



Mr Christopher Jude Thompson
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20 July 2022

Dear Mr Thompson

Application No.	APP-0006866553
Applicant	MYER PTY LTD
Application for Licence name	Packaged liquor licence Myer Castle Hill
Proposed trading hours	Monday to Saturday 09:00 AM – 12:00 PM Sunday 10:00 AM – 10:00 PM
Proposed Premises	Part Level 2 Myer Store, Castle Towers 1 Castle Street CASTLE HILL NSW 2154
Legislation	Sections 3, 30 and 45 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority
Application for a packaged liquor licence – Myer Castle Hill**

The Independent Liquor & Gaming Authority first considered the application above at its meeting on 16 June 2021 and, following the receipt and consideration of further requested information, and pursuant to sections 30 and 45 of the *Liquor Act 2007*, decided on 13 October 2021 to **refuse** the application.

Statement of reasons

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

If you have any questions, please contact the case manager, Glenn Barry, at glenn.barry@liquorandgaming.nsw.gov.au.

Yours faithfully

Philip Crawford
Chairperson

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

STATEMENT OF REASONS

DECISION

1. On 13 May 2020, MYER PTY LTD (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application (“Application”) for a packaged liquor licence (“Licence”) for the premises at Part Level 2 Myer Store, Castle Towers, 1 Castle Street, CASTLE HILL NSW 2154 (“Proposed Premises”).
2. The Authority first considered the Application at its meeting on 16 June 2021 and, following the receipt and consideration of further requested information, decided on 13 October 2021 to refuse to grant the Licence under sections 30 and 45 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the Act and the Liquor Regulation 2018.

MATERIAL CONSIDERED BY THE AUTHORITY

4. In reaching this decision the Authority has had regard to material and submissions provided by the Applicant in support of the Application, and the legislative requirements under sections 3, 30 and 45 of the Act.
5. For the purpose of this decision, it is not necessary to consider, and the Authority has not considered, the other material before the Authority relevant to the determination of whether the other criteria for granting the Licence have been met.
6. 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.
7. A list of the material considered by the Authority is set out in Schedule 1.

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 determining a liquor licence application, 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.

Liquor sales area required if bottle shop is part of another business activity

11. Section 30 of the Act provides that liquor may only be sold under a packaged liquor licence in a liquor sales area that is adequately separated from areas of the premises in which other activities are carried out if the primary purpose of the licence is not the sale or supply of liquor.
12. Additionally, the principal activity carried out in such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.

Decision making in relation to licence applications

13. Section 45 of the Act provides that the Authority may, after considering an application for a licence and any relevant matters, grant or refuse to grant the licence.

14. An extract of these sections is set out in Schedule 2.

KEY FINDINGS

15. The Applicant is seeking to add a liquor sales area (92 m²) to an existing Myer department store (5,579 m²). According to the Applicant, the purpose of the Application involves the retail sale of various “personalised” liquor products as well as hampers including liquor during certain “celebratory” periods, for consumption away from the Proposed Premises.
16. The Applicant contends that the primary purpose of the liquor sales area will be the retail sale of packaged liquor for consumption away from the licensed premises, but only when the liquor sales area is being utilised. The Applicant contends that general department store products would be sold in the area outside the “celebratory” periods noted in the Application. The liquor sales area is expected to only operate in “celebratory” periods leading up to Christmas, Australia Day, Easter, Mother’s Day and Father’s Day.
17. The Applicant does not propose to have permanent walls and barriers around the liquor sales area, instead preferring to vary the barriers and boundaries by using bollards and rope. The Applicant submits the liquor sales area will be defined by different floor treatments to provide an identifiable boundary and will not be locked outside of trading hours or when not in use. Security staff will not be permanently stationed at the liquor sales area as other Myer employees will be used to patrol or be within the vicinity of the liquor sales area.
18. The Authority notes the objection of NSW Police, which focused on the operation of section 30 of the Act. NSW Police submit that a liquor sales area is not designed to operate as a temporary licensed area as intended by the Applicant, rather it must remain licensed and staffed accordingly at all times while the store is in operation.
19. The Authority notes it provided the Applicant an opportunity to comment on the imposition of proposed conditions, which would revise the business model and ensure compliance with legislative requirements. The three proposed conditions relate to:
 - a) restricting the licence to the sale of food/gift hampers containing liquor and other personalised liquor products to specific dates
 - b) all alcoholic products must be purchased from a specific point of sale before exiting the liquor sales area
 - c) the liquor sales area must be adequately separated from the rest of the store.
20. The Authority notes the Applicant’s submission in response, whereby the Applicant:
 - a) does not consent to condition one as it restricts reasonable trade
 - b) proposes alternative wording for condition one which originates from Victoria
 - c) provides a revised plan of management and schedule which reflects the Applicant’s position regarding proposed condition one
 - d) consents to proposed conditions two and three.
21. The Authority has had regard to the Police objection, the assessment of the L&GNSW case officer and the responses of the Applicant to the Authority’s further enquiries regarding the application of section 30 of the Act.

DETERMINATION

22. There is concern regarding the intended business model and primary purpose of the Proposed Premises as the Applicant asserts that the primary purpose is the sale of liquor, but only from time to time. There is further concern regarding the Applicant's submissions regarding the separation of the liquor sales area and whether the principal activity carried out in the liquor sales area is in fact the sale of liquor.
23. The Authority observes that the Applicant does not intend:
- a) for the primary purpose of the Proposed Premises to be the sale of liquor for consumption away from the licensed premises
 - b) to always use the liquor sales area, rather it is to be used on a temporary basis to suit seasonal trade or "celebratory" periods
 - c) to adequately separate the liquor sales area with permanent walls or barriers
 - d) to have any security personnel in operation to patrol and monitor the liquor sales area
 - e) to lock the liquor sales area, as it will not have the capacity to be locked outside of trading hours when not in use.
24. The Authority considers the Applicant's intended liquor sales area does not satisfy section 30 of the Act as its principal activity is not the sale of liquor for consumption away from the licensed premises, nor is the liquor sales area adequately separated from other areas of the Proposed Premises.
25. Having regard to the Applicant's intended business model and intended use of the liquor sales area in the Proposed Premises, the Authority is of the view that the Application does not satisfy the statutory requirements of section 30 of the Act.

CONCLUSION

26. The Authority considers that, if the Licence is granted, there is a risk that the business model of the Proposed Premises would physically and visually integrate, and potentially result in issues relating to irresponsible attitudes and practices towards the promotion, sale and supply of liquor.
27. Having considered the technical issues arising from the Application, and the risk of future harm that could potentially be caused by these issues, the Authority is not satisfied that the Proposed Premises has sufficiently addressed the statutory requirements pursuant to section 30 of the Act.
28. Accordingly, the Authority has decided to refuse to grant the Licence under sections 30 and 45 of the Act.



Philip Crawford

Chairperson

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

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 & Gaming NSW 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 1

Material considered by the Authority – Myer, Castle Hill

1. Completed Category B Community Impact Statement dated 18 March 2020.
2. Completed application dated 13 May 2020.
3. Submission from NSW Police dated 13 May 2021.
4. Floor plan for the Proposed Premises, dated 16 May 2019, indicating the proposed liquor sales area will apply.
5. Correspondence between L&GNSW and the Applicant between 18 June 2020 and 7 June 2021.
6. Correspondence between L&GNSW and the Applicant regarding further inquiries from the Authority between 19 July 2021 and 16 September 2021.
7. Amended Myer Plan of Management – Castle Hill Store dated September 2021.
8. Amended Schedule to Plan of Management dated September 2021.
9. Various documentation relating to Myer Sydney City Store LIQP724013038.

Schedule 2 – Relevant extracts from the *Liquor Act 2007*

Myer Castle Hill

3 Objects of Act

- (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.
 - (d) the need to support employment and other opportunities in the:
 - (i) live music industry; and
 - (ii) arts, tourism, community and cultural sectors.

30 Liquor sales area required if bottle shop is part of another business activity

- (1) If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises (***the liquor sales area***) that is adequately separated from those parts of the premises in which other activities are carried out.
- (2) The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.

45 Decision of Authority in relation to licence applications

- (1) The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (2) The Authority may, in such circumstances as the Authority considers appropriate, treat an application for a licence as having been withdrawn.
- (3) The Authority must not grant a licence unless the Authority is satisfied that:
 - (a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and
 - (b) practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and
 - (c) if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates—that development consent or approval is in force.

Note. Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.

- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.
- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
 - (a) that the person:
 - (i) is a member of, or
 - (ii) is a close associate of, or
 - (iii) regularly associates with one or more members of,a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and
 - (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.

- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
- (a) is of good repute, having regard to character, honesty and integrity, and
 - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.