

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

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<b>APPLICATION NO:</b>	APP-0001994640
<b>APPLICATION FOR:</b>	On-premises liquor licence for a restaurant with Primary Service Authorisation
<b>TRADING HOURS:</b>	Monday to Sunday: 10:00 AM to 10:00 PM
<b>APPLICANT:</b>	Matthew Taylor
<b>LICENCE NAME:</b>	Keith Coffee
<b>PREMISES ADDRESS:</b>	U 1 132 Murwillumbah St MURWILLUMBAH NSW 2484
<b>ISSUE:</b>	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
<b>LEGISLATION</b>	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE**

**KEITH COFFEE**

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-premise liquor licence for a restaurant with Primary Service Authorisation, application number APP-0001994640.

On 27 February 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 are to be operated at all times in accordance with the Plan of Management dated 31 January 2016 as may be varied from time to time in consultation with the Local Area Commander.
5. The licensee must ensure that all patrons must have an allocated seat when served or supplied alcohol, or while consuming alcohol.
6. The licensee must ensure that the number and location of tables and chairs provided for seated dining is in accordance with the approved floor plan at all times.
7. The primary purpose of the premises is as a restaurant with the kitchen to be open and substantial food service to be available to patrons at all times during the approved hours of operation.
8. All liquor to be served via table service only.
9. The following drinks must not be supplied: no shots, no doubles or any drink with alcohol mixed with an energy drink.
10. No more than four drinks sold to any person at any one time.
11. The maximum number of patrons permitted on the premise is not to exceed the number of available seated positions.
12. The licensee or its representative must join and be an active member of the local liquor accord.
13. The licensee must maintain a closed-circuit television system on the premises in accordance with the following requirements:
  - 1.1. the system must record continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times),
  - 1.2. recordings must be in digital format and at a minimum of 15 frames per second,
  - 1.3. any recorded image must specify the time and date of the recorded image
  - 1.4. the system's cameras must cover the following areas:
    - 1.4.1. all entry and exit points on the premises,
    - 1.4.2. the footpath immediately adjacent to the premises,
    - 1.4.3. all publicly accessible areas (other than toilets) on the premise;
  - 1.5. The licensee must also:
    - 1.5.1. keep all recordings made by the CCTV system for at least 30 days, and
    - 1.5.2. ensure that the system is accessible by at least one member of staff at all times it is in operation, and provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings.
14. Alcohol may only be consumed ancillary to a meal in the footpath dining area.

15. 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**

- (1) Application form lodged 23 September 2016 (DOC16/113249)
- (2) Category A Community Impact Statement, signed and dated by the applicant on 23 September 2016 (DOC16/113253)
- (3) Certificate of Advertising, signed and dated 14 December 2016 (DOC17/025248)
- (4) Development Application DA15/0679 granted by Tweed Shire Council on 30 September 2015, approving the use of the premises as a barber and café (DOC16/162782)
- (5) Footpath Approval No. S68/FT000059 issued by Tweed Shire Council on 8 December 2015 (DOC17/025249)
- (6) Section 96 Modification to Development Application DA15/0679 granted by Tweed Shire Council on 18 November 2016, extending the trading hours for the premises to 6:00 AM to 10:00 PM Monday to Sunday (DOC16/162782)
- (7) Identification, National Police Certificate, and Competency Card for the applicant (DOC16/113256, DOC16/162784, DOC16/113258)
- (8) Submission from Tweed/Byron Local Area Command Licensing Unit, NSW Police Force, dated 7 October 2016 (DOC16/119920)
- (9) Submission from a member of the public in respect of the application, received on 29 September 2016 (DOC16/120786)
- (10) Submission from the Compliance branch, Liquor & Gaming NSW, dated 27 October 2016 (DOC16/135089)
- (11) Environment and Venue Assessment Tool (EVAT) Report dated 27 October 2017 (DOC16/135535)

- (12) Email correspondence dated 13 December 2016, (DOC16/172134), from the Authority to the applicant requesting additional information, and a second request on 9 February 2017 (DOC17/027615)
- (13) Email correspondence from the applicant dated 25 January 2017 (DOC17/025247) and 10 February 2017 (DOC17/027991), in response to the requests for additional information and supporting documentation.
- (14) Photos of the premises (DOC17/025265) and a copy of the food menu (DOC17/025251)
- (15) Plan of Management dated 31 January 2016 (DOC17/025252)
- (16) Plan at grant of proposed premises lodged with application and amended on 10 February 2017 (DOC17/027992)

## **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 Murwillumbah, and the “broader community” of the Tweed Shire Council LGA.

#### **5. Analysis of Submissions and other Materials**

- (1) I am satisfied that this application for an on-premises liquor licence, for a restaurant with Primary Service Authorisation, has appropriate Development Consent in place.
- (2) Police have made a submission which objects to the Primary Service Authorisation, and raises a number of concerns in respect of the application, including the licensing of the

barber shop, passageway and toilet; and proposing six conditions. The applicant has agreed to exclude the barber shop, passageway and toilet from the boundary of the licensed area. The applicant has provided a submission in response to the proposed conditions, which was duly considered by the Authority.

- (3) A further submission was received from a member of the public in respect of the application. The submission raised concerns regarding inappropriate seating; effect of granting the licence on surrounding businesses; and noise levels. The applicant provided a submission in response addressing the concerns raised.
- (4) The Compliance branch of Liquor & Gaming NSW has also made a submission noting that Murwillumbah has significant issues regarding alcohol related assault and disorderly conduct. Concerns were also raised regarding the potential for the venue to morph into a bar/nightclub, and five conditions were proposed. The applicant has addressed the concerns raised in the Compliance submission and consented to the proposed conditions.
- (5) 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 nor detract from, the amenity of the neighbourhood.
- (6) I am satisfied that the statutory advertising requirements have been met.
- (7) 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 harm in the local community.

## **6. Overall social impact**

### **(1) Positive benefits**

The licensed premises comprises of a restaurant adjacent to a barber shop, with a capacity of 16 patrons within the boundary of the licensed area, located in Murwillumbah, far north-eastern New South Wales.

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

### **(2) Negative impacts**

Three submissions were received raising various concerns in respect of the application. A number of conditions have been imposed on the licence in an effort to minimise the potential negative impacts of granting the liquor licence on the Local Community. 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) 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: 27 February 2017

Joanne Zammit  
Coordinator 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>



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