



Ms Nicole Beath
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27 March 2017

Dear Ms Beath,

APPLICATION NO: APP-0002265630
APPLICATION FOR: On-premises liquor licence (restaurant) with a primary service authorisation
PROPOSED TRADING HOURS: Monday to Sunday 10:00AM – 5:00PM
APPLICANT: Matthew Burton
LICENSED PREMISES NAME: Gundog Estate Cork St. Cafe
PREMISES: 42 Cork Street
GUNDAROO, NSW 2620
ISSUE: Whether to grant or refuse an application for an on-premises licence with a primary service authorisation
LEGISLATION Sections 3, 11A, 21-28, 40, 45, 48 *Liquor Act 2007*

INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION - APPLICATION FOR A NEW ON-PREMISES LIQUOR LICENCE WITH A PRIMARY SERVICE AUTHORISATION – GUNDOG ESTATE CORK ST. CAFE

The Independent Liquor and Gaming Authority considered application number 0002265630 on 22 March 2017 and, pursuant to sections 45 and 24(3) of the *Liquor Act 2007* (Act), decided to **grant** the Application subject to the following conditions:

- Trading Hours**
Monday to Sunday 10:00am to 5:00pm
- 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.

3. **Restricted Trading and New Years Eve**

Consumption on premises

Good Friday	12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
Christmas Day	12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
December 31 st	Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day.

4. The licensee or its representative must join and be an active participant in the local liquor accord.
5. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, the application and other information submitted in the process of obtaining this licence.
6. The premises are to be operated at all times in accordance with the House Policy dated 6 February 2017 as may be varied from time to time after consultation with the Local Area Commander.
7. The licensee or its representative must ensure that no liquor sold or supplied pursuant to the licence is to be removed from the licensed area within which it was served. Liquor is not to be carried by customers from one licensed area to another.
8. The licensee shall maintain a CCTV system that meets the following minimum requirements:
 - 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 the identity of an individual to be established beyond reasonable doubt when:
 - a. the person represents 100% of screen height, and
 - b. there is an unobstructed view of the persons face
 - 2) Recording should be retained for a period of 30 days before being reused or destroyed.
 - 3) Immediate access to the CCTV system and the ability to review recordings on the system is to be granted to NSW Police, L&GNSW Officers or other regulatory officer upon request.
 - 4) When the venue is trading, at least one person shall be at the venue who is capable of accessing the CCTV system and is able to immediately review recordings and produce copies.
 - 5) All surveillance cameras must be operational 30 minutes prior to when the licensed premise opens to trade and continues to record for 30 minutes after the licensed premises ceases to trade.

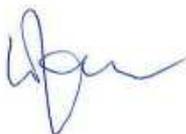
- 6) The CCTV system shall be able to reproduce a copy of the recordings on CD, DVD or USB memory stick and must be provided within 24 Hours to NSW Police, L&GNSW Officer or other regulatory officer upon request.
9. The licensee must ensure that, immediately after the licensee or a staff member or agent becomes aware of an incident involving an act of violence causing an injury to a person on the licensed premises or in the immediate vicinity,
 - 1) All reasonable steps are taken to preserve and keep intact the area where the incident occurred, and that any implement or other thing associated with the act of violence is retained in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police Force; and
 - 2) The Commander of the Local Area Command of NSW Police or his/her delegate, is advised by the licensee or a staff member or agent of the incident as soon as practicable; and
 - 3) The licensee or staff member complies with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

In this condition, "staff member" means any person employed by or acting on behalf of the licensee of the licensed premises and it includes any person who is employed to carry on the security activities on or about the premises.

10. The kitchen shall remain operational at all times that the primary service authorisation is being exercised.

If you have any advice or enquiries about this letter, please contact the case manager via email to santina.causa@justice.nsw.gov.au

Yours faithfully



Philip Crawford

Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

STATEMENT OF REASONS

DECISION

1. The Independent Liquor and Gaming Authority (Authority) is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the application lodged on 13 October 2016 (Application) for an on-premises licence with a primary service authorisation, as all of those parties 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 together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the *Liquor Act 2007* (Act) that the overall social impact of granting this on-premises licence with a primary service authorisation would not be detrimental to the well-being of the local and broader communities.
3. The Application is approved pursuant to sections 45 of the Act.
4. Pursuant to section 24(3) of the Act, the Authority has endorsed the on-premises licence with a primary service authorisation that allows liquor to be sold or supplied for consumption on the licensed Premises otherwise than with, or ancillary to a full meal between 10:00am to 5:00pm Monday through Sunday (inclusive).
5. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2).

MATERIAL CONSIDERED BY THE AUTHORITY

6. The Authority has considered the Application, Community Impact Statement (CIS) and all submissions received in relation to the Application. As foreshadowed in *Authority Guideline 6*, the Authority has also had regard to relevant liquor licensing records maintained by Liquor and Gaming NSW (LGNSW), Bureau of Crime Statistics and Research (BOCSAR) crime data and Australian Bureau of Statistics (ABS) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. The material before the Authority that was considered when making this decision is listed and, in some cases, briefly summarised in the Schedule.
7. The Authority notes that on 13 October 2016 the Applicant also lodged a related application for a packaged liquor licence, which will adjoin the café (the subject of this on-premises licence Application).

LEGISLATIVE FRAMEWORK

8. The legal requirements for the making of a valid application for a new liquor licence are provided by section 40 of the Act and the *Liquor Regulation 2008* (Regulation).

The power to grant and application for a liquor licence is provided by section 45 of the Act.

9. Pursuant to section 24(3) the Authority may endorse an on-premises licence with an authorisation that allows liquor to be sold or supplied for consumption on the licensed premises otherwise than with, or ancillary to, the other product or service provided or supplied to people on the licensed premises.
10. For the purposes of section 48(5) of the Act, section 48(2)(g) defines a relevant application as including any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations.
11. Clause 10 of the Regulation requires a Category A CIS to be lodged for a relevant application, which includes an application for an authorisation under section 24(3) of the Act.
12. Section 48(5) of the Act requires that the Authority must not grant an application unless satisfied that “the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community”.
13. For the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Gundaroo.
14. Consistent with the Authority’s long standing policy to find that the broader community comprises the relevant local government area (LGA), the Authority is satisfied that the broader community is, at the time of this decision, the area of Yass Valley Council LGA.
15. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
 - (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 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.*

KEY FINDINGS

16. The Authority is satisfied, on the basis of the Application and CIS material before it, that for the purposes of section 40 of the Act, the Application has been validly made and minimum procedural requirements have been satisfied.
17. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a licensed venue of the kind proposed in the Application. No probity issues were raised with regard to the Applicant following consultation with law enforcement agencies, including NSW Police (Police) and LGNSW.
18. The Authority is further satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service of alcohol practices will be in place with the commencement of licensed trading. This finding is made on the basis of the Applicant's *House Policy* provided on 6 February 2017.
19. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act that the proposed use of the Premises disclosed in this Application falls within the scope of the development consent that is currently in force with regard to the Premises. This finding is made on the basis of the determination of Development Consent No. 5.2009.252.1 issued by Yass Valley Council (Council) on 14 July 2010 and letter from Council dated 8 November 2016 stating that the required development consent is in place for both "packaged cellar door and on premises sales", noting that the development consent "does not extend to a retail bottle shop".

Social Impact – Positive Benefits

20. Noting the absence of any community opposition to the Application, the Authority is satisfied that granting the Application is broadly consistent with the "expectations, needs and aspirations of the community", furthering an object of section 3(1)(a) of the Act.
21. On the basis of the Applicant's contentions in the CIS, the Authority is satisfied that granting this on-premises licence for a modern café with a wine maker advising patrons on the wine to accompany their meal will reasonably develop, in the public interest, the liquor industry in respect of the local community in furtherance of the statutory object in section 3(1)(b) of the Act.
22. The Authority is also satisfied, on the basis of the CIS and the comments made by Police in their submission dated 27 February 2017, that Gundaroo is a tourist destination and granting the licence will to some extent contribute to the responsible development of the tourism industry, in accordance with the object expressed in section 3(1)(c) of the Act.

Social Impact – Negative Impacts

23. Having reviewed all the material before it, the Authority considers that over time there is a risk that liquor sold at an on-premises licensed business that is subject to

a primary service authorisation will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse liquor.

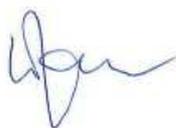
24. Although the Application is subject to a primary service authorisation operating the same trading hours as the proposed licensed trading hours, the Authority is satisfied, on the basis of the Application, CIS and Police submission dated 27 February 2017, that the licensed trading hours sought to be exercised on the Premises are a mitigating factor providing a modest reduction in the scope for harm generated by this licence. The Applicant proposes to trade between 10:00am and 5:00pm Monday through Sunday. These hours are significantly less extensive than the standard hours potentially available under the Act, particularly in the evenings. The Authority is further satisfied, on the basis of the Police submission received 27 February 2017, that the proposed trading hours will not heavily impact on the general duties of Police. The limited evening hours objectively reduce the scope for potential adverse impacts from the sale of liquor at this business.
25. The Authority is satisfied, on the basis of the Applicant's plan/diagram of the Premises that this is a medium scale licensed premises in relative terms. The square meterage (confirmed subsequent to the decision in an email to licensing staff from the Applicant's solicitor on 24 March 2017) is 107 square metres.
26. Although licence density data suggests that the local and broader community have somewhat high rates of packaged liquor licences and on-premises licences subject to a primary service authorisation per 100,000 persons, the weight given to this factor has been reduced by the relatively small populations of the local and broader communities (15,020 for Yass Valley LGA and 1,032 for the suburb of Gundaroo) which has the potential to skew the data. The Authority is satisfied on the basis of LGNSW licensing records that the state suburb of Gundaroo has only one on-premises licence with a primary service authorisation and Yass Valley LGA currently has four on-premises liquor licences with primary service authorisations.
27. The Authority is satisfied, on the basis of BOCSAR Crime Maps for the period between October 2015 and September 2016 that concentrations of alcohol related crime are not prevalent in the local community surrounding the Premises.
28. The Authority is further reassured by the BOCSAR NSW Crime Statistics for the year ending September 2016 that Yass Valley LGA has lower rates of alcohol related *domestic assault*, *non-domestic assault* and *malicious damage to property* per 100,000 persons compared to NSW as a whole.
29. The Authority notes, on the basis of the information sourced by licensing staff from ABS Socio-Economic Indexes For Areas (SEIFA) data, that both the Yass Valley LGA and the suburb of Gundaroo are relatively very advantaged, ranking in the highest decile on the Index of Relative Socio-Economic Advantage and Disadvantage.

30. When making this decision, the Authority has had regard to the conditions to which the licence will be subject and the measures set out by the Applicant in the *House Policy* submitted by the Applicant on 6 February 2017.

Conclusion

31. The Authority is 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. The interested parties include Police, the Applicant, Council and neighbouring occupiers and all other parties required to be consulted under the legislation.
32. Having considered together the positive benefits and negative impacts that the Authority are satisfied are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the Act that the overall social impact of granting this on-premises licence with a primary service authorisation would not be detrimental to the well-being of the local and broader communities.
33. The Application is approved pursuant to sections 45 of the Act.
34. Pursuant to section 24(3) of the Act, the Authority has endorsed the on-premises licence with a primary service authorisation that allows liquor to be sold or supplied for consumption on the licensed Premises otherwise than with, or ancillary to a full meal.
35. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) – including (a) the need to minimise harm associated with misuse and abuse of liquor (including 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.

Decision Date: 22 March 2017



Philip Crawford
Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>

SCHEDULE

Material Before The Authority

1. ABS SEIFA data sourced by licensing staff on the basis of the 2011 census indicating that the Yass Valley ranks in the 9th decile on the Index of Socio Economic Advantage and Disadvantage by comparison to other local government areas in New South Wales and the State Suburb of Gundaroo ranks in the tenth decile.
2. Data prepared by licensing staff based on the ABS 2011 Census population data and LGNSW licensing data as of 23 February 2017, indicating that the State suburb of Gundaroo has a rate of **193.79** liquor licences per 100,000 persons, while the Yass Valley LGA has a rate of **73.25** compared to a State-wide rate of **35.63** and the New South Wales rate is **35.63**.
3. BOCSAR NSW Crime Statistics for October 2014 to September 2016 (published on the BOCSAR website). For the twelve months ending September 2016 this data indicates that:
 - (a) The rate of alcohol related assault (domestic assault) incidents in Yass Valley per 100,000 persons is **66.9** compared to the NSW rate of **118.1**;
 - (b) The rate of alcohol related assault (non-domestic assault) incidents in Yass Valley per 100,000 persons is **60.9** compared to the NSW rate of **137.9**;
 - (c) The rate of malicious damage to property incidents in Yass Valley per 100,000 persons is **499** compared to the NSW rate of **838.1**.
4. BOCSAR Crime Maps based upon data from October 2015 to September 2016 detailing hotspots for the concentration of offences near the location indicating that the Premises
 - (a) Is *not located* within any hotspots for incidents of *alcohol related assault*;
 - (b) Is *not located* within any hotspots for incidents of *assault (domestic assault)*;
 - (c) Is *not located* within any hotspots for incidents of *assault (non-domestic assault)*;
 - (d) Is *not located* within any hotspots for incidents of *malicious damage to property*.
5. Application form lodged on 13 October 2016
6. Category A CIS lodged on 13 October 2016 attaching a list of neighbouring stakeholders and special interest groups.
7. Email from the Applicant's representative dated 27 October 2016 in response to an email from licensing staff dated 14 October 2016 attaching the following documents: Certificate of advertising signed by the Applicant on 25 October 2016; the Applicant's National Police Certificate; signed page 9 of the CIS form.
8. Plan/diagram of the Premises highlighting in Red the proposed licensed area of the adjoining packaged liquor licence (as sought in the related packaged liquor licence application) and highlighting in yellow the proposed licensed area of the café for the on-premises licence.

9. Local Consent Authority Notice, Public Consultation Site Notice and Police Notice.
10. Email from the Applicant's representative dated 6 February 2017 in response to an email from licensing staff dated 1 February 2017 attaching a copy of the Applicant's undated *House Policy*.
11. Submission from Senior Constable Philip Anderson, Licensing Officer of the Hume Local Area Command (LAC) of Police received 27 February 2017. In this two-page submission, Police note that Gundaroo is a small farming community, which has a growing weekend tourist trade from Canberra, that there is no Police stationed at the location of the Premises and the nearest major station is Yass. Police believe that the proposed hours of operation "will not heavily impact on the general duties of Police". Police advise that they do not object to the Application but request that conditions relating to crime scene preservation, minimum CCTV requirements, membership of the local liquor accord and the kitchen being operational at all times the primary service authorisation is being exercised be imposed upon the licence. Police contend that these conditions will assist them if an incident does occur at the Premises.
12. Submission from LGNSW Compliance Operations dated 28 February 2017 including the results from the application of the automated Environment and Venue Assessment Tool and advising that LGNSW does not intend to carry out any further assessment.
13. Google geographical maps depicting an aerial view of the location of the Premises extracted by licensing staff on 3 March 2017.
14. Email from the Applicant's representative dated 6 March 2017 responding to an email from licensing staff dated 28 February 2017. In this email the Applicant clarifies the licensed area of both the café and cellar door; describes where the liquor sales will be made and how the licensee will ensure bottles purchased for takeaway from the related packaged liquor licensed area (the subject of the related application) are not opened and/or consumed on the Premises; describes how the on-premises licensed area will be physically defined from the packaged liquor licensed area (the subject of the related application); advises that the tastings area and the primary service area will not be unlicensed; describes how tastings will be conducted; and confirms the Applicant's intended use of the primary service authorisation and what area it will be restricted to.
15. The Applicant has attached the following documents to this email: amended *House Policy* provided by the Applicant on 6 March 2017 in relation to the related application for a packaged liquor licence; a plan/diagram of the licensed area of the packaged liquor licence (the subject of the related application); substituted plan/diagram of the licensed area of the packaged liquor licence (the subject of the related application); plan/diagram of the licensed area of the packaged liquor licence (the subject of the related application) highlighted in blue and the on-premises licensed area highlighted in yellow.

16. Email from the Applicant's representative (undated) responding to an email from licensing staff dated 8 March 2017 advising that the Applicant is happy to include the kitchen in the on-premises licensed area.
17. Email from the Applicant's representative (undated) responding to an email from licensing staff dated 19 December 2016. In this email the Applicant agrees to a number of conditions being imposed upon the licence, advises that Council consents to the proposed on-premises licence, describes how the licensed area of the packaged liquor licence (the subject of the related application) will be physically separated from the on-premises restaurant, describes how the outdoor area of the licensed café is physically defined and requests that the Authority accept a House Police instead of a Plan of Management.
18. The Following documents are attached to this submission:
 - Letter from Council dated 8 November 2016 advising that development consent 5.2009.252.1 is in place for both packaged cellar door and on-premises sales, but noting however that the development consent does not extend to a retail bottle shop. This letter attaches a copy of the local consent authority notice and development Application No. 5.2009.252.1 issued by Council on 14 July 2010.
 - Cork St. Café outside terrace seating plan
 - Cork St, Café Draft Food and Drink Menu
 - Four photographs depicting the outside terrace, inside the café and wine sales area, wine tasting and sales area and the kitchen and service counter.