



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

APPLICATION NO: APP-0002105338

APPLICATION FOR: On-premises liquor licence with Primary Service Authorisation

TRADING HOURS Restaurant and Primary Service Authorisation: Consumption on Premises
Monday to Saturday: 10:00 AM to 12:00 AM
Sunday: 10:00 AM to 10:00 PM

APPLICANT: Mr Filip Grossert

LICENCE NAME: The Village at Narellan

PREMISES ADDRESS: Tenancy 307 Narellan Town Centre
326 Camden Valley Way
NARELLAN, NSW 2567

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-premise liquor licence with Primary Service Authorisation

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

**ILGA DELEGATED DECISION – APPLICATION FOR AN ON PREMISES
THE VILLAGE AT NARELLAN**

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-premise liquor licence with Primary Service Authorisation APP-0002105338.

On 23 December 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

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| 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 |

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 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 dated 19 August 2016 as may be varied from time to time after consultation with the Local Area Commander.
5. The following drinks must not be sold or supplied after 10:00pm:
 - a) Any drink commonly referred to as a 'shot' that is designed to be rapidly consumed (with the exception of aperitifs such as sambucca, limoncello or scotch);
 - b) Any drink containing alcohol mixed with an energy drink;
 - c) No RTD drinks with an alcohol volume greater than 5%.
 - d) No drinking containers commonly referred to as 'shot glasses' are to be available on the premises at any time.
6. The licensee or its representative must join and be an active participant in the local liquor accord.
7. The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) by more than 5 dB between 7:00 AM and 12:00 Midnight.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz- 8 kHz inclusive) between 12:00 Midnight and 7:00 AM.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 Midnight and 7:00 AM.

For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises. The licensee or its representative will ensure that no live entertainment is performed within the premises and that no music (amplified or otherwise) played within the premises is heard at the boundary of the closest residential premises.

8. A CCTV surveillance system will be installed at the premises. Physical access to and copies of recordings from the CCTV system are to be made available upon request from NSW Police. There is to be a member of staff present when the premises is operating that can gain access to and operate the CCTV system to allow for the 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.
9. 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:
 - (i) 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
 - (ii) make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
 - (iii) Comply with and directions given by the Commander or delegate to preserve or keep intact the area where the act of violence occurred.
10. The premises are not to be used or promoted *solely* as an entertainment venue. Any entertainment provided within the premises must be an ancillary or incidental to the purpose of a restaurant/bar.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the application, and other relevant material:

- (1) Application form lodged 23 August 2016 (DOC16/093158)
- (2) Certificate of Advertising declaration by applicant on 25 August 2016 (DOC16/161870)
- (3) Plan of Management dated 19 August 2016 (DOC16/157456)
- (4) Development Consent DA2016/00514 dated 20 July 2016 (DOC16/093160)
- (5) Submission from NSW Police, Camden Local Area Command dated 4 October 2016 (DOC16/117765)

- (6) Plan of proposed premises lodged with application (DOC16/093161)
- (7) National Police Certificate dated 30 May 2016 (DOC16/093169)
- (8) Responsible Service of Alcohol issued for applicant CCH10028988 expires 12 December 2016
- (9) Email correspondence dated 22 November 2016 from the Authority to the applicant requesting additional information including a response to submissions (DOC16/157544)
- (10) Email correspondence dated 25 November 2016 from the applicant in response to the request for additional information including response to submissions and supporting documentation (DOC16/157544)
- (11) Email correspondence dated 28 November 2016 from the Authority to the applicant requesting consent to imposition of additional conditions (DOC16/162034)
- (12) Email correspondence dated 30 November 2016 from the applicant in response to the request for consent to additional conditions (DOC16/164469)

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 4 div 4 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) 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 Narellan and the “broader community” of Camden Council LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this is application for an on-premises restaurant with primary service authorisation has appropriate Development Consent in place.
- (2) Police do not object to the grant of the on-premise restaurant, however oppose the grant of primary service authorisation with a written submission. Police propose a number of conditions to be included in the licence, should the application be granted. The applicant was provided an opportunity to provide a response to these conditions and the responses were duly considered.
- (3) 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 vessel does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (4) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The Restaurant will form part of the Narellan Town Centre. The Centre is currently undergoing significant redevelopment and expansion. The redevelopment comprises a new entertainment precinct including indoor and outdoor dining, of which the Restaurant will form part of.

(2) Negative impacts

Police indicate that the increase in alcohol related crime in the area has been a direct result in the opening of the recent establishments. A 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 impact 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) 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-premises liquor licence application with conditions.

Decision Date: 23 December 2016



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>

