



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

DOC16/108627

APPLICATION NO: 1-4819129854

APPLICATION FOR: On-premises liquor licence - Restaurant with Primary Service Authorisation and Extended Trading Authorisation

TRADING HOURS: Monday to Sunday 10:00 AM to 11:00 PM

APPLICANT: Hamish Ingham

LICENCE NAME: Banksii Vermouth Bar & Bistro

PREMISES ADDRESS: Tenancy R9.11 "Alexander" Building
R9 23 Barangaroo Avenue
BARANGAROO SOUTH, NSW 2000

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 restaurant with primary service authorisation and extended trade authorisation.

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

**ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES LICENCE
FOR A RESTAURANT WITH PRIMARY SERVICE AUTHORISATION AND
EXTENDED TRADING AUTHORISATION**

BANKSII VERMOUTH BAR & BISTRO

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 for a restaurant with primary service authorisation and extended trade authorisation, appl. no. 1-4819129854.

On 25 September 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 (restaurant)

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 wellbeing 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 is to operate with its principle business being that of a restaurant as defined by the Liquor Act and not as a bar.
5. No drinks commonly referred to as shots, shooters, slammer, and/or bombs are to be sold or supplied after 10:00 PM.
6. The premises are to be operated at all times in accordance with the Plan of Management dated 7 September 2016 as may be varied from time to time in consultation with the Local Area Commander.
7. 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.
8. The licensee or its representative must join and be an active participant in the local liquor accord.
9. The licence cannot be exercised unless and until the Independent Liquor and Gaming Authority has been provided with evidence that the premises is complete and ready to trade.



10. CCTV footage on premises:

The Licensee shall maintain a CCTV system that meets the following minimum requirements:

- 1) 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 the screen height, and
 - b. there is an unobstructed view of the person's face.
- 2) 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.
- 3) 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.
- 4) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.
- 5) 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.
- 6) 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 closing.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) Immediate access to the CCTV system and the ability to review recordings is to be granted to NSW Police, OLGR Inspectors or other regulatory officers upon request.
- 11) 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 officers or other regulatory officers.
- 12) 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.
11. **Signage** (in lettering not less than 15mm in height on a contrasting background) is to be erected near the main principle entry to the premises; in such manner that it would be reasonable to expect that a person leaving the premises will be alerted to its contents. The signage shall state:

Please leave quickly and quietly and have regard to our neighbours

12. 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.

13. Crime Scene Preservation

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:

- a. Take all practical steps to preserve and keep intact the area where the act of violence occurred
- b. Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police
- c. Make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident and



- d. Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.
14. 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, Police and/or L&G NSW officers.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the application, the accompanying community impact statement (CIS-Category A) and other relevant material:

- (1) Application form – Lodged 1 July 2016 (DOC16/090790).
- (2) Community Impact Statement (CIS) document and supporting material accompanying the application, dated 30 June 2016. The CIS includes contentions on the social impact of granting the application (DOC16/090797)
- (3) Additional information provided by the applicant to accompany the application was received on 1 July 2016 (DOC16/090794)
- (4) Plan of Management for the Premises signed 7 September 2016 (DOC16/103842)
- (5) Plan of the proposed licensed area received 1 July 2016 (DOC16/090796)
- (6) Registration of Business name “Banksii Vermouth Bar & Bistro” dated 21 April 2016 (DOC16/103844)
- (7) National Police Certificate dated 9 June 2016 (DOC16/090795)
- (8) Three (3) forms of approved identification documents provided on 1 July 2016 (DOC16/090793)
- (9) Responsible Service of Alcohol Competency Card for Mr Hamish Ingham CCH10439362, expiry date of 14 April 2020 provided (DOC16/090793)
- (10) NOTICE OF DETERMINATION - APPROVAL - APPLICATION NO: D/2016/598 dated 9 June 2016 approved by City of Sydney. DA is for “Fitout use and signage for tenancy R9.11 for a licensed bar and restaurant “Banksii Bistro” with internal and external seating”. (DOC16/103845)
- (11) SECTION 96 MODIFICATION APPROVAL – APPLICATION NO: D/2016/598/A DATED 15 August 2016 approved by City of Sydney to “Amend condition 2 (Hours of Operation) to allow external trading to 11pm on a trial period (DOC16/103841)
- (12) Council Submission received 22 June 2016 (DOC16/090792)
- (13) The applicant responded to the Council submission on 8 September 2016 by email (INW16/50828)

- (14) Police Submission received on 14 September 2016 (DOC16/103839)
- (15) The applicant responded to the Police submission on 16 September 2016 by email (INW16/50829)
- (16) A Public Submission was received on 15 September 2016 (DOC16/105739)
- (17) The applicant responded to the Public submission on 21 September 2016 by email (INW16/50833)
- (18) Photographs indicating how the outdoor area will be physically defined received 21 September 2016. (INW16/50833)

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.

- 1) 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 Barangaroo and the "broader community" comprises the Council of the City of Sydney LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on-premise liquor licence with a primary service authorisation and extended trade authorisation is for a low risk business model.
- (2) The premises is to operate with its principal business being that of a restaurant as defined by the *Liquor Act 2007* and not as a bar.
- (3) The licence will be exercised in accordance with a Plan of Management that provides operational practices in place to ensure liquor is sold and supplied in a responsible manner.
- (4) Submissions were received from the Council, NSW Police and a Public Submission. The applicant was given the opportunity to provide responses to the submissions. The applicant was able to describe measures in place to alleviate any adverse issues including CCTV, Plan of Management, security, signage and responsible service of alcohol strategies.
- (5) A number of conditions have been imposed on the licence as assurance of liquor management obligations.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

Having examined the material provided with the application, I am satisfied that the grant of the liquor licence will be of public interest in the Barangaroo precinct. The nature of the licence sought means that there are unlikely to be any amenity impacts on the Local Community but will allow restaurant allows patrons to dine along the waterfront with a unique experience.

(2) Negative impacts

One public submission from a local resident was noise related concern. Police reviewed the application and did not object to the granting of the on premise licence. Police did indicate that they objected to the grant of the primary service

authorisation due to the premise being a new licensed premise and that the premise is at an increase risk of failure to comply with RSA requirements.

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 on-premise liquor licence with primary service authorisation and extended trade authorisation with conditions.

Decision Date: 25 September 2016



Samantha Torres

Executive Director

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>