



**NSW Department of Industry
Liquor & Gaming NSW**

APPLICATION NO:	APP-0003447215
APPLICATION FOR:	On-premises liquor licence for restaurant with primary service authorisation
TRADING HOURS:	Monday to Saturday: 10:00am to 12:00am Sunday: 10:00am to 10:00pm
APPLICANT:	Leanne Simcic
LICENCE NAME:	The Al-Lea
PREMISES ADDRESS:	Shop 7 331-335 Barrenjoey Road NEWPORT NSW 2106
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should <i>grant</i> or <i>refuse</i> the liquor licence application
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

THE AL-LEA

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 Industry, has decided to grant the application for an on-premises restaurant liquor licence with primary service authorisation, application number APP-0003447215.

On 11 January 2017, 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 six hours between 4:00am and 10:00am during each consecutive period of 24 hours. The licensee must comply with this six-hour closure period along with any other limits specified in the trading hours for this licence.

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2. Consumption on premises

Good Friday 12:00 noon - 10:00pm

Christmas Day 12:00 noon - 10:00pm (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 2:00am on New Year's Day, whichever is the later.

Note: trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00am.

STATEMENT OF REASONS

1. Material before the ILGA delegate

CM9 Ref: DF17/017096

- (1) Applications for on-premises liquor licence and primary service authorisation, lodged 3 October 2017
- (2) Category A Community Impact Statement
- (3) Application notices
- (4) Certification of Advertising Application, signed and dated 10 December 2017
- (5) Copies of the applicant's National Police Certificate, RSA Interim Certificate and identification
- (6) Development Consent No. 94/183, granted by Pittwater Council on 7 October 1994, and Modification of Consent No. 94/183, granted 19 January 1995
- (7) Plan of the proposed licensed premises
- (8) Plan of Management for the venue, dated 1 September 2017
- (9) Photographs of the outdoor dining area
- (10) Submission from Northern Beaches Council, dated 18 October 2017, objecting to the application on the basis that it is inconsistent with the provisions of the development consent
- (11) Email from Liquor & Gaming NSW, dated 20 October 2017, requesting further information
- (12) Email from Northern Beaches Council, dated 8 November 2017, in response to the request for further information, and confirming that Council does not object to the Primary Service Authorisation being utilised in the outdoor dining area as this is situated on private property
- (13) Submission from NSW Police Force, dated 4 November 2017, raising no objection to the application and proposing two licence conditions

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- (14) Email correspondence from Liquor & Gaming NSW to the applicant, requesting further information in support of the application, dated 24 November 2017 and 6 December 2017
- (15) Email correspondence from the applicant to Liquor & Gaming NSW, in response to the request for further information, dated 11 January 2018

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

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- 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 the granting or removal of:
 - a. a small bar licence,
 - b. a packaged liquor licence (limited to telephone/internet sales),
 - c. an on-premises licence relating to a restaurant that, in the case of a new licence, includes an application for a primary service authorisation,
 - d. an on-premises licence relating to a karaoke bar, a catering service or a vessel,
 - e. an application for a producer/wholesaler licence that, in the case of a new licence, includes an application for a drink on-premises authorisation
 - f. an application for ongoing extended trading hours to permit the sale of liquor after midnight in relation to any of the above licence types.
- (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 Newport, and the “broader community” of the Northern Beaches Local Government Area.

5. Analysis of Submissions and other Materials

- (1) This application is for an on-premises liquor licence with primary service authorisation for a restaurant with 43 patron capacity, located in Newport, a beachside suburb in the Northern Beaches.
- (2) I am satisfied that the statutory advertising requirements have been met.

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- (3) I am satisfied that appropriate development consent permitting the proposed activity is in place.
- (4) Northern Beaches Council made a submission objecting to the application on the grounds that it was not consistent with the provisions of the relevant development consent. The applicant subsequently modified their application accordingly.
- (5) NSW Police Force made a submission raising no concerns with the application, and proposing two licence conditions, which were duly considered by the Authority delegate and the applicant.

6. Overall social impact

(1) Positive benefits

The granting of the licence will enable the venue to supplement and enhance the services offered, thereby offering the local beachside community with an intimate, safe and sophisticated venue at which to enjoy a drink with or without a meal.

(2) Negative impacts

The small, low risk nature of the venue, together with the plan of management provided by the applicant 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.



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- (5) In making this decision under delegation 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: 11 January 2018

Matt Weber
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>