

NSW Department of Customer Service

Liquor & Gaming NSW

Application number:	APP-0007601717	
Application for:	Liquor – Packaged (online) liquor licence	
Trading hours:	Monday to Saturday Sunday	10:00 AM to 12:00 midnight 10:00 AM to 10:00 PM
Applicant:	WINEBAY AUSTRALIA PTY LTD	
Licence name:	Winebay Australia	
Premises address:	25 REDFIELD RD EAST KILLARA NSW 2071	
Issue:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a Packaged (online) liquor licence.	
Legislation:	Section 45(1) of the <i>Liquor Act 2007</i>	

Liquor – Packaged (online) liquor licence

Winebay Australia

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 Packaged (online) liquor licence. application number APP0007601717

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: 23 December 2020



Kieran McSherry

A/Senior Licensing Officer New Licensing and Special Events

Liquor and Gaming NSW

Delegate of Independent Liquor and Gaming Authority

STATEMENT OF REASONS

Analysis of Submissions and statutory requirements

- (1) Submissions were received and considered as summarised at Table [3]. In relation to the submissions received, while there were concerns raised about the potential impact of granting the licence, I am satisfied that these can be addressed by the conditions which I have imposed on the licence.
- (2) Appropriate consent is in place for the use of the premises as a small bar.
- (3) No submission received from Council.
- (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 small bar liquor licence will not be detrimental to the local or broader community.

Overall social impact

(1) Positive benefits

The proposed licence will provide convenient access to liquor by taking orders online, by phone, fax or mail order, and delivery to customers via courier.

No sales will be made in person at the licensed premises and members of the public will not be permitted to attend the premises to place or collect their orders.

(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

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

V2.0

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: Not permitted - December 24th: Normal trading Monday to Saturday, 8:00 AM to 10:00 PM Sunday - Christmas Day: Not permitted - December 31st: Normal trading
3.	0002030 No walk-up The licensee must ensure that the sale of liquor is limited to taking orders over the telephone or by facsimile or mail order, or through an Internet site.
4.	The licensee must ensure that no tastings are conducted on the premises.
5.	No advertising or promotional material relating to liquor is to be displayed outside the premises.
6.	No liquor products for sale under this licence are to be delivered or stored at the licensed premises.
7.	Plan of management: The premises is to be operated at all times in accordance with the Plan of Management dated 23/12/2020 as may be varied from time to time after consultation with NSW Police and/or Liquor and Gaming NSW. 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, or Liquor & Gaming NSW inspector.

TABLE 2 – Proposed conditions not imposed on the licence:	Proposed by:	Reason code (see table 9)
N/A		

Liquor & Gaming NSW

V2.0

Materials considered by the ILGA delegate

TABLE 3: Submissions analysis	
Stakeholder submissions	
1.	NSW Police <ul style="list-style-type: none"> Nil
2.	Local consent authority <ul style="list-style-type: none"> No Council Submission is received on the application.
3.	Public <ul style="list-style-type: none"> Public submissions received mainly concerning noise level and the proposed hours going into midnight would be disturbing on the neighbourhood. <p>Applicant responded:</p> <ol style="list-style-type: none"> Customers will NOT attend the premises at any time; No alcohol that is intended for sale will be delivered to, stored at or dispatched from the premises. All orders will be made via telephone, email or via the licensee's website; and Any products ordered will be dispatched by a third-party from a remote location.

TABLE 4: Document analysis		
Details		Dated received/comment
1.	Application form	21/08/2020
2.	Plan of proposed licensed area	Compliant
3.	Certification of Advertising	Compliant
4.	National Police Certificate ID RSA competency card Licensee training	Not required Compliant Compliant Compliant:
5.	Development consent	Home office. Kuring-Gai Council does not raise objection to the application provided the residence is well managed and without causing major impacts on the neighbouring residents

6.	Applicant's consent to conditions
7.	Correspondence from Liquor and Gaming NSW to the applicant
8.	Correspondence from the applicant to Liquor and Gaming NSW

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 are 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.

Liquor & Gaming NSW

V2.0

	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.