



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

APPLICATION NO:	APP-0001568969
APPLICATION FOR:	On premises liquor licence for a restaurant with primary service authorisation
PROPOSED TRADING HOURS:	Restaurant: Monday to Sunday: 10:00 AM - 09:30 PM Primary Service Authorisation: Monday to Sunday: 10:00 AM - 09:30 PM
APPLICANT:	Mr Jianye Wen
LICENCE NAME:	Lan Yuan St Ives
PREMISES ADDRESS:	Shop 101, 166 Mona Vale Rd ST IVES NSW 2075
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 licence with primary service authorisation and impose conditions for that licence.
LEGISLATION	S45(1) S 48(5) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION - APPLICATION FOR ON-PREMISES LIQUOR
LICENCE WITH PRIMARY SERVICE AUTHORISATION**

LAN YUAN ST IVES

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 with conditions the application for an on-premises liquor licence for a restaurant with a primary service authorisation, application no APP-0001568969.

On 23 November 2016, 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 (liquor can only be served with or ancillary to a meal in a dining area)
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
<p>Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day.</p>	

3. The business authorised by this licence must not operate with a greater overall level of social impact on the well being 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 are to be operated at all times in accordance with the Plan of Management dated 28 February 2016 as may be varied from time to time after consultation with the Local Area Commander.
5. The licensee or its representative must join and be an active participant in the local liquor accord.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the Application, the accompanying community impact statement (CIS)

1. Application form – lodged 26 April 2016 (DOC16/040321)
2. Community Impact Statement (CIS) document and supporting material that accompanies the Application. (DOC16/040327)
3. Development Approval No modification to DA0585/14 dated 18 January 2016 issued by Kuring-Gai Council. (DOC16/055741)
4. NSW National Police Certificate, dated 01 March 2016. (DOC16/044880)
5. Submission & EVAT report from Secretary dated 23 May 2016 confirming that Liquor & Gaming NSW does not intend to carry out any further assessment of this application at this time. (DOC16/052586)
6. Submission from Ku-ring-gai Council dated 29 April 2016, raising an objection to the application based on the proposed trading hours. (DOC16/051892)
7. Submission from Ku-ring-gai Police LAC dated 29 April 2016 confirming that Police have no concerns with the application. (DOC16/041705)
8. Alcohol Plan of Management for the venue dated 28 February 2016 detailing how the liquor licence will be managed. (DOC16/040326)
9. Premises plans. (DOC16/154308)
10. Email correspondence from the Authority to the applicant including applicant's consent to the imposition of the licence conditions. (DOC16/154305)

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:
- 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.
- (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 St Ives and the "broader community" comprises the Ku-ring-gai Council LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on premises liquor licence with primary service authorisation is unlikely to result in any increase in alcohol-related harm in the local community.
- (2) The application is for an on premises restaurant licence with primary service authorisation. The licence will be exercised in accordance with a plan of management that addresses the responsible service of alcohol, staff training, intoxication and other non-acceptable behaviour, persons suspected of being under 18 years of age and local amenity.
- (3) A submission from Ku-ring-gai Council was received, which raised an objection to the application based on the proposed trading hours of the premises. The applicant has amended the proposed trading hours according to the trading hours approved in development consent.

6. Overall social impact

(1) Positive benefits

The licence will be operated as a restaurant with primary service authorisation between 10:00 AM and 09:30 PM Monday to Sunday. Serving food is the primary purpose of the business. Customers will not be permitted to purchase alcohol for consumption away from the premises.

(2) Negative impacts

The Council objected to the application based on the proposed trading hours. The applicant amended the proposed trading hours according to the trading hours approved in development consent. No other concerns were raised. The nature of the licence sought means that there are unlikely to be any amenity 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. Having considered together the positive benefits and negative impacts that I am satisfied are likely to flow from granting the Application, I am satisfied that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.
6. 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 with conditions the licence application.

Decision Date: 23 November 2016



Olgica Lenger
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>