



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

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| APPLICATION NO: | 1-6825047450 |
| APPLICATION FOR: | Liquor – On Premises Restaurant with Primary Service Authorisation |
| | INDOOR On Premises: Monday to Sunday: 10:00 AM to 10:00 PM |
| | OUTDOOR On Premises: Monday to Sunday: 10:00 AM to 10:00 PM |
| TRADING HOURS: | INDOOR Primary Service Authorisation: Monday to Sunday: 10:00 AM to 10:00 PM |
| | OUTDOOR Primary Service Authorisation: Monday to Sunday: 10:00 AM to 10:00 PM |
| APPLICANT: | Ms Alison Susan Hayes |
| LICENCE NAME: | Berry Hospitality Pty Ltd |
| PREMISES ADDRESS: | 103-105 Queen St, BERRY, NSW, 2535 |
| 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 <i>Liquor Act 2007</i> |

**ILGA DELEGATED DECISION – APPLICATION FOR
Liquor – On Premises Restaurant with Primary Service Authorisation**

Berry Hospitality Pty Ltd

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 Restaurant with Primary Service Authorisation, application number 1-6825047450.

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On 02 August 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. Retail sales
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
3. The premise is to operate with its principal business being that of a restaurant as defined by the Liquor Act and not as a bar, with the kitchen to be open and substantial food service to be available to patrons at all times during the approved hours of operation.

STATEMENT OF REASONS

1. Material before the ILGA delegate (DF18/009813)

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 on 31 May 2018
- (2) Category A Community Impact Statement (CIS)
- (3) Plan of proposed licensed area
- (4) Plan of management
- (5) Certification of Advertising
- (6) Council Approval
- (7) Applicant's consent to conditions
- (8) NPC for Ms Alison Susan Hayes
- (9) Notices

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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 Division 4.1 or Part 5.1 of that

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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 suburb of Berry, and the “broader community” of Shoalhaven City 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 Premises Restaurant with Primary Service Authorisation liquor licence is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The premises will operate as a bone fide restaurant serving meals and the kitchen will be fully operational throughout trading hours.

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- (3) The licence will be exercised in accordance with the Plan of Management provided to the Authority.
- (4) Council submission received with no objection and stating that the application is supported by current DA consent
- (5) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The proposed licence will enable a restaurant serving genuine meals to increase their level of customer service and cater for the needs of various business and social groups.

(2) Negative impacts

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.



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- (5) 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 liquor licence application with conditions.

Decision Date: 02 August 2018

Wendy Yeung Wye Kong
A/Coordinator (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.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.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>