before the Authority

1. Email submission from Drummoyne Baptist Church dated 10 March 2016. This submission records an objection to the proposed Application on the following grounds:
 - a) The Drummoyne Baptist Church is within “walking distance” of the Premises and has a low wall which “people like to sit on, drink alcohol and have loud conversations” which wakes residents in the area and creates rubbish in the church grounds.
 - b) Access to alcohol at the IGA would encourage excessive consumption of alcohol through more competitive pricing.
 - c) The presence of alcohol in the IGA may increase exposure of children shopping with their parents to alcohol.
2. Submission from Roads and Maritime Services (RMS), dated 1 March 2016, advising that there were 13 alcohol related crashes in the Canada Bay Local Government Area (LGA) during 2013. RMS recommend that the licensee or its representative join and be an active member of the local Liquor Accord and that the licensee draw customer’s attention to the safe party strategies available on the police website or display a list of tips for people hosting social events.
3. Notices of the Application sent to various public agencies and other stakeholders, dated 2 May 2016.
4. CIS document and supporting material dated 2 May 2016, including the following:
 - a) IGA Drummoyne Plus Liquor House Policy detailing policies for the responsible service of liquor including prevention of sale of alcohol to minors and intoxicated persons, consumption of alcohol on the premises, responsible service of alcohol training, signage, and CCTV.
 - b) ASIC Current Organisation Extract dated 11 March 2016 for Hojo Supermarkets Pty Ltd.
 - c) ASIC Current Organisation Extract dated 22 March 2016 for Franklins Pty Ltd.
 - d) Applicant *Management Plan* for the proposed business dated April 2016.
 - e) Plan of the Premises highlighting in pink the proposed licenced area and separate plan of the licenced area. The licenced area is recorded as 59 square metres.
5. Additional Information about the Application and CIS dated 2 May 2016. In this 14-page document, the Applicant provides information about the Application, the location of the Premises, manner of operation and facilities to be provided, suitability of the site for a packaged liquor facility, responsible service of liquor, access to liquor by minors, position with Council, completion of the Premises, contended positive benefits of granting the Application, proposed conditions to be imposed on the licence, the proposed 6-hour closure period, the location of nearby community buildings, facilities and places, notification of stakeholders and issues raised during consultation. The Applicant also responds to the submission from the Drummoyne Baptist Church as follows:

- a) The Church is located over 350 metres from the Supermarket by road and for this reason it is unlikely that customers of the *IGA* would purchase liquor and consume it in or around the Church.
 - b) Drummoyne is already a competitive market place for liquor and for this reason alcohol consumption is unlikely to increase as a result of this licence being granted.
 - c) Young people are already exposed to alcohol marketing ubiquitously.
 - d) In the year ending December 2015 the suburb of Drummoyne recorded a significantly lower rate of “liquor offences” including “consume alcohol in public by a minor” than NSW as a whole. The Applicant submits that this indicates that Drummoyne does not have a particular problem with juvenile drinking.
6. The Applicant also discusses (by apparent reference to the social impact factors identified in Authority *Guideline 6*) the type, scale, hours of the Premises, licence density, SEIFA data, and measures to be implemented to reduce the potential for alcohol related harms and submits that there will be no adverse impact to the area.
 7. Submission from City of Canada Bay Council dated 11 May 2016 noting that development consent is not required to permit the Application.
 8. Application Form lodged on 27 May 2016.
 9. Report to the Authority dated 10 June 2016 from the Compliance Branch of the Office of LGNSW.
 10. Submission from Senior Constable Angela Halteh, Burwood Local Area Command dated 1 July 2016.
 11. Email from Authority staff to the Applicant dated, 13 September 2016.
 12. Email submission from the Applicant dated 20 October 2016 in which the Applicant consents to six conditions upon the licence. The Applicant also provides comment on submissions made in relation to the Application and addresses risk factors including crime data, SEIFA data, and licence density. The Applicant also includes two attachments:
 - a) Attachment ‘A’ to the email from the Applicant dated 20 October 2016. This is a petition in support of the Application.
 - b) Attachment ‘B’ to the email from the Applicant dated 20 October 2016. This is a signed statement by the Applicant in response to the submission made by Drummoyne Baptist Church.
 13. BOCSAR Crime Maps based upon data from July 2015 to June 2016 detailing hotspots for the concentration of offences near the location indicating that the Premises:
 - (a) Is located outside a *low-density hotspot* for incidents of *domestic assault*
 - (b) Is located within a *medium density hotspot* for incidents of *malicious damage to property*.

14. Liquor licensing records from LGNSW indicating that the suburb of Drummoyne already has 4 registered club licences, 0 full hotel licence and 4 packaged liquor licences.
15. Liquor licence density data from LGNSW indicating that the Canada Bay LGA recorded:
 - (a) A rate of **17.16 packaged liquor licences** per 100,000 persons, which is below the NSW state wide rate of **35.85**.
 - (b) A rate of **6.60 registered club licences** per 100,000 persons, which is well below the NSW state wide rate of **20.48**.
 - (c) A rate of **13.20 full hotel licences** per 100,000 persons, which is substantially below the NSW state wide rate of **30.36**.
16. BOCSAR Report on *Crime by Local Government Area and Alcohol Related Status* for July 2010- June 2015:
 - (a) The rate of *alcohol related domestic violence assault* incidents across Canada Bay LGA from July 2014 to June 2015 was **38.9** per 100,000 persons, well below the rate for New South Wales at **122.6** per 100,000 persons.
 - (b) The rate of *alcohol related non-domestic assault* across Canada Bay LGA from July 2014 to June 2015 was **27.4**, significantly less than the State-wide rate of **144**.
 - (c) The rate of *alcohol related offensive behaviour* offences flagged by reporting Police as *alcohol related* across Canada Bay LGA from July 2014 to June 2015 was **5.7** per 100,000 persons, well below than the State-wide rate of **88.2**.
 - (d) The rate of *alcohol related assault police* incidents across the Canada Bay LGA from July 2014 to June 2015 was **2.3**, lower than the rate of **18.2** per 100,000 for New South Wales.
17. Data on alcohol related crime obtained from published BOCSAR sources for period between July 2014 and June 2015.
18. ABS SEIFA data prepared on the basis of the 2011 Census indicating that the State suburb of Drummoyne ranked in the 10th decile and the Canada Bay LGA ranked in the 9th decile compared to other local government areas and state suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).
19. Google geographical maps depicting an aerial view of the location of the Premises.