

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

DOC16/130037

APPLICATION NO: 1-4164753545

APPLICATION FOR: Liquor – on-premises
Restaurant with primary service authorisation

TRADING HOURS: Monday to Sunday 10:00 AM to 10:00 PM

APPLICANT: Mr Overduin Jakob

LICENCE NAME: The Agency

PREMISES ADDRESS: Basement Level 29 Albany St
CROWS NEST NSW 2065

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-premises restaurant with primary service authorisation

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

**ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES
RESTAURANT LICENCE WITH PRIMARY SERVICE AUTHORISATION**

THE AGENCY

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 licence with primary service authorisation, 1-4164753545.

On 5 November 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
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 Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4. The premises must be operated at all times in accordance with the Plan of Management dated 13 September 2016, as may be varied from time to time in consultation with the Local Area Commander.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. The licensee must ensure that the number of patrons on the premises does not exceed forty three (43).
7. The premises is to operate with its principal business being that of a restaurant as defined by the Liquor Act and not as a bar.
8. The kitchen is to remain open with substantial food service available to patrons during the approved hours of operation.
9. Patrons within the licensed premises are only permitted to consume alcohol whilst seated.
10. No drinks commonly referred to as shots, shooters, slammers, and/or bombs are to be served at any time.
11. The sale of alcohol must cease 15 minutes prior to closing.
12. The licensee or its representative must 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.
13. The licence cannot be exercised unless and until the Independent Liquor & Gaming Authority has been provided with evidence that the premises at this location is complete and ready to trade.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the application, the accompanying community impact statement (CIS-Category A) and other relevant material:

- (1) Application form – Lodged 4 March 2016 (DOC16/017483)
- (2) Community Impact Statement (CIS) document and supporting material accompanying the application, dated 3 March 2016. (DOC16/017486)
- (3) Plan of Management for the premises dated 13 September 2016 (DOC16/0129056)
- (4) Premises plan of the proposed licensed area (DOC16/017487)
- (5) NSW National Police Certificate dated 29 January 2016 (DOC16/017490)
- (6) Identification documentation provided 4 March 2016 (DOC16/017489)
- (7) Responsible service of alcohol competency card with an expiration date of 31 January 2016 (DOC16/017488)
- (8) Notice to Applicant of Of Determination of a Development Application No: D378/11 dated 5 December 2011 approved under the Environmental Planning and Assessment Act 1979. (DOC16/017491)
- (9) Complying Development Certificate No. J150433 dated 1 December 2015 approved under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. (DOC16/017492)
- (10) Council Submissions received 29 March 2016 and 26 April 2016 (DOC16/033585 and DOC16/042599)
- (11) Police Submission received on 5 April 2016 (DOC16/031477)
- (12) Public Submission received 8 April 2016 (DOC16/032797)
- (13) Email correspondence dated 10 September 2016 from the Authority to the applicant requesting further information in relation to the application. (DOC16/101411)
- (14) Email correspondence from Mr Michael Marr on behalf of the applicant providing responses to request for additional information, imposition of conditions and response to Public and Police submission, received 13 September 2016 and 2 November 2016 (DOC16/129053, INW16/51373)

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) 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 State suburb of Crows Nest and the Broader Community, the North Sydney Council LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on-premise liquor licence with a primary service authorisation located in an area of mixed commercial and residential dwelling in Crows Nest.
- (2) The licensed premises is to operate as a bona fide restaurant serving meals to seated patrons. The primary service authorisation will allow patrons to consume

an alcoholic beverage at informal social and business meetings, outside lunch and dinner trade hours.

- (3) The licence will be exercised in accordance with a Plan of Management that provides operational practices to ensure responsible service of alcohol.
- (4) Submissions were received by Council, local resident and NSW Police.
- (5) Police did not object to the granting of the on premise licence, however objected to the grant of the primary service authorisation due to the premise being a new licensed premises and that the premises is at an increased risk of failure to comply with RSA requirements.
- (6) Public submission raised concerns about a liquor licence being issued in a residential area and the licence operating as a bar.
- (7) The applicant was given the opportunity to provide responses to the submissions.
- (8) The applicant was able to describe measures in place to alleviate any adverse issues including a detailed Plan of Management and consented to conditions.
- (9) A number of conditions have been imposed on the licence as assurance of liquor management obligations.
- (10) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The proposed licensed premises will operate as a bona fide restaurant serving genuine meals to seated patrons, including freshly shucked oysters, gourmet pot pies, soups, caviar and 30 types of cheeses. The marketing of the premises will be targeted to mature-aged discerning clientele and family groups.

(2) Negative impacts

The licence will be operated in accordance with harm minimisation measures outlined in the Plan of Management provided by the applicant.

Police have requested conditions to be imposed on the licence which have been included on the licence document, or otherwise addressed in the Plan of Management.

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-premise liquor licence with primary service authorisation and extended trade authorisation with conditions.

Decision Date: 5 November 2016



Olgica, 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>