

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

APPLICATION NO:	APP-0001994475
APPLICATION FOR:	On-premises liquor licence for a restaurant with catering service and Primary Service Authorisation Restaurant and catering service: Monday to Saturday: 11:00 AM to 12:00 AM Sunday: 11:00 AM to 5:00 PM
TRADING HOURS:	Primary Service Authorisation: Monday to Saturday: 11:00 AM to 12:00 AM Sunday: 11:00 AM to 5:00 PM
APPLICANT:	Two Eight Two Eight Inc.
LICENCE NAME:	Two Eight Two Eight
APPROVED MANAGER:	Phillip John Haling
PREMISES ADDRESS:	28 Bourbah Street GULARGAMBONE NSW 2828
ISSUE:	Whether the delegate of the Independent Liquor & Gaming Authority (the Authority) should grant the liquor licence application relating to Two Eight Two Eight.
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

TWO EIGHT TWO EIGHT

The Independent Liquor & Gaming Authority (the Authority) may grant a liquor licence pursuant to section 45 of the *Liquor Act 2007* (the Act). This Authority has delegated this function to Coordinator Licensing, Liquor & Gaming NSW (L&GNSW) pursuant to the *Gaming and Liquor Administration Act 2007*. The delegate has determined to grant the application for an on-premise liquor licence for a restaurant with catering service with Primary Service Authorisation, application number APP-0001994475 (Two Eight Two Eight).

The granting of the application is subject to the following conditions being imposed on the licence:

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

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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. Restaurant:

Consumption on premises

Good Friday 12:00 noon - 10:00 PM

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.

3. Catering service:

Consumption on premises

Good Friday Normal trading

Christmas Day Normal trading

December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

4. 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.

5. The licensee will not permit alcoholic beverages to be removed from the premises.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 9 September 2016 (DOC16/102514)
- (2) Category A Community Impact Statement, signed and dated by the applicant on 31 August 2016 (DOC16/102516)
- (3) Local Consent Authority Notice prepared by Coonamble Shire Council on 29 September 2016, indicating that development consent is required but not in place (DOC16/116895)
- (4) Development Certificate Approval No: 029/2016, issued by Coonabmle Shire Council on 14 November 2016, approving the operation of an on-premises liquor licence and Primary Service Authorisation at the premises (DOC16/161901)
- (5) Certification of Advertising Application, signed and dated by the applicant on 31 August 2016 (DOC16/116899)
- (6) Police submission, dated 28 February 2017, objecting to the application (DOC17/042210)
- (7) Applicant's response to the Police submission, dated 1 March 2017 (DOC17/044833)
- (8) Appointment of Manager – Notice, signed and dated by the applicant on 3 November 2016 (DOC16/142896)
- (9) Photographs of the premises and a copy of the café menu (DOC17/030265, DOC17/030267)
- (10) Plan at grant of proposed premises lodged with application and amended on 23 February 2017 (DOC17/040577)
- (11) Business Model and House Policy as at February 2017 (DOC17/040567)
- (12) Environment and Venue Assessment Tool (EVAT) Assessment Report, prepared by the Compliance branch, Liquor & Gaming NSW, on 23 February 2017 (DOC17/038328)
- (13) Minutes of the Two Eight Two Eight Inc Annual General Meeting on 10 October 2016 (DOC17/030270)
- (14) Copy of Philip John Haling's RSA Competency Card (DOC16/147632)
- (15) Email correspondence between the applicant and Liquor & Gaming NSW requesting and providing further information and consenting to the imposition of the proposed conditions, spanning from September 2016 to February 2017 (DOC16/102526, DOC16/116894, DOC16/116900, DOC16/126460, DOC16/126466, DOC16/142905, INT16/50649, DOC16/147623, DOC16/147631, DOC16/161900, DOC17/021393, DOC17/030255, DOC17/030257, DOC17/034856, DOC17/036966, DOC17/037009, DOC17/038457, DOC17/038461, DOC17/040564, DOC17/040569, DOC17/042223, DOC17/044831)

2. Legislative framework, statutory objects and considerations

The granting of a liquor licence must be consistent with the Objects of the Act, which are: 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; and c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

Therefore, in order to secure the Objects of the Act, each person who exercises functions under the 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; and 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 in 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);

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- 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 Gulargambone, and the "broader community" of the Coonamble Shire 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 is unlikely to result in any significant increase in alcohol-related harm in the local community.
- (2) The proposed licensed premises is a community run café located in Gurlargambone, a small village in the central west plains of NSW. Although Coonamble Shire Council initially indicated that development consent was not in place, the applicant has since obtained appropriate development consent permitting the proposed activity.
- (3) A submission was lodged by Walgett Police, objecting to the application on the grounds that there are sufficient liquor outlets to meet the needs of the local community, and the granting of the liquor licence will be detrimental to the wellbeing of the local and broader community. In addition, Police submit that members of the community had issues and concerns with the application which came to light during the CIS process. However, no specific information was provided on who held these concerns or what they were, precisely. The applicant addressed these issues in a submission in response.
- (4) Specifically, the applicant submits that the premises will fill a void in the local community. Namely, Two Eight Two Eight will be the only place in town where people can have a social lunch. She reiterates that the café will continue to be operated as a café and that it is not their intention to transform the space into a bar. Further, she argues this is a good opportunity for local residents and tourists alike to frequent and support a locally operated café and give back to the community. In addition, she points out that the Community Impact Statement resulted in no written objections from local residents, and that only one individual verbally expressed an objection, but she did note this came from a person affiliated with the local hotel.

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- (5) Compliance & Enforcement provided an EVAT report and an accompanying email advising that “Liquor & Gaming NSW does not intend to carry out any further assessment of this application at this time”. No concerns were raised.
- (6) No other submissions were received.
- (7) The Secretary’s delegate has requested conditions to be imposed on the licence. The applicant’s response to the proposed conditions has been considered.
- (8) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The proposed licensed premises is an award winning community run facility which includes a café and catering service. The premises offers a range of services to the small village of Gurlargambone.

(2) Negative impacts

Police objected to the granting of the liquor licence. Police believe that there are sufficient liquor outlets to meet the needs of the local population, which is declining. Police noted that the local community experiences high socio-economic disadvantage and a high alcohol-related crime rate. Police are concerned that the premises will become a target for crime and antisocial behaviour.

In order to minimise the negative impacts of granting the licence on the local and broader community, a number of conditions have been imposed on the licence.

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 that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place. I have considered the concerns raised by local Police regarding increased risk of alcohol-related harm and anti-social behaviour. It is significant that no other written objections were received in the course of the CIS process. While Police indicate that members of

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the community raised concerns and issues, this is not borne out by the evidence and there is nothing before me to substantiate this nor to identify what these issues entail.

- (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 the licence application with conditions as noted.

Decision Date: 30 May 2017



Mary Butterfield
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.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>