



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

DOC16/170990

APPLICATION NO:	APP-0001982268
APPLICATION FOR:	On-premises liquor licence with catering class, Primary Service Authorisation and Extended Trading Authorisation
PROPOSED TRADING HOURS:	10:00 AM to 12:00 AM Monday to Sunday
APPLICANT:	Third Eye Entertainment Pty. Ltd.
PROPOSED LICENSED PREMISES NAME:	Third Eye Rooftop Restaurant & Function Center
PREMISES ADDRESS:	364 Princes Highway Banksia NSW 2216
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 Primary Service Authorisation.
LEGISLATION:	Section 45(1) of the Liquor Act 2007

ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES LIQUOR LICENCE WITH CATERING CLASS, PRIMARY SERVICE AUTHORISATION AND EXTENDED TRADING AUTHORISATION – THIRD EYE ROOFTOP RESTAURANT & FUNCTION CENTER

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-0001982268.

On 12 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. 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 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 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. 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. CCTV:

1. The licensee shall install and maintain closed circuit video surveillance cameras and recorders at the main entrance, bars and entertainment area of the licensed premises whilst the premises are open for business.
2. CCTV cameras must be maintained throughout the premises with camera coverage to specifically record images of the following areas: a) all other public entrances and exits, whether or not in use at the time b) staircases c) all portions of the floor area accessible to the public where entertainment is provided d) toilet external entrances e) all general areas accessible by the public, excluding toilets and accommodation rooms f) the footpath area directly adjacent to the premises
3. Recordings must: a) be in digital format b) record at a minimum of ten (10) frames per second; and c) commence one hour prior to opening, and operate continuously until at least one hour after closure.
4. The correct time, date and camera identification must be automatically embedded on all recordings and be able to be read when the image is played back on a different system without interfering with the view of the target area.
5. Recordings should be retained for a period of 30 days before being reused or destroyed.
6. The licensee shall ensure that no person is able to delete or alter any recordings within the 30 day period.
7. When the venue is open and trading, at least one person shall be at the venue who is capable of accessing the CCTV system and is able to immediately review recordings and produce copies on a Compact Disk, DVD, or USB memory stick and must, upon request, be provided to the NSW Police, Office of Liquor, Gaming and Racing inspectors or other regulatory officers a copy of the recordings immediately.

8. Immediate access to the CCTV system and the ability to review recordings on the system is to be granted to NSW Police, Office of liquor, Gaming and Racing inspectors or other regulatory officers upon request.
 9. Prior to the commencement of trade each day, the CCTV system shall be checked to ensure the equipment is in full operating order. If, during the daily check or at any other time, it is discovered that the equipment is not in full operating order, the licensee is to notify the St George Local Area Commander or delegate within two hours. All reasonable steps must be undertaken to repair the system as soon as practicable. A record of the notification along with remedial action is to be immediately recorded in the incident book.
 10. The CCTV recordings of the cameras referred to in sub-condition 3. must be sufficient to enable the recognition of a person. A viewer must be able to say with a high degree of certainty whether or not an individual shown is the same as someone they have seen before when: a) the person represents not less than 50% of screen height, and b) there is an unobstructed view of the persons face.
 11. Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.
 12. Camera recordings must meet the standards set in sub-conditions 10 at all times, either by way of camera technology and settings, and/or by maintenance of lighting, camera positioning, camera shades or other environmental factors.
5. The licensee shall maintain an Incident Book and must be available to Council, Police and Office of Liquor, Gaming and Racing Inspectors at all reasonable times. In addition to other matters, the licensee/manager shall record in the Incident Book, any complaints made directly to the management or staff of the venue by local residents or business people about the operation of the venue or the behaviour of its patrons.
 6. 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. For the purposes of this condition the LA10 can be taken as the average maximum deflection of the noise emission from the licensed any residential premises between the hours of 12:00 midnight and 07:00am. 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.
 7. Signs clearly visible to patrons are to be affixed at the exits to the premises warning patrons of the need to leave the premises and the immediate vicinity quietly and quickly.

8. At all times the purpose of the premises is to operate as a restaurant.
9. No live entertainment or amplified music on the rooftop terrace after 9:00 PM.
10. The premises are to be operated at all times in accordance with the Plan of Management dated 5 December 2016 as may be varied from time to time after consultation with the Local Area Commander NSW Police.
11. The maximum patron capacity is 160 persons (this figure includes a maximum of 24 patrons on the first floor dining area, and a maximum of 20 persons in the outdoor rooftop dining area).
12. The premise is to operate with its principal business being that of a restaurant as defined by the Liquor Act and not as a bar.
13. The kitchen must remain open and substantial food service must be available to patrons at all times during the approved hours of operation.
14. The licensee or its representative must join and be an active participant in the local liquor accord.
15. At all times, the licensee shall consider the amenity of its neighbours and shall take all reasonable measures to ensure that adverse impacts to the surrounding area do not occur. The licensee will take all reasonable measures to ensure that the behaviour of staff and patrons when entering or leaving the premises does not detrimentally affect the amenity of the neighbourhood.
16. The licensee will not host alcohol only events, dance parties or operate the premises in the manner of a nightclub:-

A dance party event means an event, whether ticketed event or otherwise, which is open to the public and where the primary activity is entertainment provided by live DJ/DJ's and/or the live performances for the purpose of dancing. Note: This requirement is not intended to include wedding ceremonies/receptions, corporate events, and school formals at which DJ entertainment or other live performances of electronic dance music is provided ancillary to the event.
17. 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.
18. The licensee, or his/her representative, must be present during all functions.

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 with Primary Service Authorisation and Extended Trading Authorisation, lodged 10 August 2016 (DOC16/087400)
- (2) Category A Community Impact Statement (CIS), dated 10 August 2016
- (3) Amended Development Application No. DA-2015/337/A granted by Rockdale City Council on 12 June 2015 approving the use of the premises as a bar and bistro (DOC16/089369)
- (4) Amended Development Application No. DA-2015/337/B granted by Rockdale City Council on 25 July 2016 approving the use of the premises as a bar and bistro with operating hours of 7:00 AM until 12:00 AM Monday to Sunday (DOC16/119272)
- (5) Plan of the premises, approved by the applicant on 12 December 2016 (DOC16/168230)
- (6) Certificate of Advertising Application, signed and dated on 13 August 2016
- (7) ASIC extract for licensee and business owner, THIRD EYE ENTERTAINMENT PTY. LTD. ACN: 156 505 958 (DOC16/168231)
- (8) ASIC extract for premises owner, W. HERRMANN REAL ESTATE PTY. LTD. ACN: 063 953 300 (DOC16/170956)
- (9) Submission from Senior Constable Chalmers, St George Local Area Command, NSW Police Force, dated 4 October 2016, provided via emails dated 6 October 2016 (DOC16/119270, DOC16/119271, DOC16/119272)
- (10) Submission and Environment and Venue Assessment Tool (EVAT) Assessment Report from the Compliance team of Liquor & Gaming NSW, raising no objections to the application supporting the conditions proposed by Police, dated 5 January 2017 (DOC17/002584)
- (11) Email correspondence from the Authority to the applicant requesting further information (DOC16/161068, DOC16/168423)
- (12) Email correspondence from the applicant to the Authority, including applicant's consent to the imposition of the licence conditions (DOC16/168212, DOC16/170955)
- (13) Plan of Management, dated 5 December 2016 (DOC17/002583)
- (14) Photographs of the premises (DOC16/168261), and a copy of the current menu (DOC16/168232)

(15) Application to surrender licence LIQH440018937 (DOC16/168263)

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 Banksia and the "broader community" comprises the Bayside LGA.

5. Analysis of Submissions and other Materials

- (1) The application is for an on-premises licence with catering class, Primary Service Authorisation and Extended Trading Authorisation. The premises currently holds a hotel licence, which the licensee will surrender upon grant of the on-premises licence.
- (2) The applicant states that he wishes to surrender the hotel licence as the business has evolved into a restaurant and function centre, with the primary purpose being the sale of food.
- (3) St George Local Area Command has lodged a submission advising that they object to the application on the grounds of the proposed 7:00 AM start time. The applicant has since amended the proposed start time to 10:00 AM, which the LAC finds acceptable. The premises has been operating under a hotel licence since 2013. The LAC describes the overall compliance history of the premises as good. The LAC did however note that there are two other venues in the LGA with Primary Service Authorisation and Extended Trading Authorisation which have experienced compliance issues. The LAC has therefore proposed a number of conditions designed to minimise the risk associated with this licence type, all of which the applicant has consented to.
- (4) No other objections or submissions were received in respect of this application.

- (5) The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol and management measures.
- (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 with catering class, Primary Service Authorisation and Extended Trading Authorisation is unlikely to result in any significant increase in alcohol related harms in the local community.

6. Overall social impact

(1) Positive benefits

This licence will replace a hotel licence (LIQH440018937), to be surrendered immediately upon the grant of the on-premises licence application. The hotel licence has been operating since 30 May 2013 with what is described by the LAC as a good compliance history.

(2) Negative impacts

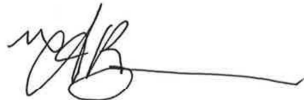
As the premises is currently licensed (pending surrender), the granting of this licence application will not adversely affect the overall social impact. A range of conditions have been imposed on the licence in an effort to minimise any potential negative impacts on the local and broader community.

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) 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: 12 January 2017



Catherine Bass-Kendzy
A/Director, 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>