



NSW Department of Industry
Liquor & Gaming NSW

APPLICATION NO:	1-4978910410
APPLICATION FOR:	On-premises liquor licence for restaurant and catering classes with Primary Service Authorisation and Sale on other Premises Authorisation
TRADING HOURS:	Monday–Friday 10:00AM-12:00AM
APPLICANT:	AMY & K PTY LTD
LICENCE NAME:	The Naked Duck North Sydney
APPROVED MANAGER:	Mr Hoang Nguyen
PREMISES ADDRESS:	177-199 Pacific Hwy, NORTH SYDNEY, NSW 2060
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 Naked Duck North Sydney

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-premise liquor licence for a restaurant and catering class with primary service authorisation and a sale on other premises authorisation, application number 1-4978910410.

On 28 April 2017, and after careful consideration of the application and other material, the delegate decided to **grant** 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-**restaurant**

Good Friday 12:00 noon - 10:00 PM

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 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 5:00 AM.

3. Consumption on premises-**catering**

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 the later.

4. The premises is to operate with its principal business as being that of a restaurant as defined by the *Liquor Act*, and not as a bar.
5. 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
6. The premises is to be operated at all times in accordance with the Plan of Management dated February 2017, as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
7. The kitchen shall remain operational at all times that the Primary Service Authorisation is being exercised.
8. The licensee must ensure that all patrons must have an allocated seat when served or supplied alcohol, or while consuming alcohol.
9. The business of providing the Catering Service must be for fee, gain or reward. Functions held pursuant to the Catering Service must be pre-booked. A Catering Service booking register must be maintained.
10. The sale on other premises authorisation can only be utilised for functions, occasions or events, which are by invitation only.
11. The licensee or an employee of the licensee must be present at all functions where alcohol is sold/ supplied.
12. The licensee is to maintain an approved Incident Register with incidents and details of the action taken, to be recorded in the Incident Register at all times.
13. A full copy of all development consents for the operation of the premises, any registers required and the current plan of management, must be kept on the premises and made available for inspection immediately upon request by members of the NSW Police force, Council, or authorised officers of Liquor and Gaming NSW.

14. The licensee or its representative must join and be an active member of the local liquor accord.
15. A CCTV surveillance system must be installed at the premises. Physical access to and copies of recordings from the CCTV system must be made available upon request from NSW Police. There must be a member of staff present, when the premises is operating, who can gain access to and operate the CCTV system to allow for immediate playback of footage to assist with identification and investigations. CCTV recordings should be retained for a period of 28 days before being reused or destroyed.
16. 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:
 - 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 accord with Crime Scene Preservation Guideline, issued by NSW Police, and
 - b) Make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
 - c) Comply with and directions given by the Commander or delegate to preserve or keep intact the area where the act of violence occurred.
17. The licensee must ensure that the following drinks are not sold or supplied at any time:
 - a) No shots, shooters or slammers and/or bombs that are designed to be consumed rapidly
 - b) Doubles (does not apply to genuine cocktails) or
 - c) Ready to Drink (RTD) packaged beverages exceeding 5% volume are sold or supplied at any time.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form, (DOC16/116832), Primary Service Authorisation application (DOC16/116879) and application for Sale on other Premises Authorisation (DOC/116902) lodged 7 September 2016
- (2) Community Impact Statement application dated 1 September 2016 (DOC16/116835)
- (3) Plan of Management dated February 2017 (DOC16/116839)
- (4) Certificate of advertising signed 2 November 2016 (DOC17/016750)
- (5) Notice of Determination – Development Application No: D450/15 issued 12 July 2016 (DOC16/116840).
- (6) Proposed floor plan for the venue (DOC16/116834).
- (7) ASIC report for the premises owner (DOC16/116837) and business owner (DOC16/116838).
- (8) A submission from Harbourside LAC dated 5 November 2016, requesting conditions to be imposed on the licence (DOC17/064060).
- (9) A submission and the EVAT Assessment Report from the Secretary, dated 25 January 2017, seeking conditions to be imposed on the licence (DOC17/017990.)
- (10) Appointment of manager notice forwarded 17 February 2017 (DOC17/064061)
- (11) Email correspondence from the Authority to the applicant requesting additional information, on 24 January 2017 (DOC17/016851), 25 January 2017 (DOC17/067349) and 25 March 2017 (DOC17/064064)
- (12) Email correspondence from the applicant in response to the requests for additional information and supporting documentation dated 17 February 2017 (DOC17/033913), and 29 March 2017 (DOC17/067018).

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 North Sydney, and the "broader community" of the North Sydney LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on-premises liquor licence for a restaurant with catering, primary service authorisation and a sale on other premises authorisation has appropriate Development Consent in place.
- (2) Police raised no objections to the grant of the licence for the premises but did request conditions to be imposed on the licence.
- (3) The Secretary's delegate has requested conditions to be imposed on the licence. The applicant's response to the proposed conditions has been considered.
- (4) No public objections were forwarded in relation to the applications.
- (5) 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 business does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The proposed licensed restaurant with primary service and sale on other premises authorisation, a patron capacity of 70 persons poses low risk to the local or broader community has been supported by a plan of management in addition to appropriate development consent. The applicant intends to provide catering for corporate functions both within the proposed licensed premises and elsewhere.

(2) Negative impacts

There have been no objections to the granting of this licence. 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) 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: 28 April 2017



Santina Causa
A/Coordinator 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>