

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

APPLICATION NO: 1-4557368301

APPLICATION FOR: On premises liquor licence for a restaurant with primary service authorisation

PROPOSED TRADING HOURS: Restaurant:
Monday to Saturday: 11:30 AM - 10:00 PM
Sunday: 11:30 AM - 08:00 PM

Primary Service Authorisation:
Monday to Saturday: 12:00 PM to 10:00 PM
Sunday: 12:00 PM - 08:00 PM

APPLICANT: Mr Daniel Quinn

LICENCE NAME: Off The Hook Fish Cafe

PREMISES ADDRESS: Shop 1 1421 Pittwater Road
NARRABEEN NSW 2101

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 licence with primary service authorisation and impose conditions for that licence.

**ILGA DELEGATED DECISION - APPLICATION FOR ON-PREMISES
LICENCE WITH PRIMARY SERVICE AUTHORISATION**

OFF THE HOOK FISH CAFE

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 for a liquor licence for a restaurant, with primary service authorisation, application no 1-4557368301.

On 17 December 2016, and after careful consideration of the Application and other material, the delegate decided to approve the Application.

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
<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 well being 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 are to be operated at all times in accordance with the Plan of Management provided on 15 December 2016 as may be varied from time to time after consultation with the Local Area Commander.
5. The premises can only trade to 08:00 PM on public holidays.
6. No person shall be permitted to take glasses or open containers of liquor off the licensed premises when leaving: in particular, patrons shall not be permitted to drink outside the premises on Pittwater Rd or behind on Berry Reserve or the bus stop and car park area to the South.
7. All alcohol is to be sold and supplied by way of table service ONLY.
8. Patrons must be seated while consuming liquor. Consuming liquor includes holding or exercising control of a container of liquor.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the Application, the accompanying community impact statement (CIS)

1. On-premises licence application form – lodged 16 June 2016 (DOC16/064835)
2. Primary service authorisation application form – lodged 16 June 2016 (DOC16/064844)
3. Community Impact Statement (CIS) document and supporting material that accompanies the Application dated 18 May 2016 (DOC16/064840)
4. Complying Development Certificate issued 11 August 2016. (DOC16/087390)
5. NSW National Police Certificate issued 28 June 2016. (DOC16/087391)
6. Submission from Northern Beaches Council dated 15 August 2016, raising no objection to the application. (DOC16/091387)
7. Submission from NSW Police dated 6 September 2016 which does not object to the granting of the on-premises restaurant licence application but does object to the granting of the primary service authorisation application. (DOC16/099922)
8. Updated Plan of Management for the venue submitted 15 December 2016 (DOC16/162198)
9. Proposed premises floor plan (DOC16/162202)
10. Food and drinks menu (DOC16/154325)
11. Business Name Registration (DOC16/142667)
12. Premises photographs (DOC16/172812)
13. Identification document and RSA competency card (DOC16/064837, DOC16/064838)
14. Certificate of Advertising (DOC16/142668)
15. Occupation Certificate (DOC16/162196)
16. Email correspondence between the applicant and police (DOC16/173269)
17. Email correspondence between the Authority and the applicant, including the applicant's consent to the imposition of the licence conditions. (DOC16/154323, DOC16/162191 & DOC16/173256)

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

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 suburb of Narrabeen and the "broader community" comprises the Bayside LGA.

5. Analysis of submissions and other materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on premises liquor licence with a primary service authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The application is for an on premises restaurant licence with primary service authorisation. The licence will be exercised in accordance with a plan of management that addresses the responsible service of alcohol, security details, noise and staff training.
- (3) A submission was received from Northern Beaches Council on 15 August 2016, which confirmed that Council has no objection to the application.
- (4) A submission was received from the Local Area Command, which raised no objection to granting the on-premises restaurant licence but did raise an objection to granting the primary service authorisation. In the response to the police objection, the applicant stated that he has contacted the Local Area Command, understands these obligations under the *Liquor Act* and agrees to satisfy those obligations. The police

have proposed a number of conditions to be imposed on the licence. The applicant has consented to all the proposed police conditions.

6. Overall social impact

(1) Positive benefits

The licence will be operated as a restaurant with a primary service authorisation operating as a restaurant between 11:30 AM and 10:00 PM Monday to Saturday and 11:30 AM and 08:00 PM on Sunday and with a primary service authorisation between 12:00 PM and 10:00 PM Monday to Saturday and 12:00 PM and 08:00 PM on Sunday. Serving food is the primary purpose of the business.

(2) Negative impacts

There was one submission received from NSW Police which objected to the primary service authorisation application. NSW Police requested that a period of twelve months should elapse before the proposed licence be granted a primary service authorisation, during which time the proposed licensee must not come under notice and must demonstrate his understanding of the Liquor Act. The applicant has since advised that he has contacted NSW Police, understands the Liquor Act and agrees to comply with all legislative requirements. No other concerns were raised.

7. Conclusion

7.1 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.

7.2 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.

7.3 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.

7.4 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.

7.5 Having considered together the positive benefits and negative impacts that I am satisfied 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.

7.6 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: 17 December 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>