



Liquor & Gaming NSW

NSW Department of Enterprise Investment and Trade

Liquor & Gaming NSW

Application No.	APP-0010108505
Application for	On-premises liquor licence for Restaurant - Sport facility - Catering Service
Trading hours	Monday to Saturday 10:00 AM to 12:00 AM Sunday 10:00 AM to 10:00 PM
Applicant	ARCHIE BROS AUSTRALIA PTY LTD
Licence name	Archie Brothers and Holey Moley, Penrith
Premises address	Westfield Shopping Centre Shop MM02 569-595 High Street, Penrith, NSW 2750
Issue	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for an on-premises liquor licence for On-premises liquor licence for Restaurant - Sport facility - Catering Service
Legislation	Section 45(1) of the <i>Liquor Act 2007</i>

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 Enterprise Investment and Trade, has decided to grant the application for an On-premises liquor licence for Restaurant - Sport facility - Catering Service, subject to conditions set out at Schedule 1 imposed on the licence.

Decision Date: 16 August 2022

Cathy Treloar
A/Team Leader
Liquor and Gaming NSW
Delegate of the Independent Liquor & Gaming Authority

STATEMENT OF REASONS

Analysis of application requirements

1. Appropriate consent is in place for the use of the premises as on-premises licence – catering service. Council advised that they have no objection to the liquor licence.
2. A Police submission was received no objection with conditions which have been consented by the applicant.
3. No public submissions were received relating to any matters with the application.
4. The licensed premises will be a restaurant with sporting amusements with catering to host events on the premises
5. I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions imposed in the licence document.
6. I am satisfied that the statutory advertising requirements have been met.
7. Plan of management
8. Plan

Materials considered by the ILGA delegate

Information considered

1. Application form received: 21 June 2022
2. Plan of proposed licensed area: Compliant
3. Certificate of advertising: Compliant
4. Plan of management
5. Documents
 - a. National Police Certificate: N/A
 - b. ID: N/A
 - c. RSA competency card: N/A
6. Approved Manager: N/A
7. Licensee training: N/A
8. Development consent: Compliant
9. Correspondence between Liquor & Gaming NSW and the applicant
10. Correspondence from Police
11. Correspondence from Council
12. Applicant's consent to conditions

Analysis of stakeholder submissions

1. NSW Police:
No objection - conditions
2. Local consent authority
No objection
3. Public
Not received

Overall social impact

1. Positive benefits

The licensee may host a variety of events which may on occasion on the premises – within the restaurant and sport facility. Responsible Service of Alcohol guidelines and measures will be in place.

2. Mitigation of potential negative impacts

I am satisfied that the granting of the liquor licence, with the conditions imposed, will ensure that the lawful operation of the premises will not be detrimental to the local or broader community.

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 as set out at Schedule 1.

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:

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

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.

Community impact test

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.

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.

Important Information

In accordance with Clause 5 of the Gaming and Liquor Administration Regulation 2016, 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. In the case of the applicant, the fee payable is the fee applying to the original application. In all other cases, the fee is \$100.

For ILGA reviews of delegated decisions, make an application for review via the [Liquor and Gaming Application Noticeboard](#). The Review Application form can be accessed online via the make a submission button.

Further information can be obtained from the [Reviews of liquor and gaming decisions](#) page on the Liquor & Gaming website.

Schedule 1

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.

In considering whether a proposed condition has merit, delegates consider:

- whether the need for the condition has been adequately established
- whether the benefits of imposing the condition are likely to outweigh the costs and
- whether the proposed condition is proportionate to the potential harm identified.

Archie Brothers and Holey Moley, Penrith

Licence conditions to be imposed	Details
Retail closure period	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.
Restricted trading & NYE (except airport, catering, other public entertainment venue, vessel - std)	Consumption on premises Good Friday 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area) Christmas Day 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area) December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day.
Restricted trading & NYE (airport, catering - std)	Consumption on premises Good Friday: Normal trading Christmas Day: Normal trading December 31st: Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later.
Plan of management	The premises is to be operated at all times in accordance with the Plan of Management dated July 2022 as may be varied from time to time after consultation with NSW Police. 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.
Approved manager	The licence cannot be exercised unless an individual has been appointed by Liquor and Gaming NSW as

	approved manager to exercise the liquor licence or the licence is transferred to a suitably qualified individual
CCTV condition	<p>1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:</p> <ul style="list-style-type: none"> (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times), (b) recordings must be in digital format and at a minimum of Ten (10) 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: <ul style="list-style-type: none"> (i) all entry and exit points on the premises, (ii) the footpath immediately adjacent to the premises, and (iii) all publicly accessible areas (other than toilets) within the premises. <p>2) The licensee must also:</p> <ul style="list-style-type: none"> (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.
Crime scene preservation	<p>The licensee must notify the Police Area Commander, NSW Police Force or his/her representative, of all serious incidents.</p> <p>Serious incidents include any incidents involving an act of violence causing an injury to a person on the premises, including, but not limited to, any injury sustained by a patron that requires medical treatment.</p> <p>The licensee must ensure that, immediately after the licensee or a staff member becomes aware of an incident on the licensed premises involving an act of violence against any person or property, the following is adhered to:</p>

	<p>(a) The licensee or a staff member must take all practical steps to preserve and keep intact the area where the act of violence occurred, in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police Force.</p> <p>(b) The licensee or a staff member must make direct and personal contact with the Police Area Commander, NSW Police Force or his/her delegate and advise the Commander or delegate of the incident.</p> <p>(c) The licensee or the staff member must comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.</p> <p>For the purpose of this condition, “staff member” 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.</p>
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Proposed conditions not imposed on the licence	Proposed by	Reason code (see reasons for not imposing requested conditions below)
The licensee must ensure that liquor is not sold, supplied or consumed in those parts of the premises which comprise the bowling lanes and the bowler’s approach or any area where amusement machines or the like are situated	Authority	C
The licensee must erect a sign at the player seating area stating "Liquor must not be taken beyond this point	Authority	C
The licensee must ensure that all liquor sold or supplied at the licensed premises is opened by staff at the point of sale	Authority	C
The licensee must cause drinking vessels, including cans and bottles, in which liquor has been served to be cleared from tables, seats and floors, within a reasonable time, after patrons vacate these areas.	Authority	C
The licensee must ensure that no amusement machines, pinball machines or other similar electronic or mechanical machines are located within the premise's	Authority	C

Reasons for not imposing requested conditions

- **A** - Already covered by the Liquor Act 2007
- **B** - Already a condition in the development consent

- **C** - 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 proposed by the person putting forward the condition
- **D** - Already covered in the plan of management. Plan of management condition has been imposed
- **E** - Not aligned with the business type and would impose disproportionate unnecessary financial and operational burden
- **F** - Being part of a liquor accord is on a voluntary basis only. Exceptional circumstances have not been proposed by the person putting forward the condition
- **G** - ILGA/L&GNSW condition wording has been imposed