

Mr Grant Cusack
Hatzis Cusack Lawyers

gc@hatziscusack.com.au

11 January 2018

Dear Mr Cusack

APPLICATION NO: APP-0003346014

APPLICATION FOR: Packaged Liquor Licence

TRADING HOURS: Monday to Saturday 9:00am – 10:00pm
Sunday 10:00am – 10:00pm

APPLICANT: DAVID JONES PTY LIMITED

LICENCE NAME: DAVID JONES - WOLLONGONG

LICENSED PREMISES: Lower Ground Level Wollongong Central
South Building
Corner Keira & Burelli Street
WOLLONGONG NSW 2500

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

LEGISLATION: Sections 3, 29, 30, 40, 45 and 48 of the
Liquor Act 2007

**Independent Liquor and Gaming Authority
Application for a packaged liquor licence – David Jones Wollongong**

The Independent Liquor & Gaming Authority considered application number APP-0003346014 at its meeting on 15 November 2017 and, pursuant to section 45 of the *Liquor Act 2007*, decided to **grant** 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 & NYE (std)

Retail sales	
Good Friday	Not permitted
December 24th	Normal trading Monday to Saturday, 8:00am to 10:00pm Sunday

Christmas Day Not permitted
December 31st Normal trading

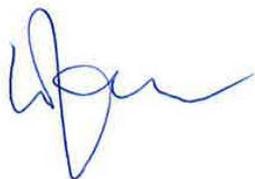
3. The licensee or its representative must join and be an active participant in the local liquor accord.
4. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
5. The premises is to be operated at all times in accordance with the Plan of Management dated October 2017 as may be varied from time to time after consultation with the Local Area Commander. A copy of the Plan of Management 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 Independent Liquor and Gaming Authority
6. The licensee will ensure the liquor sales area is adequately defined from the rest of the Food Hall/Market by means of a fixed, solid and permanent barrier.
7. 1) The licensee must maintain a closed-circuit television (CCTV) system at the food hall in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the food hall 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 food hall, 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.

Please note that the licence cannot be exercised unless and until the Authority has been notified of the appointment of an approved manager to the licence or the licence has been transferred to an individual licensee.

Please note that clause 70AB of the *Liquor Regulation 2008* (Regulation) applies to the granting of this licence application. In accordance with the Regulation, the licence is permitted to trade until 11:00pm, Monday to Saturday.

If you have any enquiries about this letter, please contact the case manager via email to michael.fabits@liquorandgaming.nsw.gov.au.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', with a stylized, cursive script.

Philip Crawford

Chairperson

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

STATEMENT OF REASONS

DECISION

1. On 1 September 2017, Mr Benjamin James Simpson-Morgan (“the Applicant”) lodged an application for a packaged liquor licence for premises located at David Jones, L/G Level, Wollongong Central (South Building) Corner Keira & Burelli Streets WOLLONGONG NSW 2500 (“the Application”) with Liquor & Gaming NSW (“L&GNSW”) for determination by the Independent Liquor & Gaming Authority (“the Authority”).
2. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority decided to grant the Application.
3. In making this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 29, 30, 31, 40, 45 and 48 of the Act, and the relevant provisions of the *Liquor Regulation 2008* (“the 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 the Authority’s Guideline 6, the Authority has also had regard to relevant L&GNSW liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, sourced by L&GNSW staff from publicly available sources.
7. The material considered by the Authority is listed in the Schedule, with a summary where appropriate.

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 determining a liquor licence application, have due regard to the need to minimise alcohol-related harm, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Trading hours

11. Section 12 of the Act sets out the standard trading period for different types of liquor licences. Additionally, section 11A imposes a condition on all licences prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

Minimum procedural requirements

12. Section 40 of the Act prescribes the minimum procedural requirements for a liquor licence application to be validly made to the Authority.

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

13. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
- the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
 - practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - the applicable development consent required for use of the premises for the business is in force.

Community impact statement

14. Section 48 of the Act requires certain applications, including an application for a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
15. Section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter brought to its attention.

Provisions specific to packaged liquor licence

16. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.
17. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.
18. Section 30 requires a separate liquor sales area to be set up on the licensed premises if its primary business is not to sell liquor for consumption away from the premises.
19. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

KEY FINDINGS

20. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

Validity, procedural and trading requirements

21. The Authority finds that:
- (a) the Application has been validly made and meets the procedural requirements under section 40 of the Act,
 - (b) the proposed trading hours for the Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods, and

- (c) the proposed use of the Premises as a bottle shop satisfies the requirements under section 29 of the Act and renders sections 30 and 31 not applicable.

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

22. 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 will be in place from the commencement of licensed trading at the Premises to ensure the responsible service of alcohol, having regard to the Applicant's "Plan of Management" document and the conditions to be imposed on the licence, and
- (c) Complying Development Certificate No. CF16308CD01 issued by Advance Building Approvals Pty Ltd on 17 May 2017 and the Notice of Determination of Development Application DA-2017/894, issued by Wollongong City Council on 8 September 2017.

Community impact statement

23. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the 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 Premises on the local and broader communities.
24. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Wollongong, and the relevant "broader community" comprises Wollongong Local Government Area ("the LGA").

Positive social impacts

25. The Authority accepts, based on the information available, the Applicant's contention that some population growth is likely to occur in Wollongong and its surrounding suburbs in the coming years. The Authority also accepts that the anticipated growth will create further demand for packaged liquor
26. The Authority also notes that the Wollongong Central Shopping Centre, within which the Premises will be located, includes David Jones, Target, Coles and over 220 retail stores. The proposed licence will be located in a small, defined section of the "Food Hall/Market" within the David Jones store, which specialises in specialty and gourmet food items. The Premises will operate on a smaller scale compared to a traditional packaged liquor outlet and will sell only a limited range of liquor products.
27. The Authority accepts the Applicant's contention that the Premises will cater to consumers who are looking to purchase premium liquor products and provides additional choice to the local and broader community who wish to purchase items that are not sold in a "traditional suburban liquor store". Also, the Authority accepts that most of these consumers will purchase liquor as gifts and/or to match the food available at the Market.
28. The Authority accepts the Applicant's contention that the granting of the licence will provide an additional measure of convenience to the local and broader communities, particularly to customers of David Jones who wish to engage in "one stop shopping" by purchasing liquor items together with food from the Market or retail goods from the broader department store.
29. The Authority is satisfied that there were no objections to the Application received from any stakeholders, special interest groups, occupiers of neighbouring residences or any other members of the public.

30. On the basis of the above, the Authority is satisfied that the Premises will provide additional convenience and choice to local consumers wishing to purchase liquor, and will contribute to the balanced and responsible development of the liquor industry, and the related retail industry, to meet the needs and expectations of the local and broader communities.

Negative social impacts

31. The Authority notes that the density of packaged liquor licences per 100,000 of population in the LGA is slightly lower than the corresponding NSW figure, whereas the density of packaged liquor licences in the suburb is higher.

32. The Authority notes that there is little evidence of any significant degree of support for the proposal amongst members of the local or broader communities. The only indication of any such support is the fact that no submissions in opposition to the Application were received.

33. The Authority notes that alcohol-related offences are occurring at significantly lower than average rates in the LGA compared to the average rates in NSW, noting that for the year ending June 2017, the LGA recorded:

(a) a rate of 99.1 per 100,000 persons for incidents of alcohol-related domestic assault, which is lower than the NSW rate of 116.2; and

(b) a rate of 249 per 100,000 persons for incidents of alcohol-related non-domestic assault, which is lower than the NSW rate of 265.8.

34. However, the Authority is concerned that alcohol-related offences are occurring at higher than average rates in Wollongong suburb, noting that for the year ending June 2017 the suburb recorded:

(a) a rate of 217.3 per 100,000 persons for incidents of alcohol-related domestic assault, which is higher than the NSW rate of 116.2; and

(b) a rate of 943.4 per 100,000 persons for incidents of alcohol-related non-domestic assault, which is considerably higher than the NSW rate of 265.8.

35. The Authority is further concerned that BOCSAR Crime Maps for the year ending June 2017 indicate that the Premises is located in high density hotspots for incidents of domestic, non-domestic and alcohol-related assault, and malicious damage to property.

36. The Authority accepts that data provided by NSW Health indicates that residents of the Wollongong LGA are dying from alcohol-related health issues at a higher than average rate and are being hospitalised as a result of alcohol-related health problems at a similar rate to the NSW average.

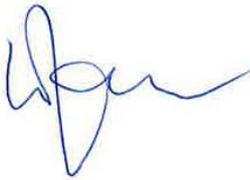
37. The Authority has had regard to the ABS data indicating that, as at 2011, Wollongong LGA was advantaged in comparison with other LGAs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage, ranking in the 7th decile (with a decile of 10 being the most advantaged), whereas Wollongong suburb ranked in the 5th decile when compared to other suburbs in NSW. The SEIFA data indicates that socio-economic disadvantage is not a compounding risk factor with respect to the impact of alcohol-related harm in the local and broader communities.

38. Having considered all the above information, the Authority acknowledges that, over time, there may be a risk that liquor sold or supplied at the Premises will contribute to alcohol-related crime and health issues in the local and broader communities. The Authority is nevertheless satisfied that this risk is adequately mitigated by:

- (a) the small size of Premises, along with its focus on the sale of premium liquor in particular to David Jones customers and other items not available in traditional liquor stores;
- (b) the fact that no objections were received from key stakeholders, including NSW Police and Wollongong City Council;
- (c) the imposition of special licence conditions; and
- (d) the Applicant's adherence to the "Plan of Management – David Jones Pty Limited" document lodged with the Application.

Overall social impact

39. Having considered the positive and negative impacts that are likely to flow from granting the licence, the Authority is satisfied that the overall social impact of granting the licence would not be detrimental to the well-being of the local and broader communities.
40. Furthermore, the Authority is satisfied that a decision to grant the licence would be consistent with the objects of the Act to regulate the supply of liquor and facilitate the responsible development of the liquor industry in line with community expectations and needs.
41. Accordingly, the Authority has decided to grant the Application.



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 <http://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

1. ABS SEIFA data based on the 2011 Census ranking Wollongong and the LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data relating to alcohol attributable deaths by local government area, 2001-2002 to 2012-2013 and alcohol attributable hospitalisations by local government area 2001-2003 to 2013-2015.
3. Complying Development Certificate No. CF16308CD01 issued by Advance Building Approvals Pty Ltd on 17 May 2017 which included the Notice of Determination of Development Application DA-2017/894, issued by Wollongong City Council on 8 September 2017.
4. BOCSAR Crime Hotspot Maps for Wollongong and surrounding suburbs for the year ending June 2017.
5. NSW crime statistics for the two years to June 2017, published by BOCSAR, showing the rates of alcohol related domestic and non-domestic assault and malicious damage to property in Wollongong and the LGA.
6. Document titled "Plan of Management - David Jones Pty Limited" dated August 2017.
7. A completed Category B CIS form, signed by the Applicant and dated 28 August 2017, with accompanying documents titled "Additional Information – Application and Community Impact" and "Additional Information – 6 hour closure period".
8. Application form for a packaged liquor licence, lodged 1 September 2017, accompanied by the following documents:
 - Local Consent Authority Notice;
 - Public Consultation – Site Notice; and
 - National Police Check of the Applicant, issued on 21 August 2017.
9. Plan of the proposed licensed area lodged with the Application on 1 September 2017.
10. Submission from Senior Constable Angus McMillan, Licensing Officer at Wollongong Local Area Command dated 19 September 2017.
11. Submission from Martin Jameson, Development Project Officer at Wollongong City Council dated 3 October 2017.
12. Certification of Advertising Application signed by Mr Grant Cusack, solicitor for the Applicant, dated 24 October 2017.
13. A letter from the Applicant in response to the submissions dated 25 October 2017.
14. Liquor licensing records from L&GNSW as at 3 November 2017 setting out the liquor licence density in the suburb and LGA, based on 2016 Census population figures.
15. Google maps showing the location of the Premises, extracted from the Google website.