



NSW Department of Justice
Liquor & Gaming NSW

APPLICATION NO: APP-0001465008

APPLICATION FOR: Liquor - producer wholesaler licence with a Drink on Premises Authorisation

TRADING HOURS: Monday to Sunday 10am -10pm

APPLICANT: Ryan Moore

LICENCE NAME: Moorebeer Brewing Co.

PREMISES ADDRESS: U 18 35 Merrigal Rd
PORT MACQUARIE NSW 2444

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 licence with a Drink on Premises Authorisation

LEGISLATION Section 45(1) of the *Liquor Act 2007*

**ILGA DELEGATED DECISION – APPLICATION FOR A
PRODUCER/WHOLESALE WITH A DRINK ON PREMISES AUTHORISATION
MOOREBEER BREWING 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 Justice, has decided to grant the application for a packaged liquor licence (online), APP-0001465008.

On 12 December 2016, and after careful consideration of the application and other material, the delegate decided to approve the application, subject to the following conditions:

Conditions imposed:

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 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.
2. Retail sales
Good Friday Not permitted
December 24th Normal trading Monday to Saturday,

8:00 AM – 10:00 PM Sunday

Christmas Day Not permitted

December 31st Normal trading

3. 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. The licensee must maintain a closed-circuit television system on the premises in accordance with the following:

- a. The system must record continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times).
- b. Recordings must be in digital format and at a minimum of 15 frames per second.
- c. Any recorded image must specify the time and date of the recorded image,
- d. The system cameras must cover the following areas:
 - i. All the exit and entry points of the premises,
 - ii. The footpath immediately adjacent to the premises,
 - iii. All publicly accessible areas (other than toilets) on the premises.

The licensee must also:

- a. Keep all recordings made by the CCTV system for at least 30 days, and
- b. Ensure that at least one member of staff is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage and;
- c. Provide any recording made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings.

5. The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

Interior noise levels which, although restricted in accordance with the above condition, still exceed safe hearing levels, are in no way supported or condoned by the Authority.

6. The premises must be operated in accordance with its Plan of Management, dated 19 November 2016, as may be varied from time to time after consultation with the Local Area Commander, NSW Police.
7. No shots, shooters, slammers or any drink that is designed to be consumed rapidly or any drink containing alcohol that is mixed with an energy drink, may be sold or supplied at the venue.
8. Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing injury to a person on the premises, the person must:
 - a. Take all practical steps to preserve and keep intact the area where the act of violence occurred, and retain all material and implements associated with the act of violence in accord with Crime Scene Preservation Guideline, issued by NSW Police, and
 - b. Make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
 - c. Comply with and directions given by the Commander or delegate to preserve or keep intact the area where the act of violence occurred.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the application, the accompanying community impact statement (CIS-Category A) and other relevant material:

- (1) Application form – Lodged 24 August 2016 (DOC16/093613)
- (2) Drink on Premises Authorisation lodged 24 August 2016 (DOC16/159561)
- (3) Plan of Management for the Premises of November 2016 (DOC16/154427)
- (4) Plan of the proposed licensed area (which details production area, tasting and retail areas) (DOC16/170379)
- (5) DA 2016/516 issued 8 August 2016 by Port Macquarie Hastings Council permitting industrial fitout for a brewery and retail outlet.(DOC16/093615).
- (6) Section 96 Modification DA 2016/516.2 which clarifies permission for 80 patron capacity and entertainment at the venue. (DOC16/170244)
- (7) National Police Certificate for the applicant Ryan Moore issued 16 August 2016, (DOC16/093620).
- (8) Copies of ID and RSA certificate for the applicant Ryan Moore (DOC16/093618-619) and (DOC16/093621), respectively.
- (9) Submission from Secretary which requests confirmation that a patron capacity of 80 and entertainment is permitted by Council, in addition to the CCTV condition to be imposed and possibly a condition in relation to amplified music although the report does detail that this would depend on whether Council consent for entertainment is in place. (DOC16/159850)
- (10) Police submission which requests a CCTV condition to be imposed as entertainment is to be provided. (DOC16/151009)
- (11) Request for additional information forwarded to the applicant 15 November 2016 and again 24 November 2016. (DOC16/150750 and DOC16/160002, respectively)
- (12) Email reply from the applicant dated 19 November 2016, and 10 December 2016. (DOC16/154275 and DOC16/170360)
- (13) Email from applicant dated 10 December 2016, consenting to all conditions which have been requested with the exception of the LA10 noise condition, in which the applicant has requested revised hours.(DOC16/170417)

2. 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.

3. 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 3A 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.

4. 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.
- (3) 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.
- (4) Local and Broader Community - for the purposes of this decision, the delegate is satisfied that the relevant “local community” is the community within the suburb of Port Macquarie and the broader community is the Port Macquarie-Hastings LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that the risk levels associated with the application for a Producer Wholesaler liquor licence with a drink on premises authorisation are minimised by a Plan of Management in addition to the conditions being imposed on the licence.
- (2) The proposed licensed premises comprises a brewery with provision for an 80 capacity drink on premises area. A Section 96 Modification to DA 2016/516 was

forwarded by the applicant which addresses concerns raised by the Secretary in relation to the permitted patron capacity and consent to entertainment being permitted at the venue.

- (3) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The primary function of the business is to brew and package beer and sell it to hotels and restaurants in the area. The applicant intends to open the brewery once a fortnight for a drink on premises licence to cater for customers who prefer alcoholic beverages other than beer.

(2) Negative impacts

No objections have been forwarded in relation to this application. The requested trading hours are reduced, police have no concerns, and have requested that CCTV system is in place at the venue.

7. Conclusion

- (1) I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether or not to grant the application, as 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.
- (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) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.

- (6) 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 packaged liquor licence application with conditions.

Decision Date: 12 December 2016



Olgica Lenger

Manager Licensing (Business Licensing)

Liquor & Gaming NSW

Delegate of the Independent Liquor & Gaming Authority



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.justice.nsw.gov.au/pages/public-consultation/online-application-noticeboard/online-application-noticeboard.aspx>. The Review Application form can be accessed on line via the Application Number hyperlink.

Further information can be obtained from the Reviews page on the Liquor & Gaming website at: <https://www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>