



**NSW Department of Industry
Liquor & Gaming NSW**

APPLICATION NO:	APP-0003860180
APPLICATION FOR:	Liquor - packaged liquor licence (online)
TRADING HOURS:	Monday to Saturday: 8:00 AM to 11:00 PM Sunday: 10:00 AM to 10:00 PM
APPLICANT:	Somm Wine Distribution Pty Ltd
LICENCE NAME:	Somm Wine Distribution Pty Ltd
PREMISES ADDRESS:	U 724 8 Merriwa St GORDON NSW 2072
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a packaged liquor licence (online).
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR
ON LINE PACKAGED LIQUOR LICENCE
Somm Wine Distribution Pty Ltd**

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 Industry, has decided to grant the application for a packaged liquor licence (online), application number APP-0003860180.

On 11 May 2018, 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 2:00 AM and 8:00 AM during each consecutive period of 24 hours. The licensee must comply with this

Liquor & Gaming

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 24 th	Normal trading Monday to Saturday 08:00 AM to 10:00 PM Sunday
Christmas Day	Not permitted
December 31 st	Normal Trading

3. The licensee must ensure that the sale of liquor is limited to taking orders over the telephone or by facsimile or mail order, or through an Internet site.
4. The licensee must ensure that no tastings are conducted on the premises.
5. No liquor products for sale under this licence are to be delivered or stored at the licensed premises.

STATEMENT OF REASONS

1. Material before the ILGA delegate (DF18/003961)

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 on 11 March 2018.
- (2) Category A Community Impact Statement (CIS) lodged with the application.
- (3) Plan of proposed licensed area (home office).
- (4) Signed certificate of advertising, dated 26 March 2018.
- (5) ASIC current company extract for SOMM WINE DISTRIBUTION PTY LTD.
- (6) Plan of Management dated March 2018.
- (7) Ku-ring-gai Council letter dated 12 April 2018 with no objection. Classification of the use of the site as a "Home occupation, or Home business" and fall within "exempt development" under the State Environmental Planning Policy [Exempt and complying Development Codes] 2008.
- (8) Applicant's consent to conditions.
- (9) Three public submissions with objections.
- (10) Email correspondence from the Authority to the applicant requesting additional information in support of the application.
- (11) Email correspondence from the applicant to the Authority in response to the requests for additional information.

Liquor & Gaming

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 4 Division 4.1 or Part 5.1 of that

Liquor & Gaming

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 Gordon, and the “broader community” of the NSW.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an online packaged liquor licence is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The proposed licensed premises comprises a home office in a residential dwelling, at which online orders will be received and processed. Liquor will be stored and dispatched from off-site storage facilities. The applicant has obtained

Liquor & Gaming

written confirmation from the Ku-ring-gai Council advising that the intended use of the premises is classified as a 'Home Business' under the Local Environmental Plan, and as such development consent is not required.

- (3) The sale of liquor will be limited to by means of taking orders over the telephone or by facsimile or mail order, or through an internet site.
- (4) Three public submissions with objections were received for the application raising the following concerns:
 - the business will impact the security of the building;
 - trading hours seem long and neighbours will be impacted;
 - customers attending the premises;
 - apartments are for residents, not businesses;
 - unavailability of a car park;
 - security concerns.

In response, the applicant has confirmed that the neighbours were informed that liquor will not be stored at the venue nor will customers attend the licensed premises. It would appear that the objection is due to a misunderstanding of how an online packaged licence operates.

- (5) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (6) The licence will be exercised in accordance with a Plan of Management and a number of licence conditions that detail the measures in place to ensure the responsible service of alcohol.
- (7) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The granting of the licence will potentially result in positive economic benefits for the applicant, and will increase the variety and competitiveness of liquor retailers, which will benefit consumers.

(2) Negative impacts

This licence application is for a home office at which orders will be processed, with liquor to be stored and dispatched at from a separate warehouse at another location. Customers will not be attending the premises to browse, purchase or

Liquor & Gaming

taste products. The nature of the licence sought means that there are unlikely to be any amenity impacts on the local community.

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) 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.
- (3) 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.
- (4) 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.

Decision Date: 11 May 2018



Joanne Zammit
Coordinator, 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.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.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>