

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

DOC16/096521

**APPLICATION NO:** 1-4205817703  
**APPLICATION FOR:** On-premises liquor licence (vessel)  
**APPLICANT:** Sean Anker  
**LICENCE NAME:** Element Charters  
**PREMISES ADDRESS:** Birkenhead Marina Berth A6  
19 Roseby St Drummoyne NSW 2047  
**ISSUE:** Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a packaged liquor licence (online).  
**LEGISLATION** Section 45(1) of the *Liquor Act 2007*

**ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES LIQUOR LICENCE (VESSEL)**

**ELEMENT CHARTERS**

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 (vessel), 1-4205817703.

On 22 September 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. The licensee is authorised to sell liquor by retail to passengers on board the vessel, for consumption on board the vessel only between the period commencing one hour before the vessel starts any voyage or passage and ending 30 minutes after the voyage or passage is completed.
3. The premises are to be operated at all times in accordance with the Plan of Management dated 28 July 2016 as may be varied from time to time after endorsement by the Local Area Commander.

4. The Licensee, Approved Manager and employees or agents of the licensee must ensure a copy of the liquor licence and Plan of Management is made available upon request by Police or Inspectors.
5. 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.
6. The Licensee is to notify the NSW Police Marine Area Commander or his/her representative of all serious incidents (serious incidents include any injury sustained by a patron that requires medical treatment or any unscheduled dockings to turn out a person who is intoxicated, violent, quarrelsome or disorderly).
7. 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) Doubles (does not apply to genuine cocktails).
  - c) Ready to Drink (RTD) packaged beverages exceeding 5% Alcohol by Volume.
8. The Licensee is to ensure no patron is stockpiling drinks and that a single patron has no more than two unconsumed drinks at any one time that are for their consumption.
9. The Licensee must not permit staff to consume liquor on the licensed premises while engaged in the sale or supply of liquor (including during any meal or other break).
10. The Licensee must ensure liquor is not removed from the licensed premises.
11. The Licensee must ensure that all bar staff will wear clothing that clearly identifies them as Bar Staff and employees of the Licensee.
12. The Licensee must actively promote drug and alcohol harm minimisation strategies.
13. All security guards employed for a private charter or event must disembark at the same wharf patrons of that charter/event do to ensure that all patrons disembarking the licensed premises do not unduly disturb the local amenity.
14. The licensee will not host Stag/Buck's nights, Hen's nights, under 18 events, alcohol only events, dance parties and events incorporating adult entertainment. For the purpose of this condition:-

A dance party event means an event, whether ticketed event or otherwise, which is open to the public and where the primary activity is entertainment provided by live DJ/DJ's and/or the live performances for the purpose of dancing. This includes the vessel being part of a group of vessels or part of a land based activity which involves an event that could be described as a "Dance Party" or where amplified music is the main reason for the event or gathering. Note: This requirement is not intended to include wedding

ceremonies/receptions, corporate events, and school formals at which DJ entertainment or other live performances of electronic dance music is provided ancillary to the event.

Adult entertainment may include, but is not limited to, events involving nudity, simulated sex and/or audience participation.

15. The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

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 07:00 am.

Interior noise levels which, although restricted in accordance with the above condition, still exceed safe hearing levels, are in no way supported or condoned by the Authority.

16. Maximum of 12 passengers permitted in the forward lower saloon at any one time.
17. Maximum of 12 passengers permitted on the upper deck at any one time.
18. Passengers are not permitted on the side decks, fore decks or upper deck outdoor area.

## 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 9 March 2016 (DOC16/023180)
- (2) National Police Certificate for Sean Anker, dated 7 February 2016 (DOC16/023205)
- (3) Sean Anker's Competency Card CCH10533833, expiry 9 February 2021 (DOC16/084296)
- (4) ID for Sean Anker (DOC16/023204)
- (5) Certificate of Survey and Operation issued by the Australian Maritime Safety Authority dated 3 March 2016 (DOC16/027175)
- (6) Plan of Management for the vessel dated 28 July 2016 (DOC16/084295)
- (7) Submission from the Secretary, Liquor & Gaming NSW dated 15 August 2016, indicating no concerns (INW16/50507)
- (8) Submission from NSW Police Force Marine Area Command dated 3 August 2016, proposing a condition to be imposed on the licence (INW16/50412)
- (9) Plan of proposed premises received 9 March 2016 (DOC16/100718)
- (10) Email correspondence dated 22 July 2016 from the Authority to the applicant requesting additional information (OUT16/50663)
- (11) Email correspondence dated 2 August 2016 from the applicant in response to the request for additional information (INW16/50411)
- (12) Email correspondence dated 4 August 2016 from the Authority to the applicant proposing a number of conditions (OUT16/50764) and response from applicant dated 8 August 2016 consenting to the proposed conditions (INW16/50506)
- (13) Photographs of the vessel received 2 August 2016 (DOC16/084294)
- (14) ASIC Registration of Business Name – Element Charters (DOC16/084297)
- (15) Risk report (DOC16/088113)

## 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) 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 Drummoyne and the “broader community”, the Sydney Harbour.

#### **5. Analysis of Submissions and other Materials**

- (1) The application is for an on-premises licence for a vessel with a patron capacity of 36 patrons (not including crew). It is proposed the vessel will provide pre-booked upmarket cruises of Sydney Harbour, where food is provided as part of the cruise.
- (2) The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol, and measures to ensure that the operation of the vessel does not impact detrimentally upon or detract from the amenity of the neighbourhood.
- (3) The Secretary of Liquor & Gaming NSW reviewed the compliance history and did not find any adverse information regarding the entities relevant to the application or the applicant. The Secretary considered the application as low risk.

- (4) A number concerns were raised in the Police submission in respect of new liquor licence applications for vessels. Police noted, however, that the proposed vessel is a luxury motor yacht which is considered to be low risk and would not require significant police resources to monitor its activities. Police proposed a condition regarding “dance parties” which the applicant consented to. I am satisfied that the conditions imposed on the licence and the measures implemented in the Plan of Management address all concerns raised in the Police submission.

## 6. Overall social impact

### (1) Positive benefits

The vessel is a small luxury motor yacht which will conduct pre-booked cruises of Sydney Harbour. The target market is persons in the age category of 30 to 60.

### (2) Negative impacts

Police raised generalised concerns regarding the number of vessels operating in Sydney Harbour, however they acknowledge that the proposed vessel is a luxury motor yacht which is considered to be low risk and would not require significant Police resources to monitor its activities.

No other objections were received and no other concerns were raised.

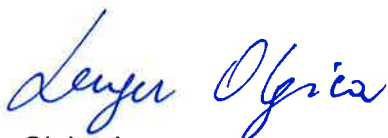
The nature of the licence sought means that there are unlikely to be any amenity impacts on the Local Community.

## 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) 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 packaged liquor licence application with conditions.

Decision Date: 22 September 2016



Olga 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>