

**NSW Department of Justice  
Liquor & Gaming NSW**

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**APPLICATION NO:** APP-0001662253  
**APPLICATION FOR:** On premises with Primary service authorisation  
**PROPOSED TRADING HOURS:** Restaurant:  
Monday to Thursday: 10:00 AM to 06:00 PM  
Friday to Sunday: 10:00 AM -10:00 PM  
Primary Service Authorisation:  
Monday to Thursday: 10:00 AM to 06:00 PM  
Friday to Sunday: 10:00 AM -10:00 PM  
**APPLICANT:** Mr Simon SMITH  
**LICENCE NAME:** megalong valley tearooms  
**PREMISES ADDRESS:** 824 Megalong Rd, MEGALONG VALLEY, NSW 2785  
**ISSUE:** Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for an on premises licence with primary service authorisation and impose conditions for that licence.  
**LEGISLATION** S45(1) S 48(5)

**ILGA DELEGATED DECISION - APPLICATION FOR ON-PREMISES LICENCE – MEGALONG VALLEY TEAROOMS**

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 with conditions the following licence application APP-0001662253.

On 28 October 2016 and after careful consideration of the Application and other material, the delegate decided to approve the Application.

**Conditions imposed:**

- 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.
- 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 31st	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.	

- The business authorised by this licence must not operate with a greater overall level of social impact on the well being of the local and broader community than what could be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
- The premises are to be operated at all times in accordance with the Plan of Management dated 17 September 2016 as may be varied from time to time after consultation with the Local Area Commander.
- The licensee or its representative must join and be an active participant in the local liquor accord.
- The licensee must ensure that immediately after the licensee or a staff member becomes aware of an incident on the licensed premises involving an act of violence causing injury to a person that all reasonable steps are taken to preserve and keep intact the area where the incident occurred and that the Local Area Commander of the local police area in which the licensed premises is located is advised by a staff member of the incident.

## 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 07 April 2016 – RM8 Reference DOC16/031469.
2. Community Impact Statement (CIS) document and supporting material that accompanies the Application, dated 07 April 2016 - RM8 Reference DOC16/031473.
3. Competency Card for Simon Robert SMITH - RM8 Reference DOC16/033103.
4. NSW National police certificate form Simon Robert SMITH dated 21 April 2016– RM8 Reference DOC16/039043.
5. Submission from council dated 8 April 2016 confirming that council have no objection to the application and development consent is not required to permit it the proposed activity – RM8 Reference DOC16/034695.
6. Submission from police dated 10 May 2016 confirming that police have no concerns with the application and proposing a condition to be imposed on the licence - RM8 Reference INW16/50099.
7. Email correspondence from the Authority to the applicant including applicant's consent to the imposition of the licence conditions - RM8 Reference DOC16/105883, DOC16/106964 & DOC16/106965.
8. Plan of management for the premises Dated 17 September 2016 - RM8 Reference DOC16/106984.
9. Premises plans - RM8 Reference DOC16/106985.

### 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

3.1 In determining an application for a licence, under section 45(3) of the *Liquor Act 2007*, the delegate must also be satisfied that:

- 3.1.1 the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates,
- 3.1.2 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
- 3.1.3 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 State suburb of Megalong Valley and the “broader community” comprises the Blue Mountains City Council LGA.

## 5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on-premises liquor licence with primary service authorisation is unlikely to result in a significant increase in alcohol related issues in the local community.
- (2) The proposed licensed premises is a restaurant with primary authorisation. A submission was received from Blue Mountains City Council confirming that development consent is not required to permit the proposed activity.
- (3) A submission was received from Blue Mountains Local Area Command. Whilst the submission does not constitute an objection, it does recommend the imposition of a condition, whilst the applicant has consented.
- (4) The licence will be exercised in accordance with a detailed Plan of Management that details the responsible service of alcohol.
- (5) I am satisfied that the statutory advertising requirements have been met.

## 6. Overall social impact

### (1) Positive benefits

Having examined the material provided with the application, I am satisfied that the grant of the liquor licence will be of public interest in the local community. It will provide tourists and locals with a local alternative to Blackheath at a more holistic food and beverage venue in the Megalong Valley.

### (2) Negative impacts

There were no objections to the granting of this application. A number of conditions have been imposed on the licence to ensure responsible service of alcohol.

## 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 on-premises restaurant liquor licence with primary service authorisation application with conditions.



Decision Date: 28/10/2016

Catherine Bass-Kendzy

A/Director 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>