

LICENSE DETAILS

Application No.	APP-0010829405
Application type	On-premises liquor licence - Vessel
Trading hours	Monday to Saturday 10:00 AM to 12:00 AM Sunday 10:00 AM to 10:00 PM
Applicant	Allan Hay
Licence name	Aquila
Premises address	THE ANCHORAGE MARINA, 26B CORLETTE POINT RD, CORLETTE, NSW 2315
Matter	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 - Vessel
Legislation	Section 45(1) of the <i>Liquor Act 2007</i>
Decision details	Under delegation issued by the Independent Liquor and Gaming Authority under section 13 of the <i>Gaming and Liquor Administration Act 2007</i> , 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 - vessel, subject to conditions set out at Schedule 1 imposed on the licence.
Decision date	3/02/2023
Delegate details	



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

STATEMENT OF REASONS

ANALYSIS OF APPLICATION REQUIREMENTS

1. A current certificate of survey has been provided for the vessel.
2. A Police submission was received and considered as summarised at **submission analysis** below.
3. No public submissions were received relating to any issues with the application.
4. Plan of vessel provided.
5. I am satisfied that the statutory advertising requirements have been met.
6. Having reviewed all the material, I am satisfied that granting this application for a Liquor on-premises licence – Vessel will not be detrimental to the local or broader community.

MATERIALS CONSIDERED BY THE ILGA DELEGATE

Information considered

1. Application form received: 24 November 2022
2. Plan of proposed licensed area: Compliant
3. Certificate of advertising: Compliant
4. Plan of management: Compliant
5. Documents
 - a. National Police Certificate: Compliant
 - b. ID: Compliant
 - c. RSA competency card: Compliant
6. Approved Manager: N/A
7. Certificate of survey: Compliant
8. Licensee training: Compliant
9. Correspondence between Liquor & Gaming NSW and the applicant
10. Correspondence from Police
11. Applicant's response to submissions received
12. Applicant's consent to conditions

Analysis of stakeholder submissions

1. NSW Police:

Police had no objections to the application which they recommended conditions are considered in Schedule 1
2. Local consent authority:

Not provided
3. Public:

Not provided

OVERALL SOCIAL IMPACT

1. Positive benefits

The licensee intends to provide cruises for a maximum of twelve passengers around the Nelson Bay area. Food will always be available when the liquor licence is being exercised.

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 will be 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.

Applications for review of ILGA delegated decisions, can be made 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.

Hay Enterprises (NSW) Pty Ltd

Licence conditions to be imposed	Licence condition details
Retail closure period	Section 11A of the <i>Liquor Act 2007</i> applied 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.
Restricted trading days and NYE	Consumption on premises Good Friday: Normal trading Christmas Day: Normal trading December 31 st : Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later.
Liquor must be sold/supplied with another product or service	Liquor may only be sold or supplied for consumption on the licensed premises with, or ancillary to, another product or service that is sold, supplied or provided to people on the licensed premises.
Requirement to provide food on licensed premises	Food of a nature and quantity consistent with the responsible sale, supply and service of alcohol must be available whenever liquor is sold or supplied.
Drinking water to be available free of charge	The licensee must ensure that free drinking water is available at all times at or near the bar areas.
No liquor to be removed from the vessel	The licensee must ensure liquor is not removed from the licensed premises.

Licence conditions to be imposed	Licence condition details
Crime scene preservation	<p>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:</p> <ol style="list-style-type: none"> 1) 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 accordance with the Crime Scene Preservation Guidelines issued by NSW Police, and 2) make direct and personal contact with the NSW Marine Area Command Supervisor or his/her delegate, and advise the Supervisor or delegate of the incident, and comply with any directions given by the Supervisor or delegate to preserve or keep intact the area where the act of violence occurred.
Staff not to consume liquor	<p>The licensee must not permit staff to consume liquor on the licensed premises while engaged in the sale or supply of liquor (including during any meal or other break).</p>
No dance parties	<p>The licensee must not permit dance party events to be conducted on the premises. For the purpose of this condition a dance party event means an event, whether a ticketed event or otherwise, which is open to the public and where the primary activity is entertainment provided by live DJ/DJ's and/or other live performances for the purpose of dancing. This includes the vessel being part of a group of vessels or part of a land-based activity which involves an event that could be described as a "Dance Party" or where amplified music is the main reason for the event or gathering.</p> <p>Note: The above condition is not intended to include wedding ceremonies/receptions, corporate events, and school formals at which DJ entertainment or other live performances of electronic dance music is provided ancillary to the event.</p>
Identification of bar staff	<p>The licensee must ensure that all staff will wear clothing that clearly identifies them as employees of the Licensee.</p>
Plan of management	<p>The premises is to be operated at all times in accordance with the Plan of Management dated December 2022 as may be varied from time to time after consultation with the NSW Police Marine Area Commander.</p> <p>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 and Racing inspector.</p>

Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)
The licensee must be always present on the premises whilst liquor is sold or supplied on board the vessel	Police	C
The licensee must not permit patrons to bring liquor into the licensed area	Police	C
The premises /vessel is to be always operated in accordance with the plan of management dated 6 th December 2022 and may be varied from time to time after endorsement by the Local Area Commander	Police	D
No drinks commonly referred to as shots, shooters, and / or bombs are to be sold and supplied on board the vessel	Police	C
The licensee shall comply with any reasonable directions of the Local Area Commander or his representative at the time, concerning the manner, operation or conduct. Directions may relate to, but are not restricted to, intoxication and the responsible service of liquor, standards to be observed in the licensed area for the purpose of preventing the misuse or abuse of liquor, the level of noise emanating from the licensed area, the steps that need to be taken to prevent patrons from disturbing the neighbourhood and hours in which liquor may be sold and supplied under the authority of this licence	Police	C

List of reasons and codes 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.