

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

APPLICATION NO:	APP-0004371340
APPLICATION FOR:	Small bar liquor licence
TRADING HOURS:	Monday to Sunday: 12:00 AM to 2:00 AM
APPLICANT:	Bernecki, Sophia Annie
LICENCE NAME:	Allan Grammar
PREMISES ADDRESS:	413-427 High Street, Penrith NSW 2750
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

Allan Grammar

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 small bar liquor licence, application number APP-0004371340.

On 4 July 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 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

Good Friday	Not permitted
Christmas Day	Not permitted
December 31st	Normal trading

Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.

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3. Crime Scene preservation

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- a) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- b) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,
- c) make direct and personal contact with NSW Police to advise it of the incident, and
- d) comply with any directions given by NSW Police 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 premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.

4. CCTV

The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

- a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
- b) recordings must be in digital format and at a minimum of six (6) frames per second,
- c) any recorded image must specify the time and date of the recorded image,
- d) the system's cameras must cover the following areas:
 - (1) all entry and exit points on the premises,
 - (2) the footpath immediately adjacent to the premises, and
 - (3) all publicly accessible areas (other than toilets) within the premises.

2. The licensee must also:

- a) keep all recordings made by the CCTV system for at least 30 days,
- b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
- c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

5. No drinks commonly referred to as shots, shooters, slammers and/or bombs are to be sold or supplied.

STATEMENT OF REASONS

1. Material before the ILGA delegate

CM9 Ref: DF18/009016

- (1) Application for small bar liquor licence, dated 30 May 2018
- (2) Plan of the proposed licensed premises
- (3) National Police Certificate for the applicant, dated 4 May 2018
- (4) Identification documentation for the applicant
- (5) Signed application notices
- (6) Development consent from Penrith City Council dated 19 February 2018, for use of premises as a small wine bar & outdoor dining area.
- (7) Email to the applicant requesting further information sent 8 June 2018
- (8) Submission from Council received 12 June 2018 restricting the hours of the small bar to 10pm on Sundays.
- (9) Police submission received 19 June 2018
- (10) Email response in relation to Police submission received 20 June 2018
- (11) Email correspondence from the applicant to Liquor & Gaming NSW providing response to earlier request for additional information received 26 June 2018
- (12) Certification of Advertising declaration, signed by the applicant on 27 June 2018
- (13) Plan of Management for the venue, dated 27 June 2018
- (14) Email correspondence from the applicant advising outdoor dining area will not be included in the licensed area dated 26 June 2018.

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 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 Penrith, and the “broader community” of the Penrith City Council LGA.

5. Analysis of Submissions and other Materials

- (1) This application is made for a small wine bar for a patron capacity of 100 persons located in Penrith.
- (2) The small bar will only serve alcohol within the indoor area of the small bar, however food will also be available in the outdoor area.
- (3) Allan Grammar is an up market wine bar who aims to provide beautiful food and service to the highest of standards in a relaxing and safe environment for not only guests, but their employees.
- (4) Entertainment will be provided in the form of soft background music to encourage the mood of the space. No live music will be played.
- (5) The applicant signed a declaration confirming that within 2 days of making the application for a small bar, a copy of the liquor licence application was provided to the local licensing police and within 2 days of lodging the development consent application, notification was provided to police and the secretary.
- (6) Appropriate development consent is now in place for use of the premises as a small bar. The development consent restricts trading hours to 12:00 AM on Sundays, however the standard allowable small bar trading hours of 12:00 PM to 2:00 AM are permitted from Monday to Saturday. Although the liquor licence will be endorsed with the standard small bar trading hours permitted by the *Liquor Act 2007*, the licence must be exercised in accordance with the lesser hours prescribed by the local consent authority.
- (7) Police submission received in respect of the application raised no concerns.

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- (8) Council submission raised concerns in relation to the tenancy of the premises. As clarification regarding the premises address has been provided, the address correctly reflects that of the application.
- (9) The Compliance branch of L&GNSW raised no objection to the application.
- (10) No further submissions were received.
- (11) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The granting of the licence will contribute to the diversity of venues in Penrith with this small bar licence being the first small bar in the suburb, which will enable patrons to enjoy a drink with or without a meal in a safe and sophisticated setting.

(2) Negative impacts

A range of factors suggest that the small bar is unlikely to have any significant negative impact on the local or broader community, including, the limited trading hours (on a Sunday) and the fact that that the venue will not be providing live entertainment nor utilising any outdoor area. Further, the Plan of Management and licence conditions will serve to mitigate any potential negative impacts.

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: 4 July 2018



Manager, Licensing (Business Licensing)
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>