

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

APPLICATION NO: APP-0002317155

APPLICATION FOR: On premises Restaurant with a Primary Service Authorisation

TRADING HOURS: Monday - Sunday 10:00 AM to 05:30 PM

APPLICANT: Alexandre Savidis

LICENCE NAME: Back and Forth

PREMISES ADDRESS: 20-22 100 Edinburgh Road, CASTLECRAIG, NSW 2068

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 *Liquor Act 2007*

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE
Back and Forth**

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 on premises Restaurant class with a Primary Service Authorisation, application number APP-0002317155.

On 22 April 2017, 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
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. 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 operate with its principal business being that of a restaurant as defined by the Liquor Act 2007 and not as a bar.
5. The kitchen must remain open with substantial food available to patrons whilst the premises is trading. A designated seat must be available to each patron within the licensed premises
6. The premises must 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 NSW Police Force.
7. No shots, shooters, slammers, bombs or any drink mixed with an energy drink that is designed to be consumed rapidly, are to be sold or supplied on the premises

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 24 October 2016 (DOC16/135181)
- (2) Community Impact Statement dated 22 October 2016 (DOC16/135184)
- (3) Certificate of Advertising declaration signed by applicant and dated 10 February 2017 (DOC17/047638)
- (4) Plan of Management dated February 2017 (DOC17/047641)
- (5) Premises plan at grant (DOC16/135185)
- (6) Notice of Determination –DA-2014/550 issued by Willoughby Council, 9 January 2015 (DOC16/135183)
- (7) Submission from Chatswood Local Area Command dated 6 December 2016 (DOC16/169403)
- (8) Submission from Willoughby Council received 22 February 2017 (DOC17/037566)
- (9) ASIC current organisation extract for the business and premises owners received 8 March 2017 (DOC17/047643/644)
- (10) Identification documents, National Police Certificate and valid Responsible Service of Alcohol competency card for the applicant received 27 October 2016 (DOC16/135187/188/189).
- (11) Email correspondence dated 4 February 2017 (DOC17/023602) from the Authority to the applicant requesting additional information.
- (12) Email correspondence from the applicant in response to the request for additional information and supporting documentation, dated 4 March 2017 (DOC17/023602)

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 Castlecraig, and the "broader community" of Willoughby City Council.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on premises restaurant class with a primary service authorisation has the appropriate Council approval in place.
- (2) Police have raised no concerns regarding the grant of this licence.
- (3) Council do not object to this application.
- (4) 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 premises does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (5) I am satisfied that the statutory advertising requirements have been met.



6. Overall social impact

(1) Positive benefits

The venue will operate as a pro-bono restaurant with a primary service authorisation. The restaurant is limited to 70 patrons with reduced trading hours. No objections have been received.

The premises poses low risk to the local or broader community and has been supported by appropriate development consent.

(2) Negative impacts

The Plan of Management provided by the applicant and conditions imposed on the licence provides a level of certainty that there are unlikely to be any amenity impacts on the local and broader 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: 22 April 2017

A handwritten signature in blue ink, appearing to read 'Santina Causa'.

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>