

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

APPLICATION NO: APP-0002050159

APPLICATION FOR: Liquor – on premises licence for a catering service with sale on other premises authorisation

TRADING HOURS: Monday to Saturday 11:00 AM to 11:00 PM
Sunday 11:00 AM to 10:00 PM

APPLICANT: Michael Heslin

LICENCE NAME: Arc @ UNSW Catering

PREMISES ADDRESS: 330 Anzac Parade KENSINGTON NSW 2052
Gate 13 Barker St
Sam Cracknell Pavilion - Level 1
UNSW KENSINGTON NSW 2052

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 CATERING,
SALE ON OTHER PREMISES AUTHORISATION**

ARC @ UNSW CATERING

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 application for a catering service, with sale on other premises authorisation, application number APP-0002050159.

On 31 January 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 3:00 AM and 9:00 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	Normal trading
Christmas Day	Normal trading
December 31st	Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

3. The licensee must conduct the licence in accordance with the Plan of Management dated December 2016, as may be varied from time to time after consultation with the Local Area Commander.
4. The licensee or its representative must join and be an active member of the Local Liquor Accord and must attend all general meetings as announced by the Liquor Accord.
5. The business of providing the Catering Service must be for fee, gain or reward. Functions held pursuant to the Catering Service must be pre-booked. A Catering Service booking register must be maintained.
6. The sale on other premises authorisation can only be utilised for functions, occasions or events, which are by invitation only.
7. No drinks commonly known as shots, shooters, slammers, or bombs, that is designed to be consumed rapidly, or any alcoholic drink mixed with an energy drink, are to be sold or supplied.
8. Security must always be available at functions with a ratio of minimum 1:100 patrons.
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:
 - a. 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
 - b. make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
 - c. 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 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.
11. 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.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate on reviewing the application and other relevant material:

- (1) Application form – Lodged 10 August 2016 (DOC16/087409)
- (2) Plan of Management and House Policy for the catering licence dated December 2016 (DOC17/015544).
- (3) Plan at grant of the proposed licensed area (DOC16/015535)
- (4) National Police Certificate for the applicant, dated 14 July 2016. (DOC16/087412)
- (5) Copies of ID and RSA certificate for the applicant. (DOC16/087413 and DOC16/087414, respectively)
- (6) Certificate of Advertising dated 17 August 2016 (DOC16/089528)
- (7) Randwick City Council submission dated 3 August 2016 which confirms that the current development consent is in place. (DOC16/089529)
- (8) Development Application – Notice of Determination, Development Application No: 01/00967/GR dated 16 November 2001. (DOC16/089530)
- (9) Eastern Beaches LAC submission dated 8 September 2016, requesting conditions to be imposed on the licence. (DOC16/099816)
- (10) Secretary submission and EVAT report with no concerns, dated 7 September 2016. (DOC16/099512)
- (11) Subsequent communication from Eastern Beaches LAC dated 24 January 2017 which confirms that they have no concerns with the plan of management. (DOC17/018441)
- (12) Public submission dated 26 August 2016, raising concerns with the application and the proposed liquor trading hours. (DOC16/093626)
- (13) Request for additional information forwarded to the applicant on 12 December 2016 and 17 January 2017. (DOC16/171291, DOC17/012502).
- (14) Email reply from the applicant dated 20 December 2016 and 18 January 2017. (DOC16/178977, DOC17/015486).

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 suburb of Kensington and the “broader community” of the state suburb of Randwick.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that the application for an on premises liquor licence for catering service and sale on other premises authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The Plan of Management, in addition to the imposed licence conditions, will act to minimise potential risks associated with the operation of the licence.
- (3) The proposed licensed premises is a function area within the Sam Cracknell Building of the UNSW campus in Kensington. The applicant intends to cater for

student events which will involve primarily the provision of food, with alcohol being ancillary to food. The catering service will be provided both on the licensed premises and within other areas of the campus, given that a sale on other premises authorisation is also in place.

- (4) The licence will be exercised in accordance with a Plan of Management that details the responsible service and delivery of alcohol.
- (5) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The licence will provide a catering service to the students within the campus of UNSW in Kensington.

(2) Negative impacts

Police have confirmed that they are happy with the Plan of Management. The Council and the Secretary have no concerns with the application.

Although a public submission was received, the applicant has noted the concerns and reduced the requested liquor trading hours accordingly. Additional conditions have been imposed on the licence in relation to noise management and security 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 application with conditions.

Decision Date: 31 January 2017



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>