

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

APPLICATION NO:	APP-0002620934
APPLICATION FOR:	On-premises liquor licence for a restaurant with primary service authorisation
TRADING HOURS:	Restaurant Monday to Saturday: 7:00 AM to 6:00 PM Sunday: 10:00 AM to 6:00 PM Primary Service Authorisation: Monday to Saturday: 7:00 AM to 6:00 PM Sunday: 10:00 AM to 6:00 PM
APPLICANT:	Mr Pasquale Polistina
LICENCE NAME:	The Tasting Deck Forestway
PREMISES ADDRESS:	2 Myoora Road Terrey Hills NSW 2084
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 <i>Liquor Act 2007</i>

ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

THE TASTING DECK FORESTWAY

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-premise liquor licence for a restaurant with primary service authorisation, application number APP-0002620934.

On 16 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 1:00 AM and 7:00 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
 - 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)

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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.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 6 February 2017 (DOC17/024736)
- (2) Category A Community Impact Statement and accompanying annexures, signed and dated by the applicant on 6 February 2017 (DOC17/024739, DOC17/024740)
- (3) Certification of Advertising Application, signed and dated 12 April 2017 by the applicant on (DOC17/084975)
- (4) Identification and National Police Certificate for the applicant (DOC17/024745, DOC17/024747)
- (5) Copy of Mr Pasquale Polistina RSA Competency Card (DOC17/024748)
- (6) Plan of the proposed licensed premises (DOC17/024742)
- (7) ASIC company report for the premises owner "SARODOM INVESTMENTS PTY LTD" (DOC17/024744).
- (8) Development Application Number DA2014/0373 granted by Warringah Council on 29 May 2014. DA is for "Internal Fit-out and use of part of premises as a Restaurant /Café" (DOC17/024737)
- (9) Development Application Number DA 2016/0092 granted by Northern Beaches Council on 2 June 2016. DA is for "Demolition works, Alterations and additions to the existing building and carparking" (DOC17/024738)
- (10) Police Submission received on 15 February 2017 (DOC17/032150)
- (11) Liquor Plan of Management, dated April 2017 (DOC17/084974)
- (12) Email correspondence from the Authority to the applicant's legal representative requesting additional information in support of the application, dated 11 April 2017, 19 April 2017 and 25 May 2017 (DOC17/077405, DOC17/117148, DOC17/116407)
- (13) Email correspondence from the applicant's legal representative to the Authority in response to the requests for additional information, dated 18 April 2017, 28 April 2017 and 25 May 2017 (DOC17/084973, DOC17/117148)

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. I have considered the Community Impact Statement in arriving at my decision to approve this licence.
- (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 Terrey Hills, and the "broader community" of the Northern Beaches 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 primary service authorisation is unlikely to result in any significant increase in alcohol-related harm in the local community.
- (2) The proposed licensed premises is an existing, privately owned and operated restaurant/café in Terrey Hills. The premises are internally accessible by foot through a fresh food market adjoining it and externally from the outdoor deck area. The applicant provided two appropriate development consents permitting the proposed activity (for the use of premises as a greengrocer with restaurant).

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- (3) Police made a submission raising no objections to the on-premises liquor licence and primary service authorisation, but have requested conditions be imposed. The applicant provided a thorough response to the conditions proposed by Police. In the absence of specific evidence or information tending to show the appropriateness of these conditions, I have determined the conditions proposed by Police will not be imposed on the licence. In arriving at this decision, I have considered the Police submission, the applicant's response to the proposed conditions, and all other material provided with this application.
- (4) I am satisfied that appropriate development consents (DOC17/024737 & DOC17/024738) which permit the proposed activity are in place.
- (5) No adverse submissions were received relative to this application.
- (6) The applicant has detailed practices that will be in place at the venue to ensure the responsible service of alcohol and that the operation of the premises does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (7) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

This application is for a restaurant and primary service authorisation with a 200 patron capacity located in Terrey Hills. The business already operates at this location as a restaurant/café, which will be supplemented by the sale of liquor pursuant to this on-premises licence. The granting of the licence will complement and enhance the services offered by the business.

(2) Negative impacts

There have been no objections to the granting of this licence. The Plan of Management provided by the applicant and conditions imposed on the licence provide a level of certainty that there are unlikely to be any major 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 Plan of Management 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

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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: 16 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>