



NSW Department of Industry  
Liquor & Gaming NSW

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<b>APPLICATION NO:</b>	APP-0002495192
<b>APPLICATION FOR:</b>	On-Premises Restaurant with Primary Service Authorisation
<b>TRADING HOURS:</b>	<b>Indoor:</b> Monday to Wednesday: 11:00AM to 11:00PM Thursday to Saturday: 11:00AM to 12:00AM Sunday: 11:00AM to 10:00PM <b>Outdoor Area:</b> Monday to Sunday: 11:00AM to 10:00PM
<b>APPLICANT:</b>	Matthew Ronald Cairns
<b>LICENCE NAME:</b>	Sydney Steak & Burger Darling Harbour
<b>PREMISES ADDRESS:</b>	International Convention Centre Shop T01 14 Darling Drive SYDNEY, NSW 2000
<b>ISSUE:</b>	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
<b>LEGISLATION:</b>	Section 45(1) of the <i>Liquor Act 2007</i>

### ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

#### Sydney Steak & Burger Darling Harbour

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 a on-premises liquor licence with primary service authorisation, application number APP-0002495192.

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 & NYE**  
Consumption on premises  
Good Friday            12:00PM – 10:00PM (liquor can only be served with or ancillary to a meal)

	in a dining area)
Christmas Day	12:00PM – 10:00PM (liquor can only be served with or ancillary to a meal in a dining area)
December 31st	Normal opening time until closing time of 2:00AM on New Year's Day, whichever is the later.

Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation.

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 must be operated at all times in accordance with the Plan of Management dated 25 January 2017 as may be varied from time to time after consultation with the Local Area Commander NSW police.
5. The premises is to operate with its principal business as being that of a restaurant as defined by the *Liquor Act* and not as a bar.
6. There is to be no stockpiling of drinks commonly known as shots, shooters, slammers or bombs that are designed to be consumed rapidly, or any alcoholic drinks that are mixed with an energy drink. Not more than one of these types of drinks is to be served to a patron at the one time.
7. The licensee or its representative must join and be an active participant in the local liquor accord.
8. The licence is authorised for the trading hours fixed by the Authority or such lesser hours as may be approved by the consent authority from time to time.
9. The venue's kitchen must remain open and operational at all times liquor is sold/supplied and be able to prepare meals of a substantial nature.
10. CCTV footage on premises:  
The Licensee shall maintain a CCTV system that meets the following minimum requirements:  
(i) A camera must be located at the main entrance to the venue and positioned to record any person entering through this entrance. The CCTV recordings of this camera must be sufficient to enable an individual to be identified, beyond reasonable doubt, when:
  - a. the person represents not less than 100% of screen height, and
  - b. there is an unobstructed view of the person's face.  
(ii) In addition, CCTV cameras must be maintained throughout the premises with camera coverage to specifically record images of the following areas:
  - a. all other public entrances and exits, whether or not in use at the time,
  - b. staircases,
  - c. all portions of the floor area accessible to the public where entertainment is provided,
  - d. toilet external entrances,
  - e. all public accessible areas within the premise excluding toilets and accommodation rooms,

- f. the footpath area directly adjacent to the premises, and
- g. courtyard and smoking areas.

(iii) The CCTV recordings of the cameras referred to in sub condition (2) must be sufficient to enable the recognition of a person. A viewer must be able to say with a high degree of certainty whether or not an individual shown is the same as someone they have seen before, when:

- a. the person represents not less than 50% of screen height, and
- b. there is an unobstructed view of the person's face.

(iv) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.

(v) Camera recordings must meet the standards set in sub condition (1) and (3) at all times, either by way of camera positioning, camera shades or other environmental factors.

(vi) Recordings must:

- a. be in digital format,
- b. record at a minimum of ten (10) frames per second, and
- c. commence one hour prior to opening, and operate continuously until at least one hour after closure.

(vii) The correct time, date and camera identification must be automatically embedded on all recordings and be able to be read when the image is played back on a different system without interfering with the view of the target area.

(viii) Recordings should be retained for a period of 30 days before being reused or destroyed. The licensee shall ensure that no person is able to delete or alter any recordings within the 30 day period.

(ix) When the venue is open and trading, at least one person shall be at the venue who is capable of accessing the CCTV system and is able to immediately review recordings and produce copies.

(x) Immediate access to the CCTV system and the ability to review recordings on the system is to be granted to NSW Police, L &G NSW Inspectors or other regulatory officers upon request.

(xi) The CCTV system shall be able to reproduce a copy of the recordings on Compact Disc, DVD or USB memory stick and must, upon request, be provided within one working day to NSW Police, L &G NSW Inspectors or other regulatory officers.

(xii) Prior to the commencement of trade each day, the CCTV system shall be checked to ensure the equipment is in full operating order. If, during the daily check or at any other time, it is discovered that the equipment is not in full operating order, the licensee is to notify the Local Area Commander or delegate within two hours. All reasonable steps must be undertaken to repair the system as soon as practicable. The Licensee shall record this daily checking activity in the incident register book that meets the standards required by the Licensing police and Council.

## 11. Neighbourhood Amenity

a. The management of the premises:

- i. Shall ensure patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- ii. Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council, the Management is to employ private security staff to ensure that this condition is complied with.
- iii. Shall record in a Register full details of any disturbance complaint/s made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.
- iv. Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by management / staff to resolve such complaint/s shall be recorded in the Register.

b. An **adequate queuing system** for patrons must be implemented at the main entrance of the licensed restaurant so as to ensure that if patrons are queuing to gain entry they do not obstruct or impede pedestrian traffic flow.

## 12. Crime Scene Preservation

- a. Immediately after the person in charge of the Licensed Premises become aware of an incident involving an act of violence causing an injury to a person on the premises, the person must:
  - i. Take all practical steps to preserve and keep intact the area where the act of violence occurred;
  - ii. Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police;
  - iii. Make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident; and
  - iv. Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

13. A full copy of all current development consents (including approved plans) for the operation of the premises, any Registers required and any required Plan of Managements must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or L & G NSW Authorised Officers.

## **STATEMENT OF REASONS**

### **1. Material before the ILGA delegate**

- (1) Application form lodged 15 December 2016 (DOC16/173939)
- (2) Certificate of Advertising declaration by applicant on 21 December 2016 (DOC17/014645)
- (3) Plan of Management dated 25 January 2017 (DOC17/060569)
- (4) Notice of Determination – Development Application No: D/2016/1660 dated 5 January 2017 (DOC17/050427)
- (5) Submission from Sydney City Local Area Command dated 10 March 2017 was received with no objections asking for the imposition of a series of conditions (DOC17/066626)
- (6) Submission from City of Sydney Council dated 10 January 2017 was received with no objections (DOC17/013514)
- (7) EVAT Report received 24 January 2017 (DOC17/017430)
- (8) Plan at grant of proposed premises lodged with application (DOC16/173942)
- (9) National Police Certificate dated 23 August 2016 lodged with the application (DOC16/173948)
- (10) Email correspondence dated 18 January 2017 (DOC17/013516), from the Authority to the applicant requesting additional information, and subsequent requests on 24 January 2017 (DOC17/021113), 10 March 2017 (DOC17/050613) and 22 March 2017 (DOC17/060866)
- (11) Email correspondence from the applicant dated 16 December 2016 (DOC17/000468), 18 January 2017 (DOC17/014644), 6 March 2017 (DOC17/046102), 21 March 2017 (DOC17/0605558) and 30 March 2017 (DOC17/070836) in response to the requests for additional information and supporting documentation.

## 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 Sydney, and the "broader community" of the City of Sydney LGA.

## 5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on-premises restaurant with primary service authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) Development consent is in place for the proposed use of a licensed restaurant with indoor and outdoor seating for 200 patrons.
- (3) Sydney City Local Area Command raised no objections to the grant of the licence, however recommend a number of conditions to be imposed on the licence which the applicant has consented to.
- (4) The City of Sydney Council raised no objections to the grant of the licence for the premises.
- (5) The Delegate of the Secretary did not raise any objections.
- (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 vessel 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

The proposed restaurant is located within the boundary of the International Convention Centre with maximum patron capacity of 200 persons offers a casual dining restaurant where some customers who prefer not to dine can enjoy a rink with friends. The restaurant also provides a public benefit by providing increased choice to customers, as a place where customers can feel safe and enjoy a meal and drink.

The on-premises restaurant with primary service authorisation poses a low risk to the local or broader community and has been supported by appropriate development consent.

### (2) Negative impacts

There have been no objections to the granting of this licence. 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



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>