



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

DOC16/176304

APPLICATION NO: APP-0001864712

APPLICATION FOR: On-premises liquor licence with Primary Service Authorisation

PROPOSED TRADING HOURS: 10:00 AM to 12:00 AM Monday to Saturday
10:00 AM to 10:00 PM Sunday

APPLICANT: BADDOCKMARTIN PTY LTD

PROPOSED LICENSED PREMISES NAME: Groundstone

APPROVED MANAGER: Katie Anne Baddock

PREMISES ADDRESS: 151 Byng St ORANGE NSW 2800 Australia

ISSUE: Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for Liquor – on-premises liquor licence with Primary Service Authorisation.

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

**ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES LIQUOR
LICENCE WITH PRIMARY SERVICE AUTHORISATION –
GROUNDSTONE**

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 number: APP-0001864712.

On 21 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. Consumption on premises

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|---------------------------|--|
| 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.

3. 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 be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4. The premises are to be operated at all times in accordance with the Plan of Management dated 10 December 2016 as may be varied from time to time after consultation with the Local Area Commander.
5. The premise is to operate with its principal business being that of a restaurant as defined by the Liquor Act and not as a bar.
6. The Licensee is to ensure that no drinks commonly referred to as shots, shooters or slammers etc are to be sold or supplied at the premises, this includes all drinks that are prepared to be consumed rapidly.
7. The licensee must ensure that all patrons must have an allocated seat when served or supplied alcohol, or while consuming alcohol.
8. The primary purpose of the premises is as a restaurant with the kitchen to be open and substantial food service to be available to patrons at all times during the approved hours of operation.
9. Tables are not to be removed to increase patron standing space. The maximum number of patrons permitted on the premises must not exceed the number of available seated positions (100 seats).
10. Venue staff must prepare all alcoholic drinks in the designated bar area and then take those drinks to the patron's table.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the Application, and other relevant material:

- (1) Application form for on-premises liquor licence with Primary Service Authorisation, lodged 16 August 2016 (DOC16/089090)
- (2) Category A Community Impact Statement (CIS), dated 16 August 2016 (DOC16/089091)
- (3) Development Application No. DA 3/2014(1) granted by Orange City Council on 18 March 2014 approving the use of the premises as an information and education facility with ancillary café (DOC16/092196)
- (4) Report to Western Region Joint Regional Planning Panel from Town Planner regarding development application for 151 Byng St, Orange, dated 4 March 2014 (DOC16/092215)
- (5) A copy of the lease for the premises between Orange Council and the applicant, which confirms the boundary of the premises, including the outdoor dining area (DOC16/175290)
- (6) Plan of the premises, approved by the applicant on 18 December 2016 (DOC16/174944)
- (7) Certificate of Advertising Application, signed and dated on 18 August 2016 (DOC16/091643)
- (8) ASIC extract for licensee and business owner, BADDOCKMARTIN PTY LTD ACN: 164 428 059 (DOC16/089093)
- (9) Submission from the Licensing Sergeant, Canobolas Local Area Command, NSW Police Force, dated 1 December 2016, advising that there are no objections to the application (DOC16/165350)
- (10) A submission and Environment and Venue Assessment Tool (EVAT) Assessment Report from the Compliance team of Liquor & Gaming NSW, raising no objections to the application and proposing three conditions to be imposed on the licence, dated 15 December 2016 (DOC16/173771)
- (11) Email correspondence from the Authority to the applicant requesting further information (DOC16/089102, DOC16/162050, DOC16/173834, DOC16/173835, DOC16/174962)
- (12) Email correspondence from the applicant to the Authority, including applicant's consent to the imposition of the licence conditions (DOC16/091632, DOC16/092912, DOC16/173729, DOC16/174936, DOC16/174938, DOC16/174939, DOC16/175288)

- (13) Plan of Management, dated 10 December 2016 (DOC16/173757)
- (14) Photographs of the premises, and a copy of the current menu (DOC16/173760)
- (15) Appointment of Manager – Notice, appointing Ms Katie Anne Baddock as Manager of the licence (DOC16/174943)

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:
 - 4.2.1. the grant or removal of a small bar licence (where required),
 - 4.2.2. a packaged liquor licence (limited to telephone/internet sales),
 - 4.2.3. 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 Orange and the “broader community” comprises the Orange LGA.

5. Analysis of Submissions and other Materials

- (1) The application is for an on-premises licence with Primary Service Authorisation. The purpose of the Primary Service Authorisation is primarily to enable patrons to have a drink before attending an event in the arts precinct, which the café is part of.
- (2) The development consent for the premises states that the trading of the café is limited to generally coincide with the operating hours of the museum, with the exception of when events are held in the café, art gallery, civic centre, council, museum & museum precinct. Accordingly, the café will generally operate with shorter trading hours than is approved by the Authority.
- (3) A submission from Police was received in which Police raised no objections to the application.

- (4) A submission and Environment and Venue Assessment Tool (EVAT) Assessment Report was received from the Compliance team of Liquor & Gaming NSW, raising no objections to the application and proposing three conditions to be imposed on the licence, all of which the applicant consented to. The EVAT assessment report assessed the risk factors for location and venue risk as mostly low to moderate, with a high police risk assessment. The Compliance team confirmed that it did not intend to carry out any further assessment of this application.
- (5) No other objections or submissions were received in respect of this application.
- (6) The licence will be exercised in accordance with a Plan of Management details measures to be employed to ensure the responsible service of alcohol.
- (7) I am satisfied that the statutory advertising requirements have been met.
- (8) Having reviewed all of the material, I am satisfied that this application for an on-premises liquor licence is unlikely to result in any significant increase in alcohol-related harms in the local community.

6. Overall social impact

(1) Positive benefits

The granting of the licence is likely to contribute positively to the vibrancy of the arts precinct in Orange. It will provide visitors to the arts precinct with the opportunity to enjoy a meal and a drink before visiting the museum or attending a show. This will bring positive benefits to both the local and broader community.

(2) Negative impacts

No objections have been received to this application, which relates to an existing business. A number of conditions have been imposed on the licence. The licence will be operated in accordance with harm minimisation measures prescribed by those conditions and outlined in the Plan of Management provided by the applicant.

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: 21 December 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>