



Liquor & Gaming NSW

NSW Department of Enterprise Investment and Trade

Liquor & Gaming NSW

Application No.	APP-0009631039
Application for	On-premises liquor licence for catering service with sale on other premises authorisation (SOOPA) removal
Trading hours	<i>Catering service hours &SOOPA</i> Monday to Sunday 12:00 PM – 10:00 PM
Applicant	Seth Baker
Licence name	The Gin Experience
Premises address	Moving from UNIT 2 28-32 BERNER ST, MEREWETHER, NSW 2291 to 225 Tyalgum Road Eungella NSW 2484.
Issue	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for an on-premises liquor licence for catering service with sale on other premises authorisation (SOOPA)
Legislation	Section 45(1) of the <i>Liquor Act 2007</i>

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 Enterprise Investment and Trade, has decided to grant the application for an on-premises liquor licence removal, subject to conditions set out at Schedule 1 imposed on the licence.

Decision Date: 30 May 2022

Kieran McSherry
Team Leader
Liquor and Gaming NSW
Delegate of the Independent Liquor & Gaming Authority

STATEMENT OF REASONS

Analysis of application requirements

1. Development approval is not required as the licensee will merely undertake administrative duties at the licensed premises which is his residential address. All events and functions will take place elsewhere utilising the sale on other premises authorisation component of the licence.
2. No Police or Council submission received
3. No public submissions were received relating to any issues with the application.
4. The licensed premises will be a home office where sales invoices are processed on-line. The sale on other premises authorisation will enable the licensee to host events or functions at various locations away from the office. The original liquor licence was granted March 2022. This application relates to the removal of that licence to a new residence in Eungella NSW 2484
5. I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions imposed in the licence document.
6. I am satisfied that the statutory advertising requirements have been met.

Materials considered by the ILGA delegate

Information considered

1. Application form received: 19 April 2022
2. Plan of proposed licensed area: Compliant
3. Certificate of advertising: Compliant
4. Plan of management
5. Documents
 - a. National Police Certificate: Compliant
 - b. ID: Compliant
 - c. RSA competency card: Compliant
6. Approved Manager: N/A
7. Licensee training: Compliant
8. Development consent: Not required – home office
9. Correspondence between Liquor & Gaming NSW and the applicant
10. Applicant's consent to conditions
11. Liquor & Gaming Live Data statistics

Analysis of stakeholder submissions

1. NSW Police:
No provided
2. Local consent authority
Not provided
3. Public
Not provided

Overall social impact

1. Positive benefits

The licensee may host cocktail tasting events to clients with food always available during these functions. The permanent on-premises catering service with the sale on other premises authorisation will negate the requirement to apply for limited licences for any given event. A suite of conditions imposed on the licence will ensure that; notification timeframes and function specific plan of managements will be in place, depending on the proposed patron capacity. Responsible Service of Alcohol guidelines and measures will be in place.

2. Mitigation of potential negative impacts

I am satisfied that the granting of the liquor licence, with the conditions imposed, will ensure that the lawful operation of the premises will not be detrimental to the local or broader community.

Conclusion

1. I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether to grant the application. 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. The decision was made by the delegate having reviewed the application statement, business model and risk analysis, stakeholder submissions and other relevant material.
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 from 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 liquor licence application with conditions as set out at Schedule 1.

Relevant extracts from the Liquor Act 2007

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:

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,
 - d. the need to support employment and other opportunities in the—
 - i. live music industry, and
 - ii. arts, tourism, community and cultural sectors.

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 4 Division 4.1 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.
 - d. the proposed approved manager/licensee has completed the relevant tiered industry training as per legislative requirements.

Community impact test

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.

The test applying under section 48(5) relates to delegated decisions in relation to:

- a. the grant or removal of a small bar licence (where required),
- b. a packaged liquor licence (limited to telephone/internet sales),
- c. an application for extended trading hours to permit the sale of liquor after midnight in relation to a small bar (where required), an on-premises relating to a restaurant that includes an application for a primary service authorisation, an on-premises licence relating to a karaoke bar, a catering service or a vessel, and an application for a producer/wholesaler licence that includes an application for a drink on premises authorisation.

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.

Important Information

In accordance with Clause 5 of the Gaming and Liquor Administration Regulation 2016, 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. In the case of the applicant, the fee payable is the fee applying to the original application. In all other cases, the fee is \$100.

For ILGA reviews of delegated decisions, make an application for review via the [Liquor and Gaming Application Noticeboard](#). The Review Application form can be accessed online via the [make a submission](#) button.

Further information can be obtained from the [Reviews of liquor and gaming decisions](#) page on the Liquor & Gaming website.

Schedule 1

Conditions considered by the ILGA delegate

All requests to impose conditions on the licence are reviewed on a case-by-case basis and a merit-based assessment is conducted.

In considering whether a proposed condition has merit, delegates consider:

- a. whether the need for the condition has been adequately established
- b. whether the benefits of imposing the condition are likely to outweigh the costs and
- c. whether the proposed condition is proportionate to the potential harm identified.

Licence conditions to be imposed

The Gin Experience

1. Retail closure period

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 4:00am and 10:00am 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. Restricted trading & NYE (airport, catering - std)

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

3. Plan of Management

A plan of management is required in the following circumstances:

- For events over 300 people and 1,999 or fewer people: a plan of management must be prepared by the Licensee.
- For events with 2,000 people or more: the Licensee must prepare a separate comprehensive plan of management and security management plan for the event in consultation with the Police Area Command.
- For events held after midnight: a plan of management must be prepared by the Licensee regardless of the number of people attending.

For any event where a plan of management is required, the premises is to be operated at all times in accordance with the plan of management. A copy of the plan of management is to be kept on the licensed premises for the duration of the event and made available for inspection on the request of a police officer, council officer, or Liquor & Gaming NSW inspector

4. Sale on other premises condition

The licensee must not exercise the sale on other premises authorisation at locations/venues where there is already a current and valid liquor licence in force.

5. Sale of liquor on other premises under an on-premises licence

Where liquor is sold on any premises other than the actual licensed premises under a sale on other premises authorisation, those other premises are taken to be part of the licensed premises.

6. 6-hour closure period

Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours (known as the 6-hour closure period). The 6-hour closure period is 04:00 AM to 10:00 AM each day, or as determined by the Independent Liquor & Gaming Authority (ILGA). During the 6-hour closure period, the licensed premises are not authorised to stay open for the retail sale of liquor on the premises. This condition only applies to:

- an on-premises licence granted on or after 30 October 2008
- an on-premises licence in force before 30 October 2008, but only where an extended trading authorisation was granted for the licence on or after 30 October 2008 and is in force.

7. Food must be made available

Food of a nature and quality consistent with the responsible sale, supply and service of alcohol must be made available whenever liquor is sold or supplied, including liquor being sold or supplied on premises other than the licenced premises

8. Free drinking water must be available

Drinking water must be available free of charge at all times while liquor is sold or supplied for consumption on the licensed premises. The drinking water must be available to patrons at or near liquor service points, or by the same means of service that liquor is available (e.g., waiter service).

9. Notice of functions must be provided to Liquor & Gaming NSW, local police and local council

The licensee must give written notice of certain proposals to provide catering services at a function to be held on premises that are not the permanent licensed premises to Liquor & Gaming NSW, local police and the local council for the area in which the function is to be held.

The notice must be given in accordance with the following:

1. Functions open to the public (including ticketed and non-ticketed functions)
 - a. Up to 100 people: 14 days
 - b. 101-1,999 people: 14 days
 - c. 2000+ people: 28 days
2. Private functions (including weddings, birthdays, office functions and others not-open to the public)
 - a. Up to 100 people: No notice required
 - b. 101-1,999 people: 14 days
 - c. 2000+ people: 14 days

Notice is not needed for smaller, private functions for 100 or fewer people that may often be held on private residences. However, there may be times where a licensee is unclear whether liquor can be sold or supplied on certain premises under the related development consent (e.g., on a business premises). In these instances, the licensee should still notify the local council, or seek clarification from the council about what is permitted.

Written notice to L&GNSW should be made by email to compliance.info@liquorandgaming.nsw.gov.au and should include the following details:

- the address of the premises on which the function is to be held
- the name of the occupier of those premises
- the nature of the function

- the number of persons for whom catering services are to be provided at the function
- the date on which, and the hours during which, the function is to be held.

10. Licensee training must be completed no later than six months from the date of grant of this liquor licence

Proposed conditions not imposed on the licence – Reason code (see reasons for not imposing requested conditions below)

Proposed conditions not imposed on the licence	Proposed by	Reason code (see reasons for not imposing requested conditions below)

Reasons for not imposing requested conditions

- **A** - Already covered by the Liquor Act 2007
- **B** - Already a condition in the development consent
- **C** - Not a relevant condition for this licence type. Condition sought is generally only imposed on high-risk licence type or in exceptional circumstances. Exceptional circumstances have not been proposed by the person putting forward the condition
- **D** - Already covered in the plan of management. Plan of management condition has been imposed
- **E** - Not aligned with the business type and would impose disproportionate unnecessary financial and operational burden
- **F** - Being part of a liquor accord is on a voluntary basis only. Exceptional circumstances have not been proposed by the person putting forward the condition
- **G** - ILGA/L&GNSW condition wording has been imposed