

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

APPLICATION NO:	APP-0003510930
APPLICATION FOR:	On premises catering service with sale on other premises authorisation
TRADING HOURS:	Monday-Saturday: 10:00 PM to 12:00 AM Sunday: 10:00 PM to 10:00 PM
APPLICANT:	Matthew Rule
LICENCE NAME:	The Music and Booze Company Pty Limited
PREMISES ADDRESS:	57 Fern St, CLOVELLY, NSW 2031
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE
The Music and Booze Company Pty Limited**

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 catering service with a sale on other premises authorisation, application number APP-0003510930.

On 7 February 2018 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 04:00 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. Restricted trading and NYE (std)

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Retail sales

Good Friday Normal trading

Christmas Day Normal trading

December 31st Normal opening time until normal closing time or 2:00 AM on New Year's day whichever is later

3. The licensee must ensure that no more than four (4) alcoholic drinks are served to any patron at any time.
4. For any public event where the patron capacity exceeds 100, but does not exceed 500, the licensee must employ fully licensed security guard(s) at the rate 1 security guard per 100 patrons for the first 100 patrons and one additional security guard for every 100 patrons after.
5. A separate Plan of Management is to be prepared for any major non-private event where the patron capacity exceeds 500 guests.

Where the patron capacity of any non-private event exceeds 500, the licensee must advise the relevant Local Area Command and Local Council, no later than 30 days prior to the event taking place.

Where the patron capacity of any non-private event exceeds 1,000, the licensee must advise the relevant Local Area Command and Local Council, no later than 42 days prior to the event taking place.

For any major event the licensee must:

- a) Prepare a separate comprehensive Plan of Management, Site Plan, Security Management Plan and Alcohol Management Plan in consultation with the Local Area Command that has jurisdiction over the area where the event will be held and,
 - b) Provide a copy of the Plan of Management, Security Management Plan, Alcohol Management Plan and Local Licensing Agreements (where applicable) to the Local Area Commander.
6. Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing an injury to a person on the premises, the person must;
 - a) 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 accordance with the Crime Scene Preservation Guideline, issued by NSW Police.
 - b) Make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident.
 - c) Comply with any directions given by the Commander or delegate to preserve and keep intact the area where the act of violence occurred.
 7. The following drinks must not be sold or supplied at any time:

- a) Any drink (commonly referred to as shots, shooters, slammers and/or bombs) that is designed to be consumed rapidly.
 - b) Doubles.
 - c) Ready to drink (RTD) packaged beverages exceeding 5% Alcohol by Volume.
8. All security guards employed during functions are to have their security licence clearly displayed at all times. In addition, each guard is to wear a number clearly visible at least 10cm x 10cm so they can be easily identified. All numbers allocated must be recorded within a security sign in book and provided to police upon request.
9. No glass permitted during any public event outdoors in a public place. Any drink (whether or not it contains liquor) must be served in either non-breakable plastic receptacles or cans.

STATEMENT OF REASONS

1. Material before the ILGA delegate (CM9 reference DF17/018911)

- (1) Application form and sale on other premises lodged 7 November 2017.
- (2) Certification of Advertising document, signed and dated by the applicant and forwarded 8 November 2017.
- (3) Copies of Identification, Responsible Services of Alcohol certification and National Police Certificate for the applicant forwarded in support of the application.
- (4) Plan of the proposed licensed premises.
- (5) An email was forwarded by Randwick city council confirming that the venue qualifies as a "home business" and therefore exempt from development consent.,
- (6) A submission from The Secretary to Liquor and Gaming NSW, with no concerns.
- (7) 2 submissions from Maroubra Licensing Police requesting conditions to be imposed on the licence if granted.
- (8) 4 public submissions were received which objected to the application.
- (9) A Business Plan and House Policy for the venue has been forwarded in support of the application.
- (10) Email correspondence from the Authority to the applicant's legal representative requesting additional information in support of the application.
- (11) Email correspondence from the applicant's legal representative to the Authority in response to the requests for additional information.

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 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 Clovelly, and the "broader community" of both Randwick City LGA and the state of NSW given the nature of the licence having a sale on other premises authorisation.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on premises catering class with a sale on other premises authorisation wholesaler liquor licence with a drink on premises authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The submission which was received from Randwick City council did not raise any objections to the granting of the licence.
- (3) Four public submissions were forwarded which opposed the application.
- (4) The Secretary to Liquor and Gaming NSW has also forwarded a submission with no concerns.

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- (5) Police have requested conditions to be imposed on the licence which have been duly considered.
- (6) I am satisfied that appropriate council consent which permits the proposed activity is in place.
- (7) The licence will be exercised in accordance with a Business plan, House policy and licence conditions that addresses the responsible service of alcohol, and provides measures to ensure that the operation of the premises does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (8) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The applicant intends to provide a diverse range of functions and events which will vary greatly from small private and corporate functions to large music festivals with a proposed patron capacity of up to 15000.

Negative impacts

The Business plan provided by the applicant for large functions and conditions imposed on the licence provide a level of certainty that there are unlikely to be any major impacts on the local community. Although four public submissions were received, all opposing the application, events will not be held on the licensed premises address but elsewhere, as a sale on other premises authorisation has also been approved.

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) 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: 7 February 2018



Joanne Zammit
Coordinator, 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>