

NSW Department of Customer Service

Liquor & Gaming NSW

Application number:	APP-0007957129	
Application for:	Small bar liquor licence	
Trading hours:	Monday to Thursday Friday and Saturday Sunday	12:00 PM to 10:00 PM 12:00 PM to 02:00 AM 12:00 PM to 10:00 PM
Applicant:	Crossbench Pty Ltd	
Licence name:	Kulture Bar	
Premises address:	176 QUEEN STREET, ST MARYS NSW 2760	
Issue:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a small bar liquor licence.	
Legislation:	Section 45(1) of the <i>Liquor Act 2007</i>	

SMALL BAR LIQUOR LICENCE

Kulture Bar

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 small bar liquor licence, application number APP-0007957129.

On 23 December 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: 23 December 2020



Nicola Taylor
Manager, New Licensing and Special Events
Liquor and Gaming NSW
Delegate of the Independent Liquor & Gaming Authority

STATEMENT OF REASONS

Analysis of Submissions and statutory requirements

- (1) A Police Submissions was received and considered as summarised at Table [3]. In relation to the submission 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. I have agreed to several the police recommended conditions and imposed them on the licence.
- (2) Two public submissions were forwarded with concerns raised regarding the patron capacity and potential noise disturbances to the amenity of the neighbourhood.
- (3) Appropriate consent is in place for the use of the premises as a small bar.
- (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. Risk profile of the premises

The inherent risk profile of a premises can be modified to reduce its potential impact through the imposition of appropriate conditions or reduced trading hours. The delegate has considered both the following inherent risk analysis and the proposed business model in determining whether to grant the licence with or without conditions.

TABLE 1: Inherent risk factor analysis		Low	Medium	High
Licence type	Small bar		x	
Authorisations	None	x		
	PSA / ETA	x		
Trading hours	Before midnight			
	After midnight (Friday/Saturday-2am)		x	
Fit & proper	NPC: no disclosable outcomes	x		
	NPC disclosable – not alcohol related			
	NPC disclosable – alcohol related			
Plan of management	Basic			

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	Comprehensive	x		
Patron capacity	Up to 120 ppl			
	120 – 200 ppl			
	More than 300 ppl			

Both St Marys and Penrith LGA's crime rates are significantly higher than NSW in all categories usually considered under delegation by the Authority; with the rate of alcohol-related domestic violence in the suburb (238.5) and LGA (152.5) significantly higher than the state average (113.2). Further, both the local and broader communities are socio-economically disadvantaged and advantaged respectively (Bottom 7% and Top 30% of NSW households, in terms of household income and residents in skilled occupations).

The outlet saturation in St Marys (115.8) and saturation density rate for the LGA (94.4) are lower compared with the NSW average (198.8). This is supported by the suburb's lower liquor licence clustering rate (11.2) with the LGA (20.4) in comparison to the state figure (93.3).

In order to help mitigate potential risks associated with the business model, the applicant has submitted a comprehensive plan of management and has consented to all conditions proposed by Police, Council and the case manager. I have considered all requested conditions and have imposed specific conditions which will negate any potential adverse impact on the local community. The risk profile of a business varies depending on its location and business model. Generally, a lower risk business model reduces the overall risk profile of a licensed premises even in an area with elevated crime statistics. Lower risk business models can contribute to the diversification of a 'hot spot' and help to balance local amenity in an area.

2. Proposed business model

Kulture Bar will be a new small bar venue which offers increased choice for patrons within the St Marys and Penrith LGA. Liquor service will cease at 10pm Sunday-Thursday with service extending to 2am Friday/Saturday when entertainment is envisaged. Security will be on site when entertainment is being provided.

(1) Positive benefits

The granting of the licence will provide patrons with increased choice to socialise, including to enjoy a meal and/or a social drink consistent with the licence within the suburb of St Marys.

(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.

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

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.

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.	<p>Consumption on premises</p> <p>Good Friday Not permitted</p> <p>Christmas Day Not permitted</p> <p>December 31st Normal trading</p> <p>Note: Trading is allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5.00AM.</p>
3.	<p>CRIME SCENE PRESERVATION</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> <ul style="list-style-type: none"> a) Take all practical steps to preserve and keep intact the area where the act of violence occurred b) Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police c) Make direct and personal contact with the Police Area Commander or his/her delegate and advise the Commander or delegate of the incident and d) Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.
4.	<p>CCTV CONDITION:</p> <p>The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:</p>

	<p>(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),</p> <p>(b) recordings must be in digital format and at a minimum of six (6) frames per second,</p> <p>(c) any recorded image must specify the time and date of the recorded image,</p> <p>(d) the system's cameras must cover the following areas:</p> <p>(i) all entry and exit points on the premises,</p> <p>(ii) the footpath immediately adjacent to the premises, and</p> <p>(iii) all publicly accessible areas (other than toilets) within the premises.</p> <p>2) The licensee must also:</p> <p>(a) keep all recordings made by the CCTV system for at least 30 days,</p> <p>(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</p> <p>(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.</p>
5.	<p>LICENSEE TRAINING CONDITION</p> <p>Licensee/manager training must be completed no later than twelve months from the date of grant of the liquor licence.</p>
6.	<p>SECURITY CONDITION:</p> <p>Class C licensed security guards, on a ratio of 1:100 patrons, or part thereof, are to be engaged from 8:00pm, each night that live entertainment is provided after 12 midnight, to ensure the safety of patrons inside and outside the premises and to maintain the quiet and good order of the area surrounding the premises.</p> <p>In addition to the above, one Class C licensed security guard is to be engaged to perform duties as described under the ID scanner condition.</p>
7.	<p>ID SCANNER CONDITION:</p> <ul style="list-style-type: none"> • After 9.00pm on nights when live entertainment is being provided, a patron must not be permitted entry to the licensed area unless they have a valid photo ID scanned by a licensed security officer using the patron ID scanner. • The scanning of each patron ID must: <ul style="list-style-type: none"> - Be visible to the patron and only take place whilst the patron is present, - Be recorded on CCTV, provided that personal information is scanned is not visible on the recording, - Include a 'live' photograph of the patron, captured by the patron ID scanner prior to entry, - Be undertaken by a class C licensed security guard,

	<ul style="list-style-type: none"> - Only evidence of age documents, as defined by the Liquor Act 2007, are acceptable for the purposes of ID scanning, and must contain the following information relating to the patron: ☐ Name, -Photograph, and -Date of birth and/or address. • Evidence of age documents are limited to the following: <ul style="list-style-type: none"> -a motor vehicle driver or rider's licence or permit, issued by Roads and Maritime Services under the Road Transport Act 2013 or by the corresponding public authority of another State or Territory, or under the law of another country, - a digital driver licence within the meaning of the Road Transport Act 2013, -a Photo Card issued under the Photo Card Act 2005, - a digital Photo Card within the meaning of Part 2A of the Photo Card Act 2005, -a proof of age card (however described) issued by a public authority of the Commonwealth or of another State or Territory for the purpose of attesting to a person's identity and age, - an Australian or foreign passport, or -a proof of age card issued by Australia Post (known as a "Keypass Identity Card"). • A person must be refused entry to the venue (as a patron) if they: ☐ Attempt to enter the venue without acceptable photo ID, -Refuse to produce their photo ID for scanning, or -Refuse to have a live photograph captured by patron ID scanner immediately prior to entry. • In the instance that the ID scanner fails to operate, a Class C security guard is to be positioned at each entrance to the venue to supervise patrons entering the premises and to check identification documents.
8.	<p>COPIES OF CONSENTS AND MANAGEMENT PLANS:</p> <p>A full and current copy of all current development consents for the operation of the licensed premises must be kept on-site and made available to Police or Council Officers or Special Investigators on request.</p>
9.	<p>INCIDENTS – RECORDING AND NOTIFICATION:</p> <ul style="list-style-type: none"> • The manager/licensee must ensure that all incidents involving staff members (including security personnel) are recorded in the incident register maintained on site, including incidents involving physical contact between staff and patrons, physical restraint of patrons and/or the ejection of patrons from the premises at any time. • Access to the incident register must be made available for viewing on the request of Council Officers and/or Police.
10.	<p>PLAN OF MANAGEMENT CONDITION:</p> <p>The premises must at all times operate in accordance with the Plan of Management dated November 2020. A copy of the Plan of Management must be maintained in a register within the licensed premises and made available to Police and Local Council on demand. The Plan of</p>

	Management may be altered with the consultation and consent of Nepean Police Area Commander, or their delegate.
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TABLE 2 – Proposed conditions not imposed on the licence:		Proposed by:	Reason code (see table 9)
1.	TRADING HOURS <ul style="list-style-type: none"> • Sunday to Thursday 12:00pm – 10:00pm • Friday to Saturday 12:00pm – 2:00am 	Police	H
2.	MAXIMUM CAPACITY: <ul style="list-style-type: none"> • The maximum occupancy capacity within the entire Hotel Licensed area is not to exceed 60 persons (including staff, patrons and performers), this is in line with their D.A. • Signage indicating the maximum capacity for each area shall be maintained at all times in a conspicuous position at the entrance. 	Police	B
3.	NOISE CONDITION: <ul style="list-style-type: none"> • No entertainment (of any kind), speakers, amplified sound, etc is to be provided outside the internal boundaries of the venue, bordered by Queen Street, including the footpath. • Access and egress for the venue is to be restricted to the front door only. 	Police	B
4.	LOCKOUT CONDITION: <ul style="list-style-type: none"> • No persons are to be given entry to the licensed venue after 12:00am on any day. 	Police	C

Materials considered by the ILGA delegate

TABLE 3: Submissions analysis	
Stakeholder submissions	
1.	NSW Police <ul style="list-style-type: none"> • Police have no objections on the application but requests conditions to be imposed.
2.	Local consent authority <ul style="list-style-type: none"> • No Council Submission was received.

3.	<p>Public</p> <ul style="list-style-type: none"> The Submissions raised Issues with size of the premises as unable to fit the proposed patron capacity, location and amenity of the neighbourhood.
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TABLE 4: Document analysis		
Details		Dated received/comment
1.	Application form	29/10/2020
2.	Plan of proposed licensed area	Compliant
3.	Certification of Advertising	Compliant
4.	ASIC Approved Manager Approval RSA competency card	Compliant Compliant Compliant
5.	Development consent	DA19/0526.01 approved by Penrith City Council issued on 17 March 2020 as amended on 25 August 2020 for Section 4.55(1a) modifications to an approved small bar
6.	Applicant's consent to conditions	
7.	Submission from Nepean Police Area Command	
8.	Correspondence from Liquor and Gaming NSW to the applicant	
9.	Correspondence from the applicant to Liquor and Gaming NSW	

Conclusion

- 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.
- 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.

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- (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

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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.