

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

APPLICATION NO: 1-5348323709

APPLICATION FOR: Removal of an on premises restaurant with a primary service authorisation

LICENCE NUMBER: LIQO660031087

TRADING HOURS: Monday to Saturday: 11:00 AM to 12:00 AM
Sunday: 11:00 AM to 10:00 PM

APPLICANT: Benjamin Hudson

LICENCE NAME: His Boy Elroy

PREMISES ADDRESS: Shop GDW114 Wollongong Central
Keira St WOLLONGONG NSW 2500

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 REMOVAL OF AN ON-PREMISES LIQUOR LICENCE FOR A RESTAURANT WITH PRIMARY SERVICE AUTHORISATION

HIS BOY ELROY

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 the removal of an on-premise liquor licence for a restaurant with primary service authorisation, application number 1-5348323709.

On 18 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 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. A copy of the Plan of Management, and any updates adopted from time to time, must be maintained in a register at the licensed premises. The Plan of Management, and the register, must be made available for inspection at any time by members of the NSW Police Force or the Director General.
5. The sale or supplying of liquor must cease thirty (30) minutes before the premises are required to cease trading.
6. The Plan of Management is reviewed annually between the licensee and the police.
7. No more than five tables are present on the deck area. No more than twenty two (22) persons are permitted on this deck at any one time consuming liquor.

All persons consuming liquor must remain seated at all times whilst utilising this outdoor area.

8. The premises must be operated with its principal business being that of a restaurant, as defined by the *Liquor Act*, and not as a bar.
9. The licensee must be an active member of the local liquor accord.
10. The premises must be operated at all times in accordance with the Plan of Management dated January 2017, as may be varied from time to time after consultation with the Local Area Commander.
11. The kitchen must be open, with substantial meals available to patrons, whenever the venue is operating.
12. The licensee must ensure that there is no stockpiling of drinks commonly known as shots, shooters, slammers or bombs that are designed to be consumed rapidly, or any alcoholic drinks that are mixed with an energy drink.

Not more than one of these types of drinks is to be served to a patron at the one time.

13. Upon removal of the licence from the previous premises location at Shop GND/500 Globe Ln, WOLLONGONG to the new premises location at Shop GDW 114 Wollongong Central, Keira Street, WOLLONGONG, the licensee must ensure that the number of patrons for the alfresco area and the outdoor dining area does not exceed 22 in total.
14. The licensee must ensure that the sale and supply of liquor in the alfresco area and the outdoor dining area is by table service only.
15. The licensee must ensure that all patrons remain seated while consuming alcohol in the alfresco area and the outdoor dining area.
16. Entertainment is prohibited in the alfresco area and the outdoor dining area.

17. The licensee must ensure that:

- a. Patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered;
- b. Patrons entering and leaving the premises do not cause undue disturbance to the amenity of the neighbourhood.
- c. An adequate queuing system for patrons must be implemented at the main entrance of the licensed premises so as to ensure that if patrons are queuing to gain entry they do not obstruct or impede pedestrian traffic flow

18. A licensed security officer must be engaged on Friday and Saturday evenings from 9 pm until at least 30 minutes after the authorised closing time, or until the last patron has left the premises, whichever is the later.

19. Security must wear identifying numbers that are at least 10 cm square. The allocated number and name of the security officer must be entered in a register kept on the premises.

20. Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing injury to a person on the premises, the person must:

- a. Take all practical steps to preserve and keep intact the area where the act of violence occurred, and retain all material and implements associated with the act of violence in accord with Crime Scene Preservation Guideline, issued by NSW Police, and
- b. Make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
- c. Comply with and directions given by the Commander or delegate to preserve or keep intact the area where the act of violence occurred.

21. The licensee must maintain a closed-circuit television system on the premises in accordance with the following:

- a. 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).
- b. Recordings must be in digital format and at a minimum of 15 frames per second.
- c. Any recorded image must specify the time and date of the recorded image,
- d. The system cameras must cover the following areas:
 - i. The exit and entry points of the premises,
 - ii. The footpath immediately adjacent to the premises,
 - iii. All publicly accessible areas (other than toilets) on the premises.

The licensee must also:

- e. Keep all recordings made by the CCTV system for at least 30 days, and
- f. Ensure that at least one member of staff is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage; and

- g. Provide any recording 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.
- 22. No person wearing any form of clothing, jewellery or other accessory, displaying or indicating by form of wording, colours, logo symbol or otherwise that they are members of or are in any way associated with; Bandidos, Black Uhlans, Coffin Cheaters, Comanchero, Finks, Fourth Reich, Gladiators, Gypsy Jokers, Highway 61, Life & Death, Lone Wolf, Mobshitters, Nomads, Odins Warriors, Outcasts, Outlaws, Phoenix, Rebels, Hells Angels, Scorpions, Notorious or any other gangs associated with Outlaw Motorcycle Gangs shall be allowed entry into, or be permitted to remain on the licensed premises.
- 23. The licensee must maintain an approved incident register with incidents and details of the action taken, to be recorded in the incident register at all times.
- 24. A full copy of all current development consents (including approved plans) for the operation of the premises and any registers required, must be kept on the premises and made available for inspection immediately upon request by NSW Police, Council officers or L&G NSW authorised officers.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 9 December 2016 (DOC16/170209)
- (2) Primary services Authorisation lodged 9 December 2016 (DOC16/170276)
- (3) Community Impact Statement lodged 9 December 2016 (DOC16/170277)
- (4) Plan at grant of proposed premises amended on 15 March 2017 (DOC16/170214)
- (5) Plan of Management dated 4 January 2017 (DOC17/045806)
- (6) Certificate of Advertising declaration signed and dated 4 March 2017 (DOC17/045804)
- (7) Leeshay Enterprises Pty Limited - Certificate of Registration of a Company issued on 26 May 2003 and ASIC Company Statement for the business owner. (DOC17/045798, DOC17/045801)
- (8) See Me Enterprises Pty Limited - Certificate of Registration of a Company issued 15 February 2008, ASIC Company Statement issued 16 February 2016, and ASIC Company details dated 17 March 2017 for the business owner. (DOC17/045799, DOC17/045800, DOC17/057023)
- (9) DA-2012/1177 - Notice of Determination of Development Application, dated 26 February 2012 for fitout of food and drinks premises within the approved West Keira Mixed Use Development (DOC17/045795)
- (10) DA-2016/1664 - Notice of Determination of Development Application dated 31 January 2017 for shopfront works, signage and outdoor seating for the venue. (DOC17/045796, DOC17/045797)
- (11) Notice of Determination of Outdoor Restaurant Application, Consent Authority from Wollongong City Council granted on 1 March 2017, approval to use footway for restaurant purposes. (DOC17/054604)
- (12) Footway licence approval for outdoor dining area issued 1 March 2017. (DOC17/054600).
- (13) Premises owner approval for alfresco dining area, letter from The GPT Group, Wollongong Central, dated 14 March 2017. (INW17/649)
- (14) An initial submission from Wollongong Council, forwarded 5 December 2016 (DOC16/170210), followed by a subsequent submission dated 15 December 2016, requesting a few conditions to be imposed on the licence. (DOC17/045802)
- (15) Submission from Wollongong LAC dated 20 December 2016, requesting conditions to be imposed on the licence (DOC16/176258, DOC17/051697).
- (16) Applicant's response to Police and Council submission received 3 March 2017. (DOC17/045805)
- (17) Email correspondence from Wollongong LAC dated 6 March 2017 clarifying a proposed condition concerning security requirements. (DOC17/0547030)



- (18) Email correspondence dated 2 March 2017 (DOC17/042967), 13 March 2017 (DOC17/052245), and 14 March 2017 (DOC17/052919) from the Authority to the applicant requesting additional information.
- (19) Email correspondence from the applicant dated 3 March 2017 (DOC17/045792), 13 March 2017 (DOC17/052756, DOC17/052765), 14 March 2017 (DOC17/052923, DOC17/054596), in response to the requests for additional information and consent to conditions.

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 city of Wollongong, and the "broader community" is the Wollongong LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for the removal of an on-premises liquor licence for a restaurant with primary service authorisation has appropriate development consent in place. The licensee has positive a compliance history, with close engagement with the local community.
- (2) Wollongong Council raised no objections to the grant of the licence for the premises and have requested conditions to be imposed on th elicence
- (3) Wollongong LAC raised no objections to the grant of the licence for the premises and have also requested conditions to be imposed on the licence.
- (4) All submissions, and the appicant's response to submissions, were duly considered and a suite of conditions were imposed on the licence.
- (5) The licence will be exercised in accordance with a comprehensive 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.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

Positive benefits

The proposed removal of the licensed restaurant with primary service authorisation will provide modern Australian cuisine to the local community and visitors to the Wollongong area.

Negative impacts

There have been no objections to the granting of this licence. Issues raised by Police and Council have been adequately addressed. A comprehensive Plan of Management provided by the applicant and the suite of conditions imposed on the licence provide controls to ensure responsible service of alcohol and minimise any adverse impacts 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: 18 March 2017



Olgica Lenger
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>