

## LICENCE DETAILS

<b>Application No.</b>	APP-0011827849
<b>Application type</b>	Producer Wholesaler licence with drink on premises authorisation (DOPA)
<b>Trading hours</b>	<i>Producer/Wholesaler - Indoor</i> Monday to Sunday 12:00 PM to 10:00 PM <i>Drink on premises trading hours</i> Monday to Thursday 05:00 PM to 10:00 PM Friday 05:00 PM to 12:00 AM Saturday 12:00 PM to 12:00 AM Sunday 12:00 PM to 10:00 PM
<b>Applicant</b>	BROKEN BAY BREWING CO. PTY LIMITED
<b>Licence name</b>	Broken Bay Brewing co.
<b>Premises address</b>	218 HARBORD RD, BROOKVALE, NSW 2100 AUSTRALIA
<b>Matter</b>	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 (DOPA)
<b>Legislation</b>	Section 45(1) of the <i>Liquor Act 2007</i>
<b>Decision details</b>	Under delegation issued by the Independent Liquor and Gaming Authority under section 13 of the <i>Gaming and Liquor Administration Act 2007</i> , 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 a producer wholesaler liquor licence, subject to conditions set out at Schedule 1 imposed on the licence.
<b>Decision date</b>	26/10/2023
<b>Delegate details</b>	



Kieran Mc Sherry, Coordinator Licensing  
Liquor and Gaming NSW  
Delegate of the Independent Liquor & Gaming Authority

## STATEMENT OF REASONS

### ANALYSIS OF SUBMISSIONS AND STATUTORY REQUIREMENTS

1. Development approval has been issued by Northern Beaches Council for an artisan food and drink premises. Council advised that they have no objection to the liquor licence.
2. Police submission was received and considered as summarised in **Submission analysis** below.
3. No public submissions were received relating to any issues with the application.
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 will not be detrimental to the local or broader community.

### MATERIALS CONSIDERED BY THE ILGA DELEGATE

#### Information considered.

1. Application form received: 26 July 2023
2. Plan of proposed licensed area: Compliant
3. Certification 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: Condition Imposed
7. Licensee Training: Condition Imposed
8. Development consent: Compliant
9. Correspondence between Liquor & Gaming NSW and the applicant
10. Correspondence from Police
11. Correspondence from Council
12. Applicant's Response to submissions received
13. Applicant's consent to conditions

#### Analysis of stakeholder submissions

1. NSW Police:

Police had no objections to the application which they recommended conditions are considered in Schedule 1.
2. Local consent authority

Council submission was received with no objection.

Public

Not provided.

## OVERALL SOCIAL IMPACT

### 1. Positive benefits

The granting of the licence will enable the licensee to operate a brewery with the addition of a drink on premises authorisation in Brookvale. The DA permits a two-stage approach, built into the floor plans and patron capacity, which has been encompassed within the liquor licence.

### 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.

## 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 will be 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.

## 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 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.

Applications for review of ILGA delegated decisions, can be made 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:

- 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.

#### (Broken Bay Brewing co)

Licence conditions to be imposed	Licence condition details
<b>Retail closure period</b>	Section 11A of the <i>Liquor Act 2007</i> 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
<b>Restricted trading &amp; NYE (std)</b>	<b>Retail sales</b> Good Friday: Normal trading December 24th: Normal trading Monday to Saturday, 10:00 AM to 12:00 midnight on a Sunday Christmas Day: Normal trading December 31st: Normal trading Monday to Saturday, 10:00 AM to 12:00 midnight on a Sunday
<b>Restricted trading &amp; NYE (std) Drink on-premises authorisation</b>	Good Friday 12:00 noon - 10:00 PM Christmas Day 12:00 noon - 10:00 PM December 31 <sup>st</sup> Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later
<b>Floor Plan</b>	Current floor plans reflect stage 1 and 2 of the development consent. Stage 1 relates to the ground floor. Once the additional level has been added, and an occupation certificate issued, the licensee may exercise the liquor licence based on the stage two floor plans.
<b>Trading hours</b>	The licensee must always exercise the liquor licence within the approved hours of the current development consent.
<b>Plan of management</b>	The premises is to be operated at all times in accordance with the Plan of Management dated October 2023 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

Licence conditions to be imposed	Licence condition details
<b>Closed-circuit television system</b>	<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 28 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>
<b>Crime Scene Preservation</b>	<p>Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:</p> <ul style="list-style-type: none"> <li>1) take all practical steps to preserve and keep intact the area where the act of violence occurred,</li> <li>2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor &amp; Gaming NSW website.</li> <li>3) Make direct and personal contact with NSW Police to advise it of the incident, and</li> <li>4) Comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.</li> <li>5) In this condition, 'staff member' 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 security activities (e.g., Crowd controller or bouncer) on or about the premises.</li> </ul>

Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)
<p><b>Plan of management:</b> The premises is to be operated at all times in accordance with the Plan of Management dated 27/04/2023 and 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 &amp; Gaming NSW inspector.</p>	Police	A



Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)
<p><b>CCTV Footage</b></p> <p>CCTV footage on premises: The Licensee shall maintain a CCTV system that meets the following minimum requirements:</p> <p>1) A camera must be located at the main entrance to the venue and positioned to record any person entering through this entrance. The CCTV recordings of this camera must be sufficient to enable an individual to be identified, beyond reasonable doubt, when: a. the person represents not less than 100% of the screen height, and b. there is an unobstructed view of the person's face.</p> <p>2) In addition, CCTV cameras must be maintained throughout the premises with camera coverage to specifically record images of the following areas: a. all other public entrances and exits, whether or not in use at the time, b. staircases, c. all portions of the floor area accessible to the public where entertainment is provided, d. toilet external entrances, e. all public accessible areas within the premise excluding toilets</p> <p>3) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.</p> <p>4) The correct time, date and camera identification must be automatically embedded on all recordings and be able to be read when the image is played back on a different system without interfering with the view of the target area.</p> <p>5) Recordings should be retained for a period of 30 days before being reused or destroyed. The licensee shall ensure that no person is able to delete or alter any recordings within the 30-day period.</p> <p>When the venue is open and trading, at least one person shall be at the venue that is capable of accessing the CCTV system and is able to immediately review recordings and produce copies.</p> <p>7) Immediate access to the CCTV system and the ability to review recordings is to be granted to NSW Police, OLGR Inspectors or other regulatory officers upon request.</p>	Police	A

Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)
<p><b>Crime Scene Preservation</b></p> <p>i. Take all practical steps to preserve and keep intact the area where the act of violence occurred</p> <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 Local 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> <p>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:</p>	Police	A
<p><b>Venue Theme</b></p> <p>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.</p>	Police	C

Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)
<p><b>Neighbourhood Amenity</b></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>i        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>i        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>i        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	D
<p><b>Liquor Accord</b> The licensee must join and be an active participant in the <b>local liquor accord</b>.</p>	Police	F
<p><b>Food</b> Food consistent of being a meal must be available at all times whilst alcohol is being sold or supplied.</p>	Police	D
<p><b>Security</b> On Friday, Saturday and Sunday when Monday is a public holiday, uniformed security personal is to be employed from 6:00pm until 30 minutes after close at a ratio of 1 guard per 100 patrons. Furthermore, any day when a planned NRL home game is played at Brookvale Oval, a guard is to be employed at a ratio of 1 guard to 100 patrons, 3 hours prior to the start of the main game and until close.</p>	Police	C

### **List of reasons and codes 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.