

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

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| APPLICATION NO: | APP-0002679744 |
| APPLICATION FOR: | On-premises liquor licence for a restaurant with Primary Service Authorisation |
| TRADING HOURS: | Monday to Wednesday: 10:00AM to 10:00PM Thursday to Saturday: 10:00AM to 11:00PM Sunday: 10:00AM to 10:00PM |
| APPLICANT: | Toby James Handel Cutler |
| LICENCE NAME: | Salvage Specialty Coffee |
| PREMISES ADDRESS: | 5 Wilkes Avenue Artarmon NSW 2064 |
| ISSUE: | Whether the delegate of the Independent Liquor & Gaming Authority (the Authority) should grant the liquor licence application relating to Salvage Specialty Coffee. |
| LEGISLATION | Section 45(1) of the <i>Liquor Act 2007</i> |

ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

Salvage Specialty Coffee

The Independent Liquor & Gaming Authority (the Authority) may grant a liquor licence pursuant to section 45 of the *Liquor Act 2007* (the Act). This application seeks an on-premises liquor licence for a Restaurant with Primary Service Authorisation. The Authority has delegated this function to Coordinator Licensing, Liquor & Gaming NSW (L&GNSW) pursuant to the *Gaming and Liquor Administration Act 2007*. The delegate has determined to grant the application relating to Salvage Specialty Coffee, application number APP-0002679744.

On 13 June 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 - restaurant

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| 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 31 st | 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.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 14 February 2017 (DOC17/032279)
- (2) Community Impact Statement Category A forwarded 14 February 2017 (DOC17/032282)
- (3) Certification of Advertising Application, signed and dated by the applicant on 13 May 2017 (DOC17/102270)
- (4) Identification and National Police Certificate for the applicant (DOC17/032288, DOC17/032286)
- (5) Plan of the proposed licensed premises (DOC17/032283)
- (6) Development Application No. DA2003/833, dated 27 August 2003 (DOC17/032281) and Modification DA2003/833/A, dated 8 August 2005 (DOC17/032280), with approval for the use of premises as a coffee shop and trading hours, granted by the Willoughby City Council.
- (7) Approval to Occupy Footway, granted by Willoughby City Council on 25 March 2015 (DOC17/032287) and a further submission with "no development consent required" from the Willoughby City Council (DOC17/037555) was received 22 February 2017.
- (8) Three public submissions supporting the liquor licence application received (DOC17/046896 – 2 March 2017, DOC17/047577 – 2 March 2017, and DOC17/055825 – 14 March 2017).
- (9) Submission from North Shore Local Area Command (DOC17/046471) received 07 March 2017 and Email response received 25 May 2017 (DOC17/116431).
- (10) Liquor Plan of Management, dated 16 May 2017 (DOC17/113992)
- (11) Email correspondence from the Authority to the applicant's legal representative requesting additional information in support of the application, dated 10 and 23 May 2017 (DOC17/102555, DOC17/114032).
- (12) Email correspondence from the applicant's legal representative to the Authority in response to the requests for additional information, dated 22 May 2017 (DOC17/113996).

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

Liquor & Gaming

- (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 Artarmon, and the "broader community" of the Willoughby City Council LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on-premises liquor licence for a restaurant with a PSA is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) Police made a submission raising no objections to the on-premises liquor licence and the Primary Service Authorisation.
- (3) Three submissions were received from the general public, all of which were supportive of the application.
- (4) I am satisfied that appropriate development consent which permits the proposed activity is in place.
- (5) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

This application is for a restaurant with 40 patron capacity located in Artarmon. The granting of the licence will complement and enhance the services offered by the business. Furthermore, Police have characterised this application as low risk and have no objection. The positive benefits are further supported by the submissions received from various community members in favour of the granting of this licence.

(2) Negative impacts

I am satisfied that there are sufficient measures in place to ensure this licence does not negatively impact on the 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: 13 June 2017



Mary Butterfield
A/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>