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4 April 2017

Dear Mr Cusack

APPLICATION NO: 1-4971197019
APPLICATION FOR: New Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Sunday 10:00am to 10:00pm
APPLICANT: Mr Leigh James Hudson
LICENSED PREMISES NAME: Sakeshop
PROPOSED PREMISES LOCATION: Shops 1 & 2, 105-107 Percival Road,
Stanmore NSW 2048
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

The Independent Liquor and Gaming Authority considered application number 1-4971197019 for a new packaged liquor licence (Application) at its meeting on 22 February 2017 and, pursuant to section 45 of the *Liquor Act 2007*, decided to **grant** the Application subject to the following licence conditions:

1. Trading Hours

Monday to Sunday 10:00am – 10:00pm.

- 2.** 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 4:00am and 10:00am 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 are to be operated at all times in accordance with the Plan of Management dated August 2016 as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. A separate sales area is to be appropriately signed: "Liquor to be purchased from this register only".
7. The liquor sales area is to be adequately defined from the rest of the retail area by means of a fixed, solid and permanent barrier.
8. The licence is to be limited to the sale of:
 - a) Liquor imported from Japan; and
 - b) Sake and Japanese beer produced outside Japan.
9. CCTV cameras are to be installed so as to capture all areas of the licensed premises including the cash register as well as each entry point of the proposed licensed premises. The licensee must maintain a closed-circuit system in accordance with the following requirements:
 - a) The system is to operate from opening time until one hour after the premises is required to close.
 - b) Recordings must be in a digital format and at a minimum of 15 frames per second.
 - c) Any recorded image must specify the time and date of the recorded image.
 - d) The system's camera must cover the following areas:
 - i. All entry and exit points to the premises.
 - ii. The footpath immediately adjacent to the licensed premises.
 - iii. All publicly accessible areas (other than the toilets) on the premises.

The licensee must also:

 - e) Keep all recordings made by the CCTV system for at least 30 days,
 - f) Ensure that at least one staff member is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage; and
 - g) Provide any recordings made by the system to a Police Officer or Inspector within 24 hours of any request by a Police Officer or Council or LGNSW Inspector to provide such recordings.
10. No advertising or promotional material relating to alcohol is to be displayed outside the premises.

If you have any enquiries about this letter, please contact the case manager via email to Kieran.McSherry@justice.nsw.gov.au

Yours faithfully



Philip Crawford
Chairperson

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

STATEMENT OF REASONS

DECISION

1. The Independent Liquor & Gaming Authority (“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 lodged on 31 August 2016 (“the Application”) for a new packaged liquor licence, as all of those parties 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.
2. 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 *Liquor Act 2007* (“the Act”) that the overall social impact of granting this licence would not be detrimental to the well-being of the local and broader communities.
3. 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) of the Act.

MATERIAL CONSIDERED BY THE AUTHORITY

4. In making this decision, the Authority has considered the Application, 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 maintained by Liquor & 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. The material considered pursuant to the making of this decision is listed and, in some cases, briefly summarised in the Schedule.
5. The Authority notes by way of background that in addition to this Application the Applicant has simultaneously lodged an application for an on-premises licence with sale on other premises authorisation, which will occupy a separate part of the same building in which the Premises is located, and will facilitate a catering and events function of the same business.

LEGISLATIVE FRAMEWORK

6. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the Act and the *Liquor Regulation 2008* (Regulation). The power to grant an application for a new liquor licence is provided by section 45 of the Act.
7. 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.
8. 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”.

9. 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 Stanmore.
10. Consistent with the Authority’s long standing policy to find that the broader community comprises the relevant local government area (“LGA”), the Authority is satisfied that the broader community is, at the time of this decision, the area of Inner West Council LGA.
11. The Authority also notes that the broader community that is specified in the Application, the community located within the Inner West Council, has only recently been formed by amalgamation of Leichhardt, Marrickville, and Ashfield councils. The Authority notes that prior to amalgamation the Premises was located within the Marrickville LGA. The Authority has considered data for all three councils when considering the socio demographic data for the new broader community.
12. 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.*

KEY FINDINGS

13. 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.
14. 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 licensed 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 NSW Police (“Police”) and LGNSW.

15. 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 licensed trading. This finding is made on the basis of the *Management Plan* dated August 2016.
16. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the use of the Premises that is the subject of this Application falls within the scope of the development consent that is currently in force with regard to the Premises. This finding is made on the basis of development application DA201600197 (“DA”) and its modification DA201600197.01 approved by Inner West Council (“Council”) on 4 July 2016 and 28 November 2016.

Social Impact – Positive Benefits

17. The Authority is satisfied, on the basis of the information provided in the Application, CIS and additional material supplied by the Applicant that granting the licence will provide some additional benefit to the local and broader community by making available specialty Japanese liquor products in a boutique facility that will also be providing a range of other related, Japanese themed, products and services - including kitchenware, tools, ingredients, classes, events, and services. The Authority accepts that this will likely contribute to the development of the liquor industry as well as the related hospitality and entertainment industries which are objects of the Act pursuant to section 3(1).
18. The Applicant contends that the proposed packaged liquor facility will benefit the local and broader community by providing a range of imported Japanese products that are “not presently available” in existing liquor stores in the local and broader community. While the Authority finds this contended benefit generally plausible in light of the information about the business, particularly the product list provided by the Applicant, full weight could not be accorded to this benefit by reason that the Applicant did not specify nor provide evidence to establish the absence of those products from other retail stores in the local and broader community.
19. The Applicant has also contended that granting the licence will benefit nearby businesses. While it is generally plausible to assert that a specialty business may attract customers who may not otherwise attend the location, this is a complex contention that would require further evidence or analysis to substantiate the claim. Little weight may be given to the purported benefit on the material before the Authority.

Social Impact – Negative Impacts

20. Having reviewed all of the material before it, the Authority considers that over time there is a risk that liquor sold from this new licensed 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.

21. The Authority further notes that the licensed trading hours sought by the Applicant are extensive, trading from 10:00 am until 10:00 pm Monday to Sunday. This is a factor that objectively extends the scope for adverse impact from the operation of this business over time.
22. However a mitigating factor is the specialty nature of the business. The Applicant has accepted a licence condition that limits the sale of liquor to products imported from Japan and Japanese style beer and sake products produced elsewhere. The Authority accepts that this business model will appeal to a niche market and will likely not have the same scope for adverse social impact as a general packaged liquor facility that is intended to appeal to a broader market. While the Applicant has not specified the floor space, on the basis of the diagram and photographs of the Premises provided by the Applicant, the Authority is satisfied that the packaged liquor business will occupy only a portion of the building that accommodates the Sakeshop enterprise and will be, in relative terms, a small to medium scale operation.
23. When considering the cumulative impact of adding another licence to the local and broader community, LGNSW liquor licence density data satisfies the Authority that the suburb of Stanmore and the former Marrickville LGA (which encompasses nearby suburbs within the Inner West LGA) have lower rates of *packaged liquor 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 in the local and broader communities.
24. With regard to prevailing crime data, BOCSAR Crime Maps for the period between October 2015 to September 2016 indicates that the Premises:
 - (a) Is located within a medium density *hotspot* for incidents of *domestic assault*.
 - (b) Is not located within a density *hotspot* for incidents of *non-domestic assault*.
 - (c) Is located within a high-density *hotspot* for incidents of *malicious damage to property*.
25. The BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015 records that during the 2014/15 financial year Marrickville LGA recorded lower rates per 100,000 persons of population for the occurrence of *alcohol related domestic violence assaults* and *alcohol related offensive behaviour offences* than NSW as a whole, although the rate of *alcohol related non-domestic violence assault* and *assault police* incidents were above the State-wide rate.
26. The same report indicates that Ashfield LGA recorded lower rates per 100,000 persons of population for the occurrence of alcohol related assaults (both domestic violence related and non-domestic violence related), alcohol related assault police, and alcohol related offensive behaviour offences than NSW as a whole. Similarly, Leichhardt LGA recorded lower rates per 100,000 persons of population for the occurrence of alcohol related assaults (both domestic violence related and non-domestic violence related), and alcohol related offensive behaviour offences than NSW as a whole. Leichhardt LGA recorded slightly higher rates per 100,000 persons of population for the occurrences of alcohol related assault Police offences than NSW as a whole.

27. While the presence of *hotspots* for the concentration of *malicious damage to property* and *domestic violence* as well the rates of alcohol related crime in the Marrickville LGA are of significant concern to the Authority, the Authority is somewhat comforted by the significantly lower recorded alcohol related crime rates in the Leichhardt and Ashfield LGAs. Furthermore, the niche nature of the proposed licensed business is a mitigating factor that will serve to minimise alcohol related harm and the misuse and abuse of liquor by limiting the potential market for the business.
28. The Authority is further comforted by the fact that no objection to the Application has been received from either local Police or from the compliance branch of LGNSW, nor have any objections been made by any community groups or stakeholders. There is no evidence or information indicating that the locality is problematic from the perspective of those law enforcement agencies for crime or disturbance pertaining to the abuse of liquor consumed off licensed premises.
29. The Authority notes, on the basis of the ABS Socio-Economic Indexes For Areas (SEIFA) data, that both the Marrickville LGA and the suburb of Stanmore are relatively advantaged compared to other LGAs and suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage, ranking in the 9th decile on the index (with a decile ranking of 10 being the most advantaged). The Authority is aware from its recent recourse to SEIFA data for the Ashfield and Leichhardt LGAs that the population in those communities are also quite socio-economically advantaged. In this respect, the Authority is satisfied that social disadvantage does not pose an additional complicating factor when considering the scope for adverse social outcomes in relation to the consumption of liquor.
30. When assessing the scope of negative impacts likely to flow from granting this Application, the Authority has also taken into account the boutique nature and scale of the proposed business and additional measures noted in the Application and CIS to reduce harm, security features to prevent alcohol product related theft and the sale of alcohol to minors and measures to separate the liquor section from the proposed on premises licenced business.
31. The Authority has also had regard to the harm minimisation measures set out in the *Management Plan* dated August 2016, the licence conditions to which the Applicant has consented and the additional harm minimisation measures such as CCTV. These harm minimisation measures are enforceable through the operation of a licence condition, and the other conditions to which the Applicant has consented, including requirements for CCTV coverage.

Conclusion

32. 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, NSW Roads and Maritime Services (“RMS”),

neighbouring occupiers, NSW Health and Department of Community Services and all other parties required to be consulted under the legislation.

- 33.** 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.
- 34.** The Application is granted pursuant to section 45 of the Act. 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: 22 February 2017



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. ABS SEIFA data sourced from the 2011 Census for Marrickville LGA and the state suburb of Stanmore.
2. Report on *NSW Recorded Crime Statistics July 2010 – June 2015* obtained from published BOCSAR sources, for July 2014 – June 2016. This data indicates that:
 - (a) the rate of *assault Police* incidents recorded by NSW Police as alcohol related across the Marrickville LGA was **25.2** per 100,000 persons, above the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of *non-domestic violence related assault* incidents recorded by NSW Police as alcohol related across the Marrickville LGA was **212.3** per 100,000 persons, above the State-wide rate of **144** per 100,000 persons;
 - (c) the rate of *domestic violence related assault* incidents recorded by NSW Police as alcohol related across the Marrickville LGA was **112.8** per 100,000 persons, below the New South Wales rate of **122.6** per 100,000 persons;
 - (d) the rate of *offensive behaviour* offences recorded by NSW Police as alcohol related across the Marrickville LGA was **78** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.
3. Report on *NSW Recorded Crime Statistics July 2010 – June 2015* obtained from published BOCSAR sources, for July 2014 – June 2016. This data indicates that:
 - (a) the rate of *assault Police* incidents recorded by NSW Police as alcohol related across the Ashfield LGA was **9.0** per 100,000 persons, below the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of *non-domestic violence related assault* incidents recorded by NSW Police as alcohol related across the Ashfield LGA was **74.2** per 100,000 persons, below the State-wide rate of **144** per 100,000 persons;
 - (c) the rate of *domestic violence related assault* incidents recorded by NSW Police as alcohol related across the Ashfield LGA was **80.9** per 100,000 persons, below the New South Wales rate of **122.6** per 100,000 persons;
 - (d) the rate of *offensive behaviour* offences recorded by NSW Police as alcohol related across the Ashfield LGA was **18.0** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.
4. Report on *NSW Recorded Crime Statistics July 2010 – June 2015* obtained from published BOCSAR sources, for July 2014 – June 2016. This data indicates that:
 - (a) the rate of *assault Police* incidents recorded by NSW Police as alcohol related across the Leichhardt LGA was **18.9** per 100,000 persons, slightly above the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of *non-domestic violence related assault* incidents recorded by NSW Police as alcohol related across the Leichhardt LGA was **108.4** per 100,000 persons, below the State-wide rate of **144** per 100,000 persons;
 - (c) the rate of *domestic violence related assault* incidents recorded by NSW Police as alcohol related across the Leichhardt LGA was **72.2** per 100,000 persons, below the New South Wales rate of **122.6** per 100,000 persons;
 - (d) the rate of *offensive behaviour* offences recorded by NSW Police as alcohol related across the Leichhardt LGA was **67.1** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.

5. Publicly available BOCSAR Crime Maps based upon data from October 2015 to September 2016 detailing hotspots for the concentration of offences near the location of the Premises.
6. Documents relating to and provided by the Applicant, including a National Police Certificate dated 24 June 2016, a LGNSW Competency Card, Drivers Licence, Medicare Card and Australian Passport.
7. Decision on DA number DA201600197 issued by Council on 4 July 2016, in respect of 1/107 Percival Road, Stanmore, including the Premises.
8. Floor plans of the Premises indicating the boundary of the proposed licensed area for the licence and the related on-premises licence dated 10 July 2016.
9. Submission from NSW Aboriginal Affairs dated 18 July 2016, recording no objection to the Application.
10. Submission from RMS dated 18 July 2016, including road crash statistics and recommendations for the operation of the Premises.
11. Applicant's Plan of Management/Management Plan and House Policy for the proposed packaged liquor business dated August 2016.
12. Occupation Certificate for the Premises issued by Benchmark Building Certifiers on 18 August 2016.
13. Notice to Local Consent Authority, Police and Site Notice for the Application signed by the Applicant on 30 August 2016.
14. Application Form for packaged liquor licence lodged on 31 August 2016.
15. CIS dated 30 August 2016 and lodged on 31 August 2016.
16. Submission from Sergeant Carol Ray of the Marrickville Local Area Command of NSW Police dated 28 September 2016, advising no objection to the Application.
17. Submission from LGNSW Compliance Operations dated 26 October 2016 including the results of an automated Environment and Venue Assessment Tool to the Application and advising that LGNSW does not intend to carry out any further assessment.
18. DA modification number 201600197.01 issued by Council in respect of 1/107 Percival Road, Stanmore, including the Premises, dated 28 November 2016.
19. Response from the Applicant's solicitor dated 23 December 2016 to an email from licensing staff dated 17 December 2016, consenting to conditions proposed by licensing staff relating to the operating hours of the Premises, management of social impact and responsible service of alcohol, signage, and products sold at the Premises. The response also included the following attachments:
 - Photographs of the interior of the Premises.
 - A list of products to be sold at the Premises and their prices.
20. NSW Health Stats Reports, dated 16 January 2017 for Marrickville LGA indicating the following:

- The Smoothed Estimate of Standardised Separation Ratio for alcohol attributable hospitalisations for 2013-2015 was 142.2, compared to the NSW average set of 100.
 - The Smoothed Estimate of Standardised Mortality Ratio for alcohol attributable deaths for 2012-2013 was 92.7, compared to the NSW average set of 100.
- 21.** Email correspondence from Council Planning Staff to licensing staff dated 24 January 2017, indicating that the operative DA for the Premises is DA201600197.
 - 22.** LGNSW liquor licence records as of 5 January 2017, indicating that density of packaged liquor licences per 100,000 persons in NSW is **35.56** compared to the suburb of Stanmore which has **25.96** and Marrickville LGA which has **35.29**.
 - 23.** Google Maps satellite map, road map, and street view images for the site of the Premises and surrounds, accessed by licensing staff on 16 January 2017.