

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

APPLICATION NO: 1-4409099798

APPLICATION FOR: Liquor licence – on-premises - restaurant with primary service authorisation

TRADING HOURS: Monday to Saturday 10:00 AM to 12:00 AM
Sunday 10:00 AM to 10:00 PM

APPLICANT: Marten Clark

LICENCE NAME: Seasalt Port Macquarie

PREMISES ADDRESS: Shop 8 18 Park Street
PORT MACQUARIE NSW 2444

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 restaurant with primary service authorisation

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

**ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISE LICENCE
WITH PRIMARY SERVICE AUTHORISATION FOR
SEASALT PORT MACQUARIE**

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 for a restaurant with primary service authorisation, 1-4409099798.

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. 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 31 st	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 must be operated at all times in accordance with the Plan of Management dated 25 September 2016 as may be varied from time to time in consultation with the Local Area Commander.
5. The premises must be operated with its principal business being that of a restaurant as defined by the *Liquor Act* and not as a bar. The licensed premises are not to be themed or operated as a nightclub.
6. The licensee or its representative must join and be an active participant in the local liquor accord.
7. The kitchen shall remain operational at all times that the primary service authorisation is being exercised.
8. 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 15 frames per second.
 - c. Any recorded image must specify the time and date of the recorded image.
 - d. The CCTV 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.
 - e. All recordings made by the CCTV system must be kept for at least 30 days before being re-used, destroyed or deleted.
 - f. The CCTV recording device shall be secured within the premises and only accessible to senior management personnel. At least one staff member must be

present on the premises, who is authorised to access the CCTV system and is able to access and fully operate the system, including downloading and producing recordings of CCTV footage and ;

- g. Provide any recording made by the system to a Police Officer or Inspector within 24 hours of any request by a Police Officer or Inspector to provide such recordings.
9. The Licensee must ensure that, immediately after the Licensee or a staff member becomes aware of an incident involving an act of violence causing an injury to a person on the licensed premises or in the immediate vicinity,
- a. All reasonable steps are taken to preserve and keep intact the area where the incident occurred, and that any implement or other thing associated with the act of violence is retained in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police Force; and
 - b. The Mid North Coast Local Area Commander or his/her delegate, is advised by the licensee or a staff member or agent of the incident as soon as practicable; and
 - c. The licensee or staff member complies with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

In this condition, "staff member" means any person employed by or acting on behalf of the licensee of the licensed premises and it includes any person who is employed to carry on the security activities on or about the premises.

10. 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. Any drink containing alcohol mixed with an energy drink.
11. The following restrictions and conditions will apply upon the sale/supply alcohol after 11:00 PM:
- a. No mixed drinks with any more than thirty (30) mls of alcohol.
 - b. No RTD drinks with an alcohol volume greater than 5%
 - c. No more than four drinks may be served to any patron at one time.
12. Tables are not to be removed to increase patron standing area. The maximum number of patrons permitted on the premises is not to exceed the number of available seated positions.

Incident Register:

13. The Licensee must maintain an Incident Register in the form and manner required under section 56 of the *Liquor Act 2007* at all times the venue is open and operating for the sale or supply of liquor.
14. The Licensee must record in the Incident Register the details of any of the following incidents and any action taken in response to any such incident:
 - a. Any incident involving violence or anti-social behaviour occurring on the premises;
 - b. Any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises;
 - c. Any incident that results in a person being turned out of the licensed premises under section 77 of the *Liquor Act 2007*;
 - d. Any incident that results in a patron of the premises requiring medical assistance,
 - e. Notwithstanding the above, any incident of a person being refused service of alcohol.
15. The licensee must, if requested to do so by a Police Officer or Inspector:
 - a. Make any such Incident Register immediately available for inspection by a Police Officer or Inspector, and
 - b. Allow a Police Officer or Inspector to take copies of the incident Register or to remove the Incident Register from the premises.
16. The Licensee must ensure that the information recorded in the Incident Register is retained for at least 3 years from when the record was made.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the application, the accompanying community impact statement (CIS-Category A) and other relevant material:

- (1) Application form – Lodged 4 May 2016 (DOC16/046497)
- (2) Community Impact Statement (CIS) document and supporting material accompanying the application, dated 2 May 2016 (DOC16/046504).
- (3) Plan of Management for the Premises dated 25 September 2016 (DOC16/137908)
- (4) Premises plan of the proposed licensed area (DOC16/046506)
- (5) NSW National Police Certificate dated 24 May 2016 (DOC16/059732)
- (6) Identification documentation for the applicant (DOC16/046498)
- (7) Responsible service of alcohol competency card with an expiry date of 11 July 2017 (DOC16/046499)
- (8) Notice of Determination Application No 680.2011.129 approved 26 June 2012 (DOC16/046503)
- (9) Council Submission form Port Macquarie-Hastings Council dated 30 May 2016 (DOC16/055868)
- (10) Police Submission Mid North Coast Licensing LAC received 30 May 2016 (DOC16/055453)
- (11) Email correspondence dated 24 September 2016 from the Authority to the applicant requesting further information in relation to the application. (DOC16/111250)
- (12) Email correspondence from Mr Michael Marr on behalf of the applicant providing responses to request for additional information, imposition of conditions and response to Police submission, received 26 September 2016 (INW16/50920, DOC16/046501)

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) 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 Port Macquarie and the Broader Community, the Port Macquarie Hastings LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on-premise liquor licence with a primary service authorisation for a restaurant located at Port Macquarie Marina on Hastings River.
- (2) The premise is to operate with its principal business being that of a restaurant as defined by the *Liquor Act 2007* and not as a bar.
- (3) The licence will be exercised in accordance with a Plan of Management that provides operational practices for responsible service of alcohol.
- (4) Submissions were received by Council and NSW Police. The applicant was given the opportunity to provide responses to the submissions. The applicant consents to conditions proposed by Police and provides a detailed Plan of Management.

- (5) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

Having examined the material provided with the application, I am satisfied that the grant of the liquor licence will provide additional dining experience to the local community. The licensing of a restaurant which has been BYO for some time without any alcohol related issues is unlikely to be of negative impact on the Local Community.

(2) Negative impacts

Police reviewed the application and did not object to the granting of the on premise licence and primary service authorisation. Applicant consents to Police conditions to be imposed on the licence.

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-premise liquor licence with primary service authorisation and extended trade authorisation 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>