



**NSW Department of Industry
Liquor & Gaming NSW**

APPLICATION NO:	APP-0005219608
APPLICATION FOR:	Liquor – Producer/Wholesaler Liquor Licence with Drink On Premises Authorisation
TRADING HOURS:	Producer/wholesaler Monday to Saturday: 11:00 AM to 11:00 PM Sunday: 11.00 AM to 10:00 PM Drink on premises authorisation Monday to Saturday: 11:00 AM to 11:00 PM Sunday: 11.00 AM to 10:00 PM
APPLICANT:	Mountain Culture Pty Ltd
LICENCE NAME:	Mountain Culture Pty Ltd
APPROVED MANAGER:	David James McCready
PREMISES ADDRESS:	23-25 Parke Street KATOOMBA NSW 2780
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a Producer/Wholesaler Liquor Licence with Drink On Premises Authorisation.
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

ILGA DELEGATED DECISION – APPLICATION FOR

Producer/Wholesaler Liquor Licence with Drink On Premises Authorisation

Mountain Culture Pty Ltd

Under delegation issued by the Independent Liquor and Gaming Authority under section 13 of the *Gaming and Liquor Administration Act 2007*, a designated Public Service employee or other Public Service employee of Liquor & Gaming NSW in the Department of Industry, has decided to grant the application for a producer/wholesaler liquor licence with drink on premises authorisation, application number APP-0005219608.

On 06 May 2019, and after careful consideration of the application and other material, the delegate decided to approve the application, subject to the following conditions:

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Conditions imposed:

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 4:00 AM and 10:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. Restricted trading and NYE (std)
Retail sales
Good Friday Normal trading
Christmas Day Normal trading
December 31st Normal trading
3. Restricted trading & NYE (std)
Drink on-premises authorisation
Good Friday 12:00 noon - 10:00 PM
Christmas Day 12:00 noon - 10:00 PM
December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later
4.
 1. The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises in accordance with the following requirements:
 - a. The system must record continuously from the opening time until one hour after the premises is required to close,
 - b. Recording 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 systems cameras must cover the following area:
 - (i) All entry and exit points of the premises, and
 - (ii) All publicly accessible area (other than toilets) within the 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 and recordings made by the system to a police officer or Liquor and Gaming NSW Inspector within 24 hours of a request by a police officer or Liquor and Gaming NSW Inspector to provide such recordings.
5. The licensee must ensure that immediately after the licensee or a staff member becomes aware of an incident involving an act of violence causing an injury to a person on the premises, the following is adhered to:
 - a. The licensee and/or staff take all practical steps to preserve and keep intact the area

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where the act of violence occurred, retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police;

b. The licensee and/or staff make direct and personal contact with the local Area Commander or his/her delegate and advise the Commander or delegate of the incident; and

c. The licensee and/or staff comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

In this condition: "staff", in relation to subject premises, means any person employed by or acting on behalf of the licensee of the premises, and includes any person who is employed to carry on activities as a crowd controller or bouncer on or about the premises.

6. The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:
 - a. Any incident involving violence or anti-social behaviour occurring on the premises,
 - b. Any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
 - c. Any incident that results in a person being turned out of the premises under section 77 of the Act,
 - d. Any incident that results in a patron of the premises requiring medical assistance.
2. The licensee must, if requested to do so by a police officer or inspector:
 - a. Make any such incident register immediately available for inspection by a police officer or inspector, and
 - b. Allow a police officer or inspector to take copies of the register or to remove the register from the premises.
3. The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

STATEMENT OF REASONS

1. Material before the ILGA delegate (DF19/001161)

The decision made by the delegate had the application, the accompanying community impact statement (CIS-Category A) and other relevant material:

- (1) Application form lodged on 17 January 2019
- (2) Certification of Advertising
- (3) Plan of proposed licensed areas
- (4) Plan of Management 2019

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- (5) ASIC extract for Mountain Culture Pty Ltd
- (6) Development Consent X/719/2018 Issued by Blue Mountains City Council with Date of Determination 17 December 2018
- (7) Police Submissions with no objection to the application and proposed conditions
- (8) Applicant's consent to conditions

2. Legislative framework, statutory objects and considerations

In determining the application, the delegate has considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which state:

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 the 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.

3. Statutory tests

- (1) In determining an application for a licence, under section 45(3) of the *Liquor Act* 2007, the delegate must also be satisfied that:

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- a. the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates,
- b. practices will be in place 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 4 Division 4.1 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.
- d. that the proposed approved manager/licensee has completed the relevant tiered industry training as per legislative requirements.

4. Community impact test

- (1) Under section 48(5) of the *Liquor Act 2007*, the delegate must not grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regards to the Community Impact Statement, where required, and any other matter the delegate is made aware of during the Application process, that the overall impact of the licence, authorisation or approval in question being granted will not be detrimental to the local or broader community.
- (2) The test applying under section 48(5) relates to delegated decisions in relation to:
 - a. the grant or removal of a small bar licence (where required),
 - b. a packaged liquor licence (limited to telephone/internet sales),
 - c. an application for extended trading hours to permit the sale of liquor after midnight in relation to a small bar (where required), an on premises relating to a restaurant that includes an application for a primary service authorisation, an on premises licence relating to a karaoke bar, a catering service or a vessel, and an application for a producer/wholesaler licence that includes an application for a drink on premises authorisation.
- (3) The Community Impact Statement provides the Authority with information about the views of relevant stakeholders and other aspects of the local community in which the proposed licensed premises is to be located. This includes, for example, the proximity of the licensed premises to hospitals or health facilities, nursing homes, schools and places of worship.

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- (4) Local and Broader Community - for the purposes of this decision, the delegate is satisfied that the relevant “local community” is the community within the suburb of Katoomba, and the “broader community” of Blue Mountains City Council LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for the producer wholesaler liquor licence with a drink on premises authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (3) I am satisfied that the statutory advertising requirements have been met.
- (4) I am satisfied that the proposed approved manager has completed the relevant tiered industry training as per legislative requirements.

6. Overall social impact

(1) Positive benefits

The venue will operate as a brewery with no online sales and a drink on premises authorisation to enable tastings, retail sales at the venue and direct sales to the public. The proposed patron capacity is two hundred and fifty (250).

The premise poses low risk to the local or broader community.

(2) Negative impacts

There have been no objections to the granting of this licence. This provides a level of certainty that there are unlikely to be any major impacts on the local community.

7. Conclusion

- (1) I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether or not to grant the application for a producer wholesaler licence with a drink on premises authorisation, 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.
- (2) In accordance with section 45(3) (a) of the Act I am satisfied that the proposed licensee is a fit and proper person to carry on the business or activity to which the proposed licence relates.

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- (3) Having considered all the related material, under section 45(3) (b) of the Act, I am satisfied that practices will be in place at the premises as soon as the licence is granted that ensure, as far as reasonably practicable, that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.
- (4) Consistent with section 45(3) (c) of the Act requiring development consent from the local council, I am satisfied that the required development consent or approval is in force.
- (5) In making this decision under delegation from of the Authority, all statutory objects and considerations prescribed by section 3 of the Act were considered and accordingly, I have determined to grant the liquor licence application with conditions.

Decision Date: 14 May 2019



Andrew Whitehead
A/Coordinator Business Licensing
Liquor & Gaming NSW
Delegate of the Independent Liquor & Gaming Authority

Important Information:

In accordance with Clause 5 of the Gaming and Liquor Administration Regulation 2008, this decision is reviewable by ILGA.

The licence applicant and persons who were required to be notified of the application and who made a submission can apply for an application for review. An application for a review must be lodged with ILGA within 28 days of the date of the publication of this decision. An application fee applies. For original applicants, the review application fee is the same as the initial application fee. For non-original applicants, the application fee is \$100.

For ILGA reviews of delegated decisions, make an application for review via the Liquor and Gaming Application Noticeboard at: <https://www.liquorandgaming.nsw.gov.au/Pages/public-consultation/online-application-noticeboard/online-application-noticeboard.aspx>. The Review Application form can be accessed on line via the Application Number hyperlink.



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Further information can be obtained from the Reviews page on the Liquor & Gaming website at: <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>