

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

APPLICATION NO: 1-4970795999

APPLICATION FOR: On-premises liquor licence for a restaurant with Primary Service Authorisation

TRADING HOURS: Monday to Saturday: 10:00 AM – 12:00 AM
Sunday: 10:00 AM – 10:00 PM

APPLICANT: Anthony MacFarlane

LICENCE NAME: Speedboat

PREMISES ADDRESS: Level 1, 81 Stanley St, DARLINGHURST
NSW 2010

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 *Liquor Act 2007*

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

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 1-4970795999.

On 31 March 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 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.

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 18 December 2016 as may be varied from time to time after consultation with the Local Area Commander.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. No drinks commonly referred to as shots, shooters, slammers and/or bombs are to be sold or supplied.
7. The premise is to operate with its principle business being that of a restaurant as defined by the Liquor Act and not as a bar.
8. The licensee must ensure that there is a designated seat at a table for each patron in the restaurant, at all times that the restaurant is trading.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form for an on-premises liquor licence, signed and dated by the applicant on 5 July 2016 (DOC16/115808)
- (2) Application form for a Primary Service Authorisation, signed and dated by the applicant on 5 July 2016 (DOC16/116510)
- (3) Category A Community Impact Statement, signed and dated by the applicant on 5 May 2016 (DOC16/115803)
- (4) Certification of Advertising Application, signed and dated by the applicant on 18 December 2016 (DOC17/013982)
- (5) Plan of the proposed licensed premises (DOC16/115804)
- (6) Liquor Plan of Management, dated 18 December 2016 (DOC17/013983)
- (7) Identification for the applicant (DOC16/115802)
- (8) National Police Certificate for the applicant, dated 6 March 2017 (DOC17/053459)
- (9) Food and drinks menu for the restaurant (DOC17/013984)
- (10) Photographs of the restaurant (DOC17/013987)
- (11) Submission from the City of Sydney Council dated 10 May 2016, objecting to the application (DOC16/115805)

- (12) Development Application DA1034/54, determined on 23 December 1954, granting approval for the premises to be used as a club and coffee lounge (DOC16/115805)
- (13) Land and Environment Court of NSW judgment dated 23 April 1985, varying the development consent for the premises (DOC17/013993)
- (14) Submission from the licensing officer, Kings Cross Local Area Command, dated 23 January 2017, advising that Police do not object to the application, and proposing two conditions to be imposed on the licence, which the applicant consented to (DOC17/022981)
- (15) Environment and Venue Assessment Tool (EVAT) Assessment Report, prepared by the Secretary's delegate on 17 October 2016 (DOC16/126885)
- (16) Amended Environment and Venue Assessment Tool (EVAT) Assessment Report and submission, prepared by the Secretary's delegate on 24 November 2016 (DOC16/160151)
- (17) Submission from a member of the public in respect of the application, dated 19 May 2016 (DOC17/012763)
- (18) Google Map print out of the locality of the premises (DOC16/158432)
- (19) Emails from the Authority to the applicant requesting further information as well as the applicant's consent to proposed licence conditions, dated 17 December 2016, 18 and 19 January 2017, 17 February 2017, and 21 March 2017 (DOC16/174671, DOC17/012939, DOC17/014253, DOC17/014352, DOC17/032679, DOC17/059416)
- (20) Emails from the applicant to the Authority in response to the request for further information, and consenting to proposed licence conditions, dated 17, 18, 28 January 2017, 3 February 2017, 14 March 2017, and 21 March 2017 (DOC17/012937, DOC17/012938, DOC17/013238, DOC17/020834, DOC17/020835, DOC17/023036, DOC17/053457, DOC17/059981)

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 Darlinghurst, and the “broader community” of the City of Sydney Council LGA.

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 with Primary Service Authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The proposed licensed premises is a 98 patron capacity restaurant located in Darlinghurst offering a modern food menu which is complemented by a small beer and wine menu. The business has been operating for a number of years at that location under previous management without incident. The applicant has years of experience in the hospitality industry and intends to run an upmarket family friendly restaurant.
- (3) Police raised no objections to the grant of the licence, however proposed two conditions to be imposed on the licence, which the applicant consented to.
- (4) The City of Sydney Council objected to the application on the basis that the premises is located in the Sydney CBD Entertainment freeze precinct and s. 47E of the Liquor Act 2007 states that during the freeze period, an authorisation must not be granted for an on-premises licence that relates to a restaurant. However, cl. 79(2) of the Liquor Regulation 2008 states that this does not apply to or in respect of CBD subject premises that are licensed restaurants.
- (5) A submission has been received from a member of the public, raising noise concerns. The applicant has noted that the premises has council approval to operate as a restaurant. As the restaurant has been in operation for many decades, it is unlikely that the granting of a liquor licence will result in a significant increase in noise levels. The applicant has proposed to modify the premises so as to minimise noise impacts on the surrounding premises.
- (6) The Secretary’s delegate raised no objections to the grant of the licence, however proposed a condition to be imposed on the licence, which the applicant consented to.
- (7) 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 or detract from, the amenity of the neighbourhood.
- (8) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

This application relates to an existing business that has been operating at the premises for many decades. The applicant has provided assurance that the premises will be operated as a bona fide restaurant serving meals to seated patrons, with a small beer and wine menu to complement the food menu. The restaurant has historically catered to a mature clientele. The granting of the licence will contribute to the diversity of premises in the Sydney CBD entertainment precinct.

(2) Negative impacts

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 or 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) 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: 31 March 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>