



NSW Department of Industry
Liquor & Gaming NSW

APPLICATION NO:	APP-0000833226
APPLICATION FOR:	On-premises liquor licence for a restaurant with catering service
TRADING HOURS:	Monday to Sunday: 10:00 AM to 10:00 PM
APPLICANT:	Martin Frederick MORGAN
LICENCE NAME:	Rolling Penny Cafe
PREMISES ADDRESS:	583A King St NEWTOWN SYDNEY NSW 2042
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

ROLLING PENNY CAFE

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 Industry, has decided to **grant** the application for an on-premise liquor licence for a restaurant with catering service, application number APP-0002240575.

On 23 April 2017, 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. **Restricted trading and NYE**
Consumption on premises - Restaurant
Good Friday 12:00 noon - 10:00 PM
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

Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.

3. Restricted trading and NYE

Consumption on premises – Catering Service

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

4. The premises are to be operated at all times in accordance with the Plan of Management dated 22 March 2017 as may be varied from time to time after consultation with the Local Area Commander NSW Police.
5. The Licensee is to ensure that no drinks commonly referred to as shots, shooters or slammers etc are to be sold or supplied at the premises, this includes all drinks that are prepared to be consumed rapidly.
6. The licensee must ensure that all patrons must have an allocated seat when served or supplied alcohol, or while consuming alcohol, with the exception of private functions.
7. The business of providing the Catering Service must be for fee, gain or reward. Functions held pursuant to the Catering Service must be pre-booked. A Catering Service booking register must be maintained.
8. The licensee or its representative must join and be an active participant in the local liquor accord.
9. The licensee must ensure that immediately after the licensee or a staff member becomes aware of any incident involving an act of violence causing an injury to a person on the premises, the following is adhered to:-
 - a) The licensee and/or staff take all practical steps to preserve and keep intact the area where the act of violence occurred, retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police;
 - b) The licensee and/or staff 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) The licensee and/or staff comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged on 8 November 2016 (DOC16/170221)
- (2) Certification of Advertising Application, signed and dated by the applicant on 11 March 2017 (DOC17/056785)
- (3) Plan of the proposed licensed premises (DOC17/063989)
- (4) Copies of the applicant's identification, Responsible Service of Alcohol Competency Card and National Police Certificate (DOC16/170226, DOC16/170227)
- (5) Development consent no. DA201200578, issued by Marrickville Council on 20 November 2015, granting approval for the premises to be operated as a café (DOC16/170229)
- (6) Submission from the licensing officer, Newtown Local Area Command, advising that Police do not object to the application, and proposing a number of licence conditions (DOC17/018738)
- (7) Four public submissions, received from three separate individuals, objecting to the application (DOC16/174785, DOC16/174829, DOC16/174844, DOC17/008701, DOC17/028787)
- (8) Environment and Venue Assessment Tool (EVAT) Assessment Report issued by the compliance branch, Liquor & Gaming NSW on 23 December 2016 (DOC16/178706)
- (9) Alcohol Plan of Management, dated 22 March 2017 (DOC17/059022)
- (10) Emails from the Authority to the applicant, dated 1 and 21 March 2017, requesting further information as well as the applicant's consent to proposed licence conditions (DOC17/042158, DOC17/059096)
- (11) Emails from the applicant to the Authority, dated 17, 22 and 24 March 2017, providing the requested information and consenting to the proposed licence conditions (DOC17/056784, DOC17/063370, DOC17/063982)

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 the granting or removal of:
 - a. a small bar licence,
 - b. a packaged liquor licence (limited to telephone/internet sales),
 - c. an on-premises licence relating to a restaurant that, in the case of a new licence, includes an application for a primary service authorisation,
 - d. an on-premises licence relating to a karaoke bar, a catering service or a vessel,
 - e. an application for a producer/wholesaler licence that, in the case of a new licence, includes an application for a drink on-premises authorisation
 - f. an application for ongoing extended trading hours to permit the sale of liquor after midnight in relation to any of the above licence types.
- (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 Newtown, and the "broader community" of the Marrickville 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 catering service is unlikely to result in any significant increase in alcohol-related harm in the local community.
- (2) The application relates to an existing restaurant in the vibrant and diverse Sydney suburb of Newtown. The Rolling Penny is a modern venue offering a delicious café menu which will be complemented by the sale and service of alcohol. The venue also proposes to cater for private functions.
- (3) I am satisfied that appropriate development consent permitting the proposed activity is in place.
- (4) Police have made a submission advising that there is no objection to the granting of the licence, and proposing a number of conditions to be imposed on the licence, all of which the applicant has consented to.
- (5) Four submissions were received from neighbouring residents, raising concerns regarding noise and the use of the rear courtyard. The applicant has adequately addressed these concerns, and has provided assurance that the rear courtyard will not be used by patrons of the restaurant, as it forms part of the private residence. The rear courtyard has not been included in the boundary of the licensed area.

- (6) The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol, and provides measures to ensure that the operation of the premises does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (7) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

This licence application relates to an existing restaurant in the popular Sydney suburb of Newtown. The granting of the liquor licence will give the restaurant's patrons the opportunity to complement their meals with an alcoholic beverage should they wish to do so. The venue also wishes to cater for private functions, and the provision of alcohol at these events would enable the business to grow.

The restaurant poses low risk to the local or broader community and has appropriate development consent.

(2) Negative impacts

Police have indicated that they do not have any objection to the granting of the liquor licence. Objections have been received from neighbouring residents, raising concerns regarding noise and the use of the rear courtyard. The applicant has indicated that the restaurant will not utilise the rear courtyard as it forms part of the private residence. The rear courtyard has not been included in the boundary of the licensed area.

The Plan of Management provided by the applicant and conditions imposed on the licence provide a level of certainty that there are unlikely to be any major 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) In making this decision under delegation 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 April 2017

A handwritten signature in blue ink that reads 'Santina Causa'.

Santina Causa
A/Coordinator 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>