

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

APPLICATION NO:	APP-0002625912
APPLICATION FOR:	On-premises liquor licence for a restaurant with Primary Service Authorisation.
TRADING HOURS:	Monday to Saturday: 10:00 AM to 12:00 AM Sunday: 10:00 AM to 10:00 PM
APPLICANT:	Stephen Swart
LICENCE NAME:	Vine & Tap
PREMISES ADDRESS:	Shops 4 & 5 142 William Street BATHURST NSW 2795
ISSUE:	Whether the delegate of the Independent Liquor & Gaming Authority (the Authority) should grant the liquor licence application relating to Vine & Tap.
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE
VINE & TAP**

The Independent Liquor & Gaming Authority (the Authority) may grant a liquor licence pursuant to section 45 of the *Liquor Act 2007* (the Act). This application seeks an on-premises liquor licence for a restaurant with Primary Service Authorisation. The 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 relating to Vine & Tap (application number APP-0002625912). A list of the material that is before the delegate of the Authority is set out in Annexure A.

After careful consideration of the application and other material, the application is approved, 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 04:00 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 - restaurant

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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 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.

3. No drinks commonly known as shots, shooters, slammers, or bombs, that are designed to be consumed rapidly, or any alcoholic drink mixed with an energy drink, are to be sold or supplied.
4. The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz \pm 8kHz inclusive) by more than 5dB between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz \pm 8kHz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

For the purposes of this condition, LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises.

STATEMENT OF REASONS

1. 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:

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.

2. 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.

3. 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 Bathurst, and the "broader community" of the Bathurst Regional Council LGA.

4. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on-premises liquor licence for a restaurant is unlikely to result in any significant increase in alcohol-related harm in the local community.
- (2) Police made a submission raising no objections to the on-premises liquor licence and Primary Service Authorisation, however, Police asked that an Alcohol Management Plan is in place and that this is adhered to when operating the business. The applicant adequately addressed Police concerns in a submission in response. Further, Police recommend a noise condition be imposed on the licence, which the applicant has consented to.

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- (3) The submission which was received from the Bathurst Regional Council did not raise any objections to the granting of the licence.
- (4) I am satisfied that appropriate development consent which permits the proposed activity is in place.
- (5) The licence will be exercised in accordance with a Plan of Management and licence conditions that addresses the responsible service of alcohol, and provides measures to ensure that the operation of the premises does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (6) I am satisfied that the statutory advertising requirements have been met.

5. Overall social impact

(1) Positive benefits

This application is for a restaurant with 125 patron capacity located in the entertainment precinct of Bathurst. There were no adverse submissions received relative to this application. The granting of the licence will complement and enhance the services offered by the business.

(2) Negative impacts

The Plan of Management provided by the applicant and conditions imposed on the licence provide a level of certainty that there are unlikely to be any major impacts on the local community.

6. 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.

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- (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: 9 June 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>

Annexure A

Material before the ILGA delegate

- (1) Application form lodged 7 March 2017 (DOC17/048449)
- (2) Category A Community Impact Statement and accompanying annexures, signed and dated by the applicant on 2 March 2017 (DOC17/048451)
- (3) Certification of Advertising Application, signed and dated by the applicant on 15 May 2017 (DOC17/107124)
- (4) Identification and National Police Certificate for the applicant (DOC17/048456, DOC17/048457)
- (5) Plan of the proposed licensed premises (DOC17/048454)
- (6) Development Application No. 2016/400, granted by Bathurst Regional Council on 12 December 2016 (DOC17/048450)
- (7) Submission from the Bathurst Regional Council, dated 9 March 2017 (DOC17/058086)
- (8) Submission from Chifley Local Area Command, received 17 March 2017 (DOC17/057353)
- (9) Further submission from Chifley Local Area Command, received 18 May 2017 (DOC17/109388)
- (10) Liquor Plan of Management, dated May 2017 (DOC17/107127)
- (11) Email correspondence from the Authority to the applicant's legal representative requesting additional information in support of the application, dated 8 and 17 May 2017 (DOC17/099366, DOC17/107786)
- (12) Email correspondence from the applicant's legal representative to the Authority in response to the requests for additional information, dated 16 May 2017 (DOC17/107133)