



NSW Department of Justice
Liquor & Gaming NSW

APPLICATION NO: APP-0001837240
APPLICATION FOR: On-premises liquor licence (vessel)
APPLICANT: RIVERSIDE MARINE NSW PTY LTD
LICENCE NAME: Fantasea Catalina
PREMISES ADDRESS: 2 Waterways Ct
ROZELLE NSW 2039
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
FANTASEA CATALINA**

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/ tour operator APP-0001837240.

On 31 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 licensee must not permit 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 other live performance/s for the purpose of dancing.

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.
4. The premises must 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 of the NSW Marine Area Command, NSW Police Force.
 5. The Licensee, the Approved Manager and employees or agents of the licensee must ensure a copy of the liquor licence and Plan of Management is made available upon request by Police or Inspectors.
 6. 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.
 7. The Licensee must notify the NSW Police Marine Area Commander or his/her representative of all serious incidents.

Serious incidents include any incidents involving an act of violence causing an injury to a person on the premises, including, but not limited to, 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.

8. The Licensee must actively promote drug and alcohol harm minimisation strategies.
9. 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.
10. The Licensee is to ensure that no patron is stockpiling drinks and that a single patron has no more than two unconsumed drinks at any one time that are for their consumption.
11. The Licensee must not permit staff to consume liquor on the licensed premises while engaged in the sale or supply of liquor (including during any meal or other break).

12. The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00 am and 12:00 midnight.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 07:00 am.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 Midnight and 7:00 AM.

For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises.

13. The Licensee must employ a minimum of one (1) fully licensed security guard whenever the vessel is hired for a private charter or event that is held on a Friday, Saturday or Sunday evening and the patron capacity exceeds 100 patrons.
14. All security guards employed for a private charter or event must disembark at the same wharf patrons of that charter/event do to ensure that all patrons disembarking the licensed premises do not unduly disturb the local amenity.
15. The Licensee must ensure that all bar staff will wear clothing that clearly identifies them as Bar Staff and employees of the Licensee.

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 2 June 2016 (DOC16/061093)
- (2) ASIC report for organisation licensee, forwarded 30 June 2016 (DOC16/071482)
- (3) Appointment of manager notice for Timothy Yates forwarded 18 October 2016 (DOC16/127441)
- (4) Certificate of Survey and Operation issued by the Australian Maritime Safety Authority on 24 June 2016 (DOC16/071485)
- (5) Plan of Management for the vessel dated September 2016 and updated 20 October 2016 (DOC16/127940)
- (6) Two submissions from the Secretary, Liquor & Gaming NSW initially dated 23 September 2016, (DOC16/110603) which has requested conditions to be imposed on the licence and subsequently, dated 20 October 2016 (DOC16/129980) which indicating no concerns to an increased patron capacity for the vessel.
- (7) Submission from NSW Police Force Marine Area Command dated 20 October 2016, proposing a further condition (in addition to those which were requested by the Secretary) to be imposed on the licence (DOC16/129149)
- (8) Plan of proposed premises received 30 June 2016 (DOC16/071486)
- (9) Email correspondence dated 17 September 2016 from the Authority to the applicant requesting additional information (DOC16/109692)
- (10) Email correspondence dated 27 September 2016 from the applicant in response to the request for additional information (DOC16/126622)
- (11) Email correspondence dated 22 September 2016 from the Authority to the applicant proposing a number of conditions (DOC16/109692) and response from applicant dated 18 October 2016 consenting to the proposed conditions (DOC16/127543)

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 the State suburb of Rozelle and the “broader community”, the Sydney Harbour.

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 403 patrons (including crew). It is proposed the vessel will provide pre-booked “tourist focussed sightseeing tours within Sydney harbour, whale watching tours off shore. The applicant has also requested single short duration transfers (ie corporate, wedding functions) lasting less than 30 minutes for a patron capacity of 400.
- (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 reviewed the compliance history and did not find any adverse information regarding the entities relevant to the application or the applicant. The Secretary considered the application as low risk.

- (4) Police have no concerns with the application providing that the requested conditions are imposed on the licence.

6. Overall social impact

(1) Positive benefits

The vessel forms part of a number of vessels currently owned by the licensee, that have recently been granted liquor licences. It will conduct pre-booked cruises of Sydney Harbour. The target market is primarily the tourist industry in addition to some corporate / private charter clients.

(2) Negative impacts

Police raised generalised concerns regarding the number of vessels operating in Sydney Harbour, however they are satisfied with the Plan of Management for the vessel provided by the applicant. No other 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: 31 October 2016



Olgica 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>