

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

DOC17/012894

APPLICATION NO: APP-0002169490

APPLICATION FOR: On-premises liquor licence with restaurant and catering classes, and Sale on Other Premises Authorisation

PROPOSED TRADING HOURS:

Restaurant:
Monday to Saturday: 5:00 PM to 9:00 PM
Sunday: 5:00 PM to 8:00 PM

Catering service:
Monday to Saturday: 5:00 PM to 9:00 PM
Sunday: 5:00 PM to 8:00 PM

Sale on Other Premises Authorisation:
Monday to Sunday: 12:00 PM to 9:00 PM

APPLICANT: Marcello Farioli

PROPOSED LICENSED PREMISES NAME: Imaccheroni

PREMISES ADDRESS: 528 Old South Head Rd ROSE BAY NSW

ISSUE: Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for Liquor – on-premises liquor licence with restaurant and catering class, and Sale on Other Premises Authorisation

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

ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES LIQUOR LICENCE FOR A RESTAURANT WITH CATERING CLASSE AND SALE ON OTHER PREMISES AUTHORISATION –

IMACCHERONI

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 with conditions the following licence application number: APP-0002169490.

On 19 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 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. Restaurant class:

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. Catering class:

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

4. The premises are to be operated at all times in accordance with the Plan of Management dated 18 January 2017 as may be varied from time to time after consultation with the Local Area Commander NSW Police.

5. The sale on other premises authorisation can only be utilised for functions, occasions or events, which are by invitation only.

6. 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.

7. The licensee must ensure that no shots, shooters or slammers are served to any patron at any time.

8. The premises can only trade to 8:00 PM on public holidays.

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 for on-premises liquor licence for a restaurant with catering service and Sale on Other Premises Authorisation, lodged 9 September 2016 (DOC16/102196)
- (2) Copies of the applicant's identification, Competency Card, and National Police Certificate (DOC16/141837, DOC16/141836)
- (3) Email dated 14 October 2016 from Woollahra Municipal Council advising that Council has no objection to the granting of the on-premises liquor licence, catering service or Sale on Other Premises Authorisation, and that the appropriate develop consent is in place (DOC16/126705)
- (4) Complying Development Certificate 2011/0105, approving the use of the premises as a restaurant (DOC16/126705)
- (5) Plan of the premises, agreed by the applicant on 12 January 2017 (DOC17/011825)
- (6) Certificate of Advertising Application, signed and dated on 9 September 2016 (DOC17/011834)
- (7) ASIC Company Extract for the business owner, SAILING INGREDIENTS PTY. LTD., ACN: 169 151 615 (DOC17/012874)
- (8) ASIC Company Extract for the premises owner, CARPET CREDITS PTY LTD LTD., ACN: 001 764 389 (DOC17/012878)
- (9) Email correspondence from the Authority to the applicant requesting further information (DOC16/102202, DOC17/007595, DOC17/011882)
- (10) Email correspondence from the applicant to the Authority, including applicant's consent to the imposition of the licence conditions (DOC16/141828, DOC16/141842, DOC16/141844, DOC16/141845, DOC17/011818, DOC17/011822, DOC17/012873, DOC17/012876, DOC17/012880)
- (11) Plan of Management, dated 18 January 2017 (DOC17/12882)
- (12) Photographs of the premises, and a copy of the current menu (DOC17/014494)

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:
 - 4.2.1. the grant or removal of a small bar licence (where required),
 - 4.2.2. a packaged liquor licence (limited to telephone/internet sales),
 - 4.2.3. 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 Rose Bay and the "broader community" comprises the Woollahra Municipality Council.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on-premises liquor licence is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The proposed licensed premises is a restaurant with catering service and Sale on Other Premises Authorisation. A submission was received from Woollahra Municipal Council advising that the appropriate development consent development consent is in place and that Council has objections to the application.
- (3) No other submissions were received in respect of this application.
- (4) The licence will be exercised in accordance with a Plan of Management details measures to be employed to ensure the responsible service of alcohol.
- (5) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

No objections have been received to this application, which relates to an existing business. A number of conditions have been imposed on the licence. The licence will be operated in accordance with harm minimisation measures prescribed by those conditions and outlined in the Plan of Management provided by the applicant.

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: 19 January 2017



Olgica Lenger
Manager, 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>