

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

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**APPLICATION NO:** APP-0002015202

**APPLICATION FOR:** On-premises liquor licence for a restaurant with Primary Service Authorisation

**TRADING HOURS:** Monday to Wednesday 11:00 AM-08:00 PM  
Thursday to Saturday 11:00 AM-12:00 AM  
Sunday 11:00 AM-08:00 PM

**APPLICANT:** Mark McNeil

**LICENCE NAME:** The General Merchant Inverell

**PREMISES ADDRESS:** 82 Byron Street, INVERELL, NSW 2360

**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 *Liquor Act 2007*

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

**The General Merchant Inverell**

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 the application for an on-premise liquor licence for a restaurant with Primary Service Authorisation, application number APP-0002015202.

On 19 April 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 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 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 31<sup>st</sup> 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. 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 is to operate with its principal business as being that of a restaurant as defined by the *Liquor Act*, and not as a bar.
5. The premises is to be operated at all times in accordance with the Plan of Management dated February 2017, as may be varied from time to time after consultation with the Local Area Commander.
6. The kitchen must remain open with substantial food available to patrons whilst the premises is trading.
7. There is to be no stockpiling of drinks commonly known as shots, shooters, slammers or bombs that are designed to be consumed rapidly, or any alcoholic drinks that are mixed with an energy drink.
8. The licensee must ensure that there is a designated seat at a table for each patron in the restaurant, at all times that the restaurant is trading.
9. The licensee is to maintain an approved Incident Register with incidents and details of the action taken, to be recorded in the Incident Register at all times.
10. A copy of all registers, development consents and plans of management must be kept on the premises and made available for inspection immediately upon request by NSW police, Council Officers and/or Liquor and Gaming Authorised Officers.
11. Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing injury to a person on the premises, the person must:
  - (i) Take all practical steps to preserve and keep intact the area where the act of violence occurred, and retain all material and implements associated with the act of violence in accord with Crime Scene Preservation Guideline, issued by NSW Police, and
  - (ii) make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
  - (iii) Comply with and directions given by the Commander or delegate to preserve or keep intact the area where the act of violence occurred.

12. The Licensee must maintain a closed-circuit television system on the premises in accordance with the following:
- (a) The system must record continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times)
  - (b) Recordings must be in digital format and at a minimum of 6 frames per second.
  - (c) Any recorded image must specify the time and date of the recorded image,
  - (d) The system cameras must cover the following areas:
    - (i) All the exit and entry points of the premises,
    - (ii) The footpath immediately adjacent to the premises,
    - (iii) All publicly accessible areas (other than toilets) on the premises.

The licensee must also:

- (a) Keep all recordings made by the CCTV system for at least 30 days, and
- (b) Ensure the system is accessible by at least one member of staff at all times it is in operation.

## **STATEMENT OF REASONS**

### **1. Material before the ILGA delegate**

- (1) Application form lodged 25 October 2016 (DOC16/135822)
- (2) Certificate of Advertising declaration by applicant on 12 February 2017 (DOC17/034234)
- (3) Plan of Management dated February 2017 (DOC17/034235)
- (4) Notice of Determination – Development Application DA-185/2015 dated 11 March 2016 (DOC16/135823)
- (5) Submission from New England LAC dated 17 November 2016 with conditions to be imposed (DOC17/059865)
- (6) A signed notice, dated 31 October 2016 from Inverell Shire Council (DOC17/059873) in addition to a letter from council dated 1 March 2017 in support of the application (DOC17/042529)
- (7) Plan at grant of proposed premises amended on 21 March 2017 (OUT17/858)
- (8) ASIC Current Organisation Extract for the business owner received 21 February 2017 (DOC16/034247)
- (9) Copies of food menus (DOC17/034216/17/22/26/31)

- (10) Email correspondence dated 4 February 2017, (DOC17/023604), from the Authority to the applicant requesting additional information, followed by a second request on 21 March 2017 (DOC17/060207)
- (11) Email correspondence from the applicant dated 18 February (DOC17/034214) and 21 March 2017 (DOC17/061524), in response to the requests for additional information and supporting documentation.

## **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 Inverell, and the “broader community” of Inverell Shire Council.

#### **5. 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 with primary service authorisation has appropriate Development Consent in place.
- (2) Police have requested conditions to be imposed on the licence.
- (3) The Inverell Shire Council have confirmed that development consent is in place for the premises.
- (4) The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol, and provides measures to ensure that the operation of the business does not impact detrimentally upon or detract from, the amenity of the neighbourhood.

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

## 6. Overall social impact

### (1) Positive benefits

The proposed licensed restaurant with a primary services authorisation for a patron capacity of 80 is to operate from an historic site within Inverell.

The Restaurant poses low risk to the local or broader community and has been supported by appropriate development consent.

### (2) Negative impacts

There have been no objections to the granting of this licence. 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.

## 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: 19 April 2017



Joanne Zammit  
Coordinator, 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>