

**NSW Department of Customer Service**

**Liquor & Gaming NSW**

Application number:	APP-0007497962
Application for:	Producer wholesaler liquor licence with Drink on Premises Authorisation
Trading hours:	Producer Wholesaler (online sales only – public not to attend the premises): Monday – Saturday: 10.00AM to 12.00AM Sunday: 10.00AM to 11.00PM Drink On Premises (Including retail sales and tastings): Friday – Saturday: 11.00AM-10.00PM Sunday: 11.00AM – 9.00AM
Applicant:	MAD HATTER BEVERAGE CO PTY LTD
Licence name:	Mad Hatter Beverage Co
Premises address:	137-139 PEISLEY ST ORANGE NSW 2800
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>

**Producer wholesaler liquor licence  
with Drink on Premises Authorisation  
Mad Hatter Beverage Co**

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 Drink on Premises Authorisation, application number APP-0007497962.

On 9 November 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: 9 November 2020



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]. 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 DA consent is in place for the use of the premises as an Artisan food and drink industry
- (3) Police Submission received with no objection and requested conditions.
- (4) Council Submission received and application amended to comply with DA approval.
- (5) I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions contained in the licence document.
- (6) I am satisfied that the statutory advertising requirements have been met.
- (7) Having reviewed all the material, I am satisfied that granting this application for a Producer wholesaler liquor licence with Drink on Premises Authorisation will not be detrimental to the local or broader community.

### **Overall social impact**

#### **(1) Positive benefits**

The granting of the licence will enable a producer wholesaler to enhance sales of his product and provide a community meeting place within the town of Orange

#### **(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.

## Liquor & Gaming NSW

V2.0

In particular, the Plan of Management and licence conditions will serve to mitigate any potential negative impacts

### Conditions considered by the ILGA delegate (DF20/007988)

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: (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) DOPA 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.	<b>Crime Scene Preservation</b> 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

	<p>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</p> <p>III. Make direct and personal contact with the Police Area Command or his/her delegate and advise the Commander or delegate of the incident and</p> <p>IV. Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.</p>
5.	<p><b>CCTV condition</b></p> <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"> <li>(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),</li> <li>(b) recordings must be in digital format and at a minimum of ten (10) frames per second,</li> <li>(c) any recorded image must specify the time and date of the recorded image,</li> <li>(d) the system's cameras must cover the following areas: <ul style="list-style-type: none"> <li>(i) all entry and exit points on the premises,</li> <li>(ii) the footpath immediately adjacent to the premises, and</li> <li>(iii) all publicly accessible areas (other than toilets) within the premises.</li> </ul> </li> </ul> <p>2) The licensee must also:</p> <ul style="list-style-type: none"> <li>(a) keep all recordings made by the CCTV system for at least 30 days,</li> <li>(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</li> <li>(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.</li> </ul>

TABLE 2 – Proposed conditions not imposed on the licence:		Proposed by:	Reason code (see table 9)
1.	No drinks designed to be consumed rapidly, for example 'shots', 'shooters', 'slammers', 'bombs' are to be sold or supplied at the premises.	Police	C/G
2.	The Licensee or its representative must join and be an active participant in the local liquor accord	Police	H
3.	The premises are to be operated at all times in accordance with the Plan of Management submitted with the application for the Liquor Licence. This plan may be varied from time to time after consultation with the Local Area Commander of the Central West Police District.	Police	C (Patron capacity amended down to 100 - Similar venues in Orange quoted by police do not

			have this condition)
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**Materials considered by the ILGA delegate**

TABLE 3: Submissions analysis	
Stakeholder submissions	
1.	<b>NSW Police</b> <ul style="list-style-type: none"> <li>No Objections with conditions as stated in Table 1</li> </ul>
2.	<b>Local consent authority</b> <ul style="list-style-type: none"> <li>Objection based on DA restrictions</li> <li>Application amended to comply</li> </ul>

TABLE 4: Document analysis		
Details		Dated received/comment
1.	Application form	30 <sup>th</sup> June 2020
2.	Plan of proposed licensed area	Compliant – Internal area only as per DA approval
3.	Certification of Advertising	Compliant
4.	Plan of management	Revised and compliant
5.	National Police Certificate ID RSA competency card Advanced licensee training	Manager yet to be appointed Licence not to be exercised until an approved manager is appointed
6.	Development consent	DA 29/2020(1) for Artisan food and drink industry (Compliant)

## 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) The Licence is not to be exercised until an approved manager is appointed.
- (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.  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.

## Liquor & Gaming NSW

V2.0

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.