



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

DOC16/101435

APPLICATION NO: 1-4818713097

APPLICATION FOR: On-premises liquor licence with restaurant and catering classes, primary service and sale on other premises authorisations

PROPOSED TRADING HOURS: Monday to Saturday 10:00 AM - 11:00 PM
Sunday 10:00 AM – 10:00 PM

APPLICANT: Joanna Ferguson

PROPOSED LICENSED PREMISES NAME: **Cirrus Dining**

PROPOSED PREMISES ADDRESS: Tenancy R8.10 "Anadara" Building R8
23 Barangaroo Avenue
BARANGAROO SOUTH NSW 2000

ISSUE: Whether a delegated Liquor & Gaming NSW employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for an on premises licence with restaurant, catering class, primary service authorisation and sale on other premises authorisation and impose conditions for that licence.

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

**ILGA DELEGATED DECISION - APPLICATION FOR AN ON-PREMISES
LICENCE WITH RESTAURANT AND CATERING CLASSES,
PRIMARY SERVICE AND SALE ON OTHER PREMISES AUTHORISATIONS**

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 with conditions the application 1-4818713097 for an on-premises liquor licence for a restaurant with a catering service, primary service authorisation and sale on other premises authorisation.

The application did NOT include an application form for Extended Trading Authorisation (ETA), although the Community Impact Statement and Part 6 on the application form did select the option of ETA. The Public Consultation notice – Site Notice and Part 1 on the application form did NOT select the ETA option. Notwithstanding this was not properly dealt with in the original application advertising, thus no ETA application was before the delegate for approval. If the applicant wishes to pursue the ETA, a separate application will be required.

On 13 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
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.	

3. Consumption on premises (catering)

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 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.
5. The premises is to be operated with its principle business being that of a restaurant as defined by the Liquor Act and not as a bar.
6. No drinks commonly referred to as shots, shooters, slammers, and/or bombs are to be sold or supplied at the premises after 10:00 PM.
7. The premises is to be operated at all times in accordance with the Plan of Management dated September 2016, as may be varied from time to time in consultation with the Local Area Commander.
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 licensee or its representative must join and be an active participant in the local liquor accord.
10. 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.
11. The sale on other premises authorisation can only be utilised for functions, occasions or events, which are by invitation only.

12. **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.

13. Signage To Be Displayed

Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in such a manner that it would be reasonable to expect that a person leaving the premises will be alerted to its contents. The signage shall state: Upon leaving please respect local residents by minimising noise.

14. 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.

15. 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.
16. 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 sale on other premises and other relevant material:

- 1) Application form – dated 25 July 2016 - DOC16/090338
 - Primary service authorisation lodged 25 July 2016 – DOC16/090375
 - Sale on other premises authorisation lodged 25 July 2016 – DOC16/090521
- 2) Category A Community Impact Statement Form dated 25 July 2016 - DOC16/100991
- 3) Certificate of Advertising Application dated 18 August 2016 – DOC16/092004
- 4) Notice of Determination – Approval D/206/488 granted by City of Sydney Council, dated 22 July 2016 for fit out and use of tenancy R8.10 within the Anadara building as a licensed restaurant – Development Consent - DOC16/090340
- 5) Premises plan indicating boundary of proposed licensed area received 25 July 2016 - DOC16/090343
- 6) Plan of Management and House Policy for the premises dated September 2016 - DOC16/100977
- 7) Submission from City of Sydney Council dated 28 July 2016, stating the Council has no matters of concern with this application. Development Consent D/2016/488 approves the premises for use with hours consistent with those applied for in the application – DOC16/101394
- 8) Submission from NSW Police, Sydney City Local Area Command (Police), objecting to primary service authorisation, and requesting a number of conditions to be imposed on the licence, dated 6 September 2016. – INW16/50743
- 9) The applicant's response to Police submission dated 8 September 2016 – DOC16/101097
- 10) RSA Competency Card and National Police Certificate dated 12 July 2016 for the applicant, forwarded 8 February 2016 – DOC16/090341, DOC16/090342
- 11) Interim Occupation Certificate No. 16/123703-2, issued 5 September 2016 by McKenzie Group Consulting (NSW) Pty Ltd – DOC16/099979
- 12) Risk rating report for the application – DOC16/101208

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

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.
- 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 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 the material, I am satisfied that this application is for an on-premises licence for a restaurant with a catering service, primary service authorisation, and sale on other premises authorisation.
- 2) The proposed licensed premises will be operated in compliance with a Plan of Management which details what measures are in place to ensure liquor is sold in a responsible manner.

- 3) City of Sydney Council advised no matters of concern with the application, with Development Consent D/2016/488 approving the premises for use with hours consistent with those applied for in the application.
- 4) City of Sydney LAC (Police) submission objected to inclusion of primary service authorisation, on the basis that the area is being saturated with new licensed premises which may contribute to the level of violence currently experienced within the area. Police requested a standard set of conditions to be imposed on the licence.
- 5) The Police submission with the proposed conditions has been referred to the applicant, and comments received were duly considered.
- 6) Further, I am satisfied that no application for ETA was before me as delegate and it was not open to me to infer an application for ETA had been received because of a notation of the CIS.

6. Overall social impact

1) Positive benefits

- (a) The proposed licensed restaurant with a patron capacity of 142 patrons, will be fitted out to a high standard of an upmarket restaurant with both indoor and outdoor area, providing a modern Australian cuisine, and selling liquor with and without meals to residents of Barangaroo, employees of businesses within the Precinct, and its visitors.
- (b) Low-level background music and light entertainment ancillary to the principal use as a restaurant will be provided.
- (c) The licence will also be utilised to provide catering services primarily to the corporate and business sectors.

2) Negative impacts

- (a) The licence will be operated in accordance with harm minimisation measures outlined in the Plan of Management provided by the applicant.
- (b) Police have requested conditions to be imposed on the licence which have been included on the licence document, or otherwise addressed in the Plan of Management and the Development Consent.

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. All submissions received were considered and helped inform this decision. The interested parties include the Licensee, City of Sydney Council, Sydney City LAC, and the nearby community.
- 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 Plan of Management, and other related material, under section 45(3)(b) of the Act, I am satisfied that practices will be in place at the premises when providing catering services, primary service and sale on other premises, 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) Having considered together the positive benefits and negative impacts that I am satisfied that are likely to flow from granting the application, I am satisfied that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.
- 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 with conditions the licence application.

Decision Date: 13 September 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>