



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

APPLICATION NO:	1-4518516833
APPLICATION FOR:	On-premises liquor licence with Primary Service Authorisation
TRADING HOURS	Restaurant and Primary Service Authorisation: Consumption on Premises Monday to Saturday: 10:00 AM to 12:00 AM Sunday: 10:00 AM to 10:00 PM
APPLICANT:	Darren Price
LICENCE NAME:	Gallagher's Bar & Grill
PREMISES ADDRESS:	Grd Flr Tenancy 3/33 Cross St, DOUBLE BAY, NSW 2028.
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-premise liquor licence with Primary Service Authorisation
LEGISLATION:	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR AN ON PREMISES
Gallagher's Bar & Grill**

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-premise liquor licence with Primary Service Authorisation 1-4518516833.

On 16 December 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

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. 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 principal business being that of a restaurant as defined by the *Liquor Act 2007* and the premises are not to be themed and operated as a night club.
5. The licensee or its representative must join and be an active participant in the Local Liquor Accord.
6. Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing 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, and retain all material and implements associated with the act of violence in accord with Crime Scene Preservation Guideline, issued by NSW Police, and
 - (ii) Make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
 - (iii) Comply with and directions given by the Commander or delegate to preserve or keep intact the area where the act of violence occurred.
7. The premises are to be operated at all times in accordance with the Plan of Management dated October 2015 as may be varied from time to time after consultation with the Local Area Commander.
8. The licensee must ensure that patrons entering/ leaving the premises do not disturb the amenity of the neighbourhood.
9. A register of and disturbance/ complaints made to management in respect to the manner in which the business of the premises is being conducted and/or the behaviour of persons entering/leaving

the premises. This register must include time, date nature of the complaint and any complainant details if provided.

10. A copy of all registers, development consents and plans of management must be kept on the premises and made available for inspection immediately upon request by NSW police, Council Officers and/or Liquor and Gaming Authorised Officers.
11. The Licensee must maintain a closed-circuit television system on the premises in accordance with the following:
 - (a) The system must record continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times)
 - (b) Recordings must be in digital format and at a minimum of 6 frames per second.
 - (c) Any recorded image must specify the time and date of the recorded image,
 - (d) The system cameras must cover the following areas:
 - (i) All the exit and entry points of the premises,
 - (ii) The footpath immediately adjacent to the premises,
 - (iii) All publicly accessible areas (other than toilets) on the premises.

The licensee must also:

- (a) Keep all recordings made by the CCTV system for at least 30 days, and
 - (b) Ensure the system is accessible by at least one member of staff at all times it is in operation.
12. The sale and/or supply of liquor must cease 30 minutes prior to the cessation of the respective liquor trading hours of operation for the premises.
13. The kitchen must always be open with substantive meals available to patrons while the premises is open. A designated seat must be available to all patrons.
14. The licensee must ensure that no shots, shooters or slammers are served to any patron at any time.

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 14 July 2016 (DOC16/059555).
- (2) Certificate of Advertising declaration by applicant on 31 May 2016 (DOC16/071471).
- (3) Plan of Management dated October 2015 (DOC/059563).
- (4) Development Consent 479/2014 dated 12 February 2015 (DOC16/059561).
- (5) National Police Certificate for Darren Price dated 21 April 2016 (DOC16/059558).
- (6) RSA Competency card for Darren Price, expiry date August 2019 (DOC16/059557).
- (7) Plan of proposed licensed area (DOC16/167461)
- (8) Public submission forwarded 31 May 2016 (DOC16/069700)
- (9) Police submission forwarded 27 July 2016, requesting conditions to be imposed on the licence (DOC16/148829)
- (10) Email correspondence dated 12 November 2016 from the Authority to the applicant requesting additional information (DOC16/148837))
- (11) Email correspondence dated 24 November 2016 from the applicant in response to the request for additional information including supporting documentation (DOC16/167493 and 167495)
- (12) Email correspondence dated 6 December 2016 from the Authority to the applicant requesting consent to imposition of additional conditions (DOC16/167568)
- (13) Email correspondence dated 7 December 2016 from the applicant in response to the request for consent to additional conditions (DOC16/172119)

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 4 div 4 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 Double Bay and the “broader community” of Woolahra Municipal Council 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 has appropriate Development Consent in place.
- (2) Police raised no objections to the grant of the licence for the premises however they have requested conditions to be imposed on the licence.
- (3) There has been one public objection to the application.
- (4) 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 restaurant does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (5) A list of conditions to be imposed on the licence was forwarded to the applicant for comment and the response was duly considered.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The applicant intends to establish a fine dining restaurant within the area. A Plan of Management has been provided to enable compliance with the conditions imposed on the granting of the licence.

(2) Negative impacts

Police indicate that they have no concerns with the granting of a licence for the premises. Although one objection has been forwarded, 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) 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-premises liquor licence application with conditions.

Decision Date: 16 December 2016

Catherine Bass-Kendzy
A/Director 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>