

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

APPLICATION NO:	APP-0003275239
APPLICATION FOR:	Packaged liquor licence (online only)
TRADING HOURS:	Monday to Saturday: 6:00 AM to 11:00 PM Sunday: 10:00 AM to 10:00 PM
LICENCE NAME:	Gatrom Wine
APPLICANT:	GASTRONOM WINE PTY LTD
APPROVED MANAGER:	Antoine Portmann
PREMISES ADDRESS:	U 10 37 Foster Street SURRY HILLS NSW 2010
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE
GASTRONOM WINE**

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 only), application number APP-0003275239.

On 22 September 2017, 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 12:00 AM and 6:00 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 to 10:00 PM Sunday
Christmas Day	Not permitted
December 31st	Normal trading
3. Limited to the sale of liquor only by means of taking orders over the telephone or by facsimile or mail order, or through an Internet site.

4. No liquor products for sale under this liquor licence are to be stored at the licensed premises address.
5. The licensee must ensure that no tastings are conducted on the premises.

STATEMENT OF REASONS

1. Material before the ILGA delegate

RM8 Ref: DF17/014574

- (1) Application for packaged liquor licence, lodged 21 August 2017
- (2) File note of a telephone conversation between Liquor & Gaming NSW and the applicant in respect of some minor typographical errors on the application form, dated 23 August 2017
- (3) Category A Community Impact Statement, dated 21 August 2017, and accompanying documents
- (4) Application Notices
- (5) Certification of Advertising Application, dated 30 August 2017
- (6) Plan of the proposed licensed premises
- (7) ASIC Certificate of Registration of a Company, and Register of Members for 'GASTRONOM WINE PTY LTD'
- (8) Appointment of Manager Notice appointing Antoine Portmann to manage the liquor licence, dated 6 September 2017
- (9) Copies of Antoine Portmann's National Police Certificate, RSA Competency Card and identification
- (10) Letter from the premises owner granting permission for the premises to be used in conjunction with a liquor licence
- (11) Submission from City of Sydney Council, dated 20 July 2017, raising no objection to the application, and advising that "a home office is permitted for the proposed use"
- (12) Email correspondence from Liquor & Gaming NSW to the applicant, requesting further information in support of the application, dated 30 August 2017, and 5 September 2017
- (13) Email correspondence from the applicant to Liquor & Gaming NSW, in response to the request for further information, dated 31 August 2017, and 6 September 2017

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

Liquor & Gaming

- (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 the granting or removal of:
 - a. a small bar licence,
 - b. a packaged liquor licence (limited to telephone/internet sales),
 - c. an on-premises licence relating to a restaurant that, in the case of a new licence, includes an application for a primary service authorisation,
 - d. an on-premises licence relating to a karaoke bar, a catering service or a vessel,
 - e. an application for a producer/wholesaler licence that, in the case of a new licence, includes an application for a drink on-premises authorisation
 - f. an application for ongoing extended trading hours to permit the sale of liquor after midnight in relation to any of the above licence types.
- (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 Surry Hills, and the “broader community” is the state of New South Wales, due to the nature of the licence.

5. Analysis of submissions and other materials

- (1) This application is for a liquor licence for an online retailer who proposes to provide a gourmet food and wine pairing service, which involves providing members of the service with gourmet ingredients, wine, recipes, tasting notes etc.
- (2) The proposed licensed premises comprises of a home office situated in a residential dwelling, at which online orders will be received and processed. Liquor will be stored and dispatched from a warehouse a separate location, and customers will not be attending the licensed premises for the purpose of purchasing liquor.
- (3) City of Sydney Council made a submission raising no objections to the application, and advising that a home office is permitted for the proposed use.
- (4) No objections have been received in respect of this licence application.

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

6. Overall social impact

(1) Positive benefits

The granting of the licence will result in the introduction of a unique service into the market which is focused on education and appreciation of gourmet food and wine. By its nature, the subscription service encourages an attitude of moderation.

(2) Negative impacts

No objections were received and no concerns were raised. 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 location. Customers will not be attending the premises to browse, purchase or 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) 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) In making this decision under delegation of the Authority, all statutory objects and considerations prescribed by section 3 of the Act were considered and accordingly, I have determined to grant with conditions the licence application.

Decision date: 22 September 2017



Sarah Green
A/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.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>