



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

APPLICATION NO: APP-0001695084
APPLICATION FOR: On-premises liquor licence (vessel)
APPLICANT: Malcolm Steen
LICENCE NAME: Sydney Premium Fishing Charters
PREMISES ADDRESS: Docked at 2 Tonkin St
CRONULLA NSW 2230
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**

SYDNEY PREMIUM FISHING CHARTERS

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, APP-0001695084.

On 29 October 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 are to be operated at all times in accordance with the Plan of Management dated 24 October 2016 as may be varied from time to time in consultation with the Local Area Commander.
4. The licensee must ensure that a maximum of 12 patrons is permitted on the fly bridge.
5. The Licensee is to maintain an approved Incident Register with incidents and details of the action taken to be recorded in the Incident Register at all times.
6. The Licensee is to notify the NSW Police Marine Area Commander or his/her representative of all serious incidents (serious incidents include any injury sustained by a patron that requires medical treatment or any unscheduled dockings to turn out a person who is intoxicated, violent, quarrelsome or disorderly).
7. The following drinks must not be sold or supplied at any time:
 - a. Any drink (commonly referred to as a shot, shooter, slammer or bomb) that is designed to be consumed rapidly.
 - b. Doubles (does not apply to genuine cocktails).
 - c. Ready to Drink (RTD) packaged beverages exceeding 5% Alcohol by Volume.
8. The licensee will not host Stag/Buck's nights, Hen's nights, under 18 events, alcohol only events, dance parties and events incorporating adult entertainment.

For the purpose of this condition:-

A dance party event means an event, whether ticketed event or otherwise, which is open to the public and where the primary activity is entertainment provided by live DJ/DJ's and/or the live performances for the purpose of dancing. This includes the vessel being part of a group of vessels or part of a land based activity which involves an event that could be described as a "Dance Party" or where amplified music is the main reason for the event or gathering. Note: This requirement is not intended to include wedding ceremonies/receptions, corporate events, and school formals at which DJ entertainment or other live performances of electronic dance music is provided ancillary to the event.

Adult entertainment may include, but is not limited to, events involving nudity, simulated sex and/or audience participation.

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 13 March 2016 (DOC16/019485)
- (2) Certificate of Survey and Operation issued by the Australian Maritime Safety Authority on 24 June 2016 (DOC16/029605)
- (3) Plan of Management for the vessel dated 24 October 2016 (DOC16/134751)
- (4) Submission and EVAT report from the Secretary, Liquor & Gaming NSW dated 6 May 2016 which did not raise any concerns. (DOC16/043901)
- (5) Plan of proposed premises (DOC16/029535)
- (6) Email correspondence dated 10 September 2016 from the Authority to the applicant requesting additional information (DOC16/101425)
- (7) Email correspondence dated 15 September 2016 from the applicant in response to the request for additional information (DOC16/113630)
- (8) Further email correspondence dated 24 and 27 October 2016 from the Authority to the applicant proposing a number of conditions (DOC16/131786 and DO16/135567) and response from applicant dated 26 and 28 October 2016 consenting to the proposed conditions (DOC16/134750 and DOC16/136160)
- (9) National Police Certificate (DOC16/029541) and RSA documentation (DOC16/019487) for the proposed licensee
- (10) Certificate of Advertising (DOC16/029537)

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 Sutherland Shire Council and the “broader community” is the state of New South Wales.

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 36. The applicant intends to charter the vessel for sea cruises in addition to fishing charters.
- (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) The Secretary of Liquor & Gaming NSW did not find any adverse information regarding the entities relevant to the application or the applicant.
- (4) Police have not forwarded a submission.

6. Overall social impact

(1) Positive benefits

The vessel will conduct pre booked fishing charters/ cruises, where patrons depart from and return to Cronulla Wharf.

(2) Negative impacts

No objections were received and 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) 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: 29 October 2016



Olga 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>