

NSW Department of Customer Service

Liquor & Gaming NSW

Application number:	APP-0007688836	
Application for:	Producer Wholesaler Liquor Licence with a drink on premises authorisation	
Trading hours:	Retail sales (both indoor and outdoor): Monday to Friday Saturday Sunday	05:00 PM – 11:00 PM 01:00 PM – 11:00 PM 11:00 AM – 10:00 PM
	Drink on Premises Authorisation (both indoor and outdoor): Monday to Friday Saturday Sunday	05:00 PM – 12:00 AM 01:00 PM – 12:00 AM 11:00 AM – 10:00 PM
Applicant:	MCDONALD, Nicholas Vernon	
Licence name:	Bucketty's Brewery	
Premises address:	26 ORCHARD RD BROOKVALE NSW 2100	
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 a drink on premises authorisation.	
Legislation:	Section 45(1) of the <i>Liquor Act 2007</i>	

PRODUCER WHOLESALER LIQUOR LICENCE WITH A DRINK ON PREMISES

AUTHORISATION

Bucketty's Brewery

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 Customer Services, has decided to grant the application for a Producer Wholesaler Liquor Licence with a drink on premises authorisation, application number APP-0007688836.

On 12 October 2020 and after careful consideration of the application and other material, the delegate decided to approve the application, subject to conditions listed in table 1.

Decision Date:



Nicola Taylor

Manager, Licensing

Liquor, Gaming and Racing NSW

Delegate of the Independent Liquor & Gaming Authority

STATEMENT OF REASONS

Analysis of Submissions and statutory requirements

- (1) Submissions were received and considered as summarised at Table [3].
- (2) Development approval is in place for the proposed premises use.
- (3) Police have proposed conditions which I am minded to impose.
- (4) I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions contained in the licence document.
- (5) I am satisfied that the statutory advertising requirements have been met.
- (6) Having reviewed all the material, I am satisfied that granting this application for a Producer Wholesaler Liquor Licence with a drink on premises authorisation will not be detrimental to the local or broader community.

Overall social impact

(1) Positive benefits

The business proposed to operate a 1,000L brewery with approximate capacity to brew 150,000L per annum in its present form. In addition, a taproom for 100 patrons to sample beer produced on site with take away sales via packaged goods.

(2) Mitigation of potential negative impacts

I am satisfied that the business model, conditions imposed, and any other information contained in the application will provide that the lawful operation of the premises will not be detrimental to the local or broader community.

Conditions considered by the ILGA delegate (DF20/010286)

All requests to impose conditions on the licence are reviewed on a case by case basis and a merit-based assessment is conducted.

Liquor & Gaming NSW

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In considering whether a proposed condition has merit, delegates consider: (a) whether the need for the condition has been adequately established (b) whether the benefits of imposing the condition are likely to outweigh the costs and (c) whether the proposed condition is proportionate to the potential harm identified.

Table 1 sets out the conditions which I have decided to impose on the licence, and the Table 2 sets out conditions put forwarded for consideration which I have decided not to impose, and the reasons for that decision.

TABLE 1 - Proposed conditions imposed on the licence:	
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 04:00 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 & 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

TABLE 2 – Proposed conditions not imposed on the licence:		Proposed by:	Reason code (see table 9)
1.	Bucketty's Brewery must comply with their Operational Plan Of Management – Amended 03.08.2020.	Police	C
2.	At least one (1) uniformed licensed security is to be employed when a planned NRL home game is played at Brookvale Oval.	Police	C
3.	On any night where numbers exceed eighty (80) patrons, one (1) licensed security shall be employed.	Police	H
4.	Any food truck used in association with Bucketty's Brewery shall be located wholly within the Licensed boundary, shall use or impede access to allocated parking spaces.	Police	A
5.	1. CCTV footage on premises	Police	C
6.	2. Maximum Patron Capacity	Police	B

	<p>a. Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the main principle entry to the premises. The signage shall state: Approved patron capacity is limited to 120</p> <p>b. A comfortable seating position must be available for each patron upon the premises. This will include a seat and access to table/bench space generally in accordance with the approved plans.</p> <p>c. The seating plan as set out in accordance with the approved plans are not to be re-arranged while the drink on-premises authorisation is being utilised.</p> <p>d. Management are responsible for ensuring the number of patrons in the premises does not exceed the approved capacity specified in sub clause (a).</p> <p>e. Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected near the main principle entry to the premises; in such manner that it would be reasonable to expect that a person leaving the premises will be alerted to its contents. The signage shall state: Upon leaving please respect local residents by minimising noise</p> <p>f. Signage specified in sub clause (a) and (d) is to be erected prior to the commencement of operations.</p>		
7.	<p>3. Neighbourhood Amenity</p> <p>a. The management of the premises:</p> <p>i. Shall ensure patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.</p> <p>ii. Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations.</p> <p>iii. Shall record in an Incident Register full details of any disturbance complaint/s made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.</p> <p>iv. Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by management / staff to resolve such complaint/s shall be recorded in an Incident Register.</p>	Police	B
8.	<p>4. The licensee must join and be an active participant in the local liquor accord.</p>	Police	I
9.	<p>5. Only liquor comprising packaged liquor in sealed containers is to be sold to be taken away from the premises. Any liquor sold or supplied in open containers (including glass) is not to be taken off the licensed premises. The licensee will ensure that adequate practices are implemented to minimise the likelihood of patrons/customers consuming liquor purchased from the premises in the carpark or the immediate vicinity of the premises.</p>	Police	C

10.	6. Food must be available at all times whilst alcohol is being sold or supplied.	Police	A
11.	7. Smoke-Free Environment Legislation The use and operation of the premises is to comply with the Smoke-Free Environment Act 2000 and the Smoke-Free Environment Regulation 2000. Guidance may also be obtained from the NSW Health Department (to ensure that smoking is not permitted on premise).	Police	B
12.	8. Crime Scene Preservation a. Immediately after the person in charge of the Licensed Premises become aware of an incident involving an act of violence causing an injury to a person on the premises, the person must: i. Take all practical steps to preserve and keep intact the area where the act of violence occurred ii. Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police iii. Make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident and iv. Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.	Police	C
13.	9. A full copy of all current development consents (including approved plans) for the operation of the premises, any Registers required and any required Plan of Managements must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or inspector from the Liquor and Gaming NSW.	Police	B
14.	10. The licensee must maintain a register, in the form approved by the Secretary, in which the licensee is to record, in the manner approved by the Secretary, 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, (e) any incident that involves the possession or use on the premises of any substance that the licensee suspects of being a prohibited plant or a prohibited drug. (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 of subject premises must ensure that the information recorded in an incident register under this clause	Police	C

	is retained for at least 3 years from when the record was made.		
15.	11. Should outdoor seating be granted a defined boundary must be erected clearly defining the licensed premise.	Police	A
16.	12. The Licensed Premises are not to be themed or operated as a Nightclub. No DJ styled booth, no disco lighting systems and no dance floor area are to be utilised at any time in the premises.	Police	C
17.	13. The sale and/or supply of liquor must cease 15 minutes prior to the cessation of the respective hours of operation.	Police	B

Materials considered by the ILGA delegate

TABLE 3: Submissions analysis	
Stakeholder submissions	
1.	<p>NSW Police</p> <ul style="list-style-type: none"> Police do not object to the liquor licence however hope conditions, including the conditions which are to be complied with under their DA are placed on the liquor licence. This is for public safety and to ensure consistency.
2.	<p>Local consent authority</p> <ul style="list-style-type: none"> No council submission is received
3.	<p>Public</p> <ul style="list-style-type: none"> No public submissions are received.

TABLE 4: Document analysis		
Details		Dated received/comment
1.	Application form	19/08/2020
2.	Plan of proposed licensed area	Compliance
3.	Certification of Advertising	Compliant
4.	Plan of management	Compliant
5.	National Police Certificate ID RSA competency card licensee training	Compliant
6.	Development consent	DA2020/0160 approved by Northern Beaches Council on 07/08/2020 to use the premises as an

		artisan food and drink industry and associated signage
7.	Correspondence from Police dated 17 September 2020 advising no objection to this application but requests conditions to be imposed on the licence.	

Conclusion

- (1) I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether to grant the application. 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 decision was made by the delegate having reviewed the application statement, business model and risk analysis, stakeholder submissions and other relevant material.
- (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.
- (3) Having considered the venue management plan and 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.

TABLE 5: Relevant extracts from the Liquor Act 2007

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:

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 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.

TABLE 6: 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:
 - (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) the proposed approved manager/licensee has completed the relevant tiered industry training as per legislative requirements.

TABLE 7: 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.

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.

TABLE 8: 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 online via the Application Number hyperlink.

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>

TABLE 9: - Reasons for not imposing requested conditions.

A	Do not impose. Already covered by the Liquor Act.
B	Do not impose. Already covered/already a condition in the DA.
C	Do not impose. Not a relevant condition for this licence type. Condition sought is generally only imposed on high risk licence type or in exceptional circumstances. Exceptional circumstances have not been sufficiently made out by the person putting forward the condition.
D	Do not impose. This condition would be more restrictive than similar venues in Kings Cross which remains subject to the lockout laws in 2020.
E	Do not impose. Small Bars are considered low risk. 2016 Review of Small Bars found Venues with a small bar licence have a lower incidence of alcohol-related violence than venues operating as a small bar under another type of liquor

	licence. Smaller bars have a lower incidence of alcohol-related violence than other types of licensed venue.
F	Do not impose. Already covered in the Plan of Management. Plan of management condition has been imposed.
G	Do not impose. Not in alignment with the business type, risk associated and would impose disproportionate unnecessary financial and operational burden (small business).
H	Do Not Impose. Being part of a liquor accord is not compulsory / on a voluntary basis only. Exceptional circumstances for imposing condition have been sufficiently made out by the person putting forward to the condition.
I	Do not impose – wording not consistent with ILGA/L&GNSW standard conditions – ILGA/L&GNSW standard condition wording has been imposed instead.