

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

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**APPLICATION NO:** APP-0001770766

**APPLICATION FOR:** On-premises liquor licence (vessel)

**APPLICANT:** MOONSHADOW TQC PTY LTD

**APPROVED MANAGER:** JAMES MCARTUR ( approved manager  
number has not yet been issued)

**LICENCE NAME:** MV Spirit of Port Stephens

**PREMISES ADDRESS:** Dock D d albora Marina Teramby Street,  
NELSON BAY, NSW 2315

**ISSUE:** Whether a delegated Liquor & Gaming  
employee on behalf of the Independent  
Liquor & Gaming Authority (ILGA) should  
grant or refuse an application for a packaged  
liquor licence (online).

**LEGISLATION** Section 45(1) of the *Liquor Act 2007*

**ILGA DELEGATED DECISION – APPLICATION FOR AN ON PREMISES VESSEL  
/TOUR OPERATOR APPLICATION**

**MV Spirit of Port Stephens**

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-premises liquor licence –vessel/ tour operator APP-0001770766.

On 24 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. The licensee is authorised to sell liquor by retail to passengers on board the vessel, for consumption on board the vessel only between the period commencing one hour before the vessel starts any voyage or passage and ending 30 minutes after the voyage or passage is completed.

3. The premises must be operated at all times in accordance with the Plan of Management dated November 2016 as may be varied from time to time after consultation with the Local Area Commander.
4. No drinks commonly referred to as shots, shooters, slammer, and/or bombs are to be sold or supplied.
5. The Licensee must ensure that all bar staff will wear clothing that clearly identifies them as Bar Staff and employees of the Licensee.
6. The licensee must employ a minimum of one (1) fully licensed security guard whenever the vessel is hired for a private charter or event that is held on a Friday, Saturday or Sunday evening and the patron capacity exceeds 100 patrons.
7. 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:
  - a. 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
  - b. make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
  - c. comply with and directions given by the Commander or delegate to preserve or keep intact the area where the act of violence occurred.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate

The decision made by the delegate had the application, and other relevant material:

- (1) Application form – lodged 5 May 2016 (DOC16/045943)
- (2) ASIC report for organisation licensee, forwarded 19 May 2016 (DOC16/049632)
- (3) Appointment of manager notice for James McArthur forwarded 9 November 2016 (DOC16/145827)
- (4) Certificate of Survey and Operation issued by the Australian Maritime Safety Authority on 04/05/2015 (DOC16/052767)
- (5) Plan of Management for the vessel dated 8 November 2016 (DOC16/145826)
- (6) Submission from Port Stephens LAC dated 17 November 2016, with no objections but requesting that the conditions requested by the Authority be imposed on the licence. (DOC16/159220)
- (7) Plan of proposed premises received 19 May 2016 (DOC16/049634)
- (8) Email correspondence from the Authority dated 24 September 2016 (DOC16/111222) and again 29 October 2016 (DOC16/136878) requesting additional information .
- (9) Email correspondence dated 4 November 2016 from the applicant in response to the request for additional information (DOC16/145825 and DOC16/145834)
- (10) Photographs of the vessel received 9 August 2016 (DOC16/145830-145833)

### 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) Local and Broader Community - for the purposes of this decision, the delegate is satisfied that the relevant “local community” is the community within the State suburb of Rozelle and the “broader community”, the Sydney Harbour.

## 5. Analysis of Submissions and other Materials

- (1) The application is for an on-premises licence for a vessel with a maximum patron capacity of 135 patrons. It is proposed the vessel will cater for a variety of cruises within the Port Stephens Great Lakes Marine Park, primarily focussing on Dolphin, Whale watching in addition to wedding, lunch and private hire cruises. shore.
- (2) The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol, and measures to ensure that the operation of the vessel does not impact detrimentally upon or detract from the amenity of the neighbourhood.
- (3) Police have no concerns with the application providing that the requested conditions from the Authority are imposed on the licence.

## 6. Overall social impact

### (1) Positive benefits

The target market for vessel activities is primarily the tourist industry in addition to some private charter clients.

### (2) Negative impacts

Police have not voiced any concerns. The Secretary of the Department of Justice has not forwarded a submission. 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) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (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 the packaged liquor licence application with conditions.

Decision Date: 24 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>