

NSW Department of Customer Service  
Liquor & Gaming NSW

Application number:	APP-0009491838	
Application for:	Online packaged liquor licence- delivery only	
Trading hours:	Monday to Saturday	10:00AM to 12:00AM
	Sunday	10:00AM to 10:00PM
Applicant:	WINE WAREHOUSE PTY LTD	
Licence name:	Wine Warehouse	
Premises address:	Building 8, Yennora Distribution Centre, 71 – 81 Byron Road, Yennora 2161	
Issue:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for an Online packaged liquor licence- delivery only.	
Legislation:	Section 45(1) of the <i>Liquor Act 2007</i>	

**Online packaged liquor licence- delivery only**

**Wine Warehouse**

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 Customer Services, has decided to grant the application for an Online packaged liquor licence- delivery only application number APP-0009491838

After careful consideration of the application and other material, the Delegate decided to approve the application, subject to conditions listed in table 1.

Decision Date: 11 March 2022



**Kieran McSherry**  
Team leader/Manager Licensing-New Licensing and Special Events  
Liquor and Gaming NSW  
Delegate of the Independent Liquor & Gaming Authority

## STATEMENT OF REASONS

### Analysis of Submissions and statutory requirements

- (1) No submissions have been received objecting to the application
- (2) Appropriate consent is in place for the use of the premises as an Online packaged liquor licence- delivery only; the business operates from a commercial warehouse office.
- (3) Police raised no objections and requested more conditions be imposed.
- (4) Council confirmed there is a DA approval in place to use the premises as a warehouse however, Council also advised there is no clear record or plans showing the approval of Building 8 to be used as an office. In relation to the Council comments, it is noted that the application only concerns part of Building 8 where there is an existing office, whose use is incidental/associated to the warehouse use.
- (5) I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions contained in the licence document.
- (6) I am satisfied that the statutory advertising requirements have been met.
- (7) Having reviewed all the material, I am satisfied that granting this application for an Online packaged liquor licence- delivery only will not be detrimental to the local or broader community of NSW.

### Overall social impact

#### (1) Positive benefits

The ability to purchase packaged liquor by electronic means provides a substantial benefit and convenience to many. There is a genuine need by the public (as evidenced by the number of internet packaged liquor licences now available in NSW) to be able to purchase packaged takeaway liquor products over the internet in a competitive way. Accordingly, there are benefits to the public in issuing this Licence.

#### (2) Mitigation of potential negative impacts

I am satisfied that the business model, conditions imposed, and any other information contained in the application will provide that the lawful operation of the premises will not be detrimental to the local or broader community. In particular, the Plan of Management and licence conditions will serve to mitigate any potential negative impacts.

**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, Delegate's 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.

Table 1 sets out the conditions which I have decided to impose on the licence, and the Table 2 sets out conditions put forwarded for consideration which I have decided not to impose, and the reasons for that decision.

<b>TABLE 1 - Proposed conditions imposed on the licence:</b>	
1.	<b>0000050 Retail closure period</b> 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.	<b>0000130 Restricted trading &amp; NYE (std)</b> Retail sales Good Friday Not permitted December 24 <sup>th</sup> Normal trading Monday to Saturday 8:00 AM to 10:00 PM Sunday Christmas Day Not permitted December 31st Normal trading
3.	<b>0002290 Plan of management</b> The premises is to be operated at all times in accordance with the Plan of Management dated February 2022 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, or Liquor & Gaming NSW inspector.
4.	<b>0002030 No walk-up</b> The licensee must ensure that the sale of liquor is limited to taking orders over the telephone or by facsimile or mail order, or through an Internet site.
5.	<b>No Tastings</b> The licensee must ensure that no tastings are conducted on the premises.
6.	<b>No Advertising</b> No advertising or promotional material relating to liquor is to be displayed outside the premises.
7.	<b>No same day delivery</b> Alcohol is not permitted to be delivered to a customer on the same business day as the order is placed.

<b>TABLE 2 – Proposed conditions not imposed on the licence:</b>		<b>Proposed by:</b>	<b>Reason code (see table 9)</b>
<b>1.</b>	<p>Limited to the sale of liquor only by means of taking orders over the telephone or by facsimile or mail order, or through an internet site.</p> <p>The licensee must ensure that no liquor tastings are conducted on the premises.</p> <p>No advertising or promotional material relating to alcohol is to be displayed outside the premises.</p>	Police	B

**Materials considered by the ILGA delegate**

<b>TABLE 3: Analysis of submissions</b>	
<b>Stakeholder submissions</b>	
<b>1.</b>	<p><b>NSW Police</b></p> <ul style="list-style-type: none"> <li>Police raised no objections and requested more conditions be imposed.</li> </ul>
<b>2.</b>	<p><b>Council</b></p> <ul style="list-style-type: none"> <li>Council confirmed there is a DA approval in place to use the premises as a warehouse however, Council also advised there is no clear record or plans showing the approval of Building 8 to be used as an office.</li> </ul>

<b>TABLE 4: Document analysis</b>		
<b>Details</b>	<b>Dated received/comment</b>	
<b>1.</b>	Application form	APP-0009491838
<b>2.</b>	Plan of proposed licensed area	Compliant
<b>3.</b>	Certification of Advertising	Compliant
<b>4.</b>	Plan of management	Compliant
<b>5.</b>	<p>National Police Certificate</p> <p>ID</p> <p>RSA competency card</p> <p>Licensee training</p>	<p>Not required</p> <p>Compliant</p> <p>Compliant</p> <p>Compliant</p>

6.	Development consent	<ul style="list-style-type: none"> <li>• Occupation Certificate # 207/07</li> <li>• Use: Office/Warehouse</li> </ul>
7.	Correspondence from Liquor & Gaming NSW to the applicant requesting additional information and consent to conditions	
8.	Correspondence from the applicant in response to Liquor and Gaming.	

### 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 organisation to carry on the business or activity to which the proposed licence relates.
- (3) Having considered the Plan of Management and other 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.

**TABLE 5: 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:

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

#### TABLE 6: 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 organisation 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.

**TABLE 7: 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:
  - 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.

**TABLE 8: 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.nsw.gov.au/Pages/public-consultation/online-application-noticeboard/online-application-noticeboard.aspx>. The Review Application form can be accessed online via the Application Number hyperlink.

Further information can be obtained from the Reviews page on the Liquor & Gaming website at: <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>

**TABLE 9: - Reasons for not imposing requested conditions.**

A	Do not impose. Already covered by the Liquor Act.
B	Do not impose. Already covered/already a condition in the DA.
C	Do not impose. 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 sufficiently made out by the person putting forward the condition.
D	Do not impose. This condition would be more restrictive than similar venues in Kings Cross which remains subject to the lockout laws in 2020.
E	Do not impose. Small Bars are considered low risk.  2016 Review of Small Bars found Venues with a small bar licence have a lower incidence of alcohol-related violence than venues operating as a small bar under another type of liquor licence. Smaller bars have a lower incidence of alcohol-related violence than other types of licensed venue.
F	Do not impose. Already covered in the Plan of Management. Plan of management condition has been imposed.
G	Do not impose. Not in alignment with the business type, risk associated and would impose disproportionate unnecessary financial and operational burden (small business).
H	Do Not Impose. Being part of a liquor accord is not compulsory / on a voluntary basis only. Exceptional circumstances for imposing condition have been sufficiently made out by the person putting forward to the condition.
I	Do not impose – wording not consistent with ILGA/L&GNSW conditions – ILGA/L&GNSW condition wording has been imposed instead.