

NSW Department of Industry
Liquor & Gaming NSW

APPLICATION NO:	APP-0002245477
APPLICATION FOR:	On-premises licence for a Catering Service with Sale on other Premises Authorisation
TRADING HOURS:	Monday to Sunday: 2:00 PM to 10:00 PM
APPLICANT:	Mr Matthew Whisker
LICENCE NAME:	Whisky Uncovered
PREMISES ADDRESS:	17A Rawson St, NEUTRAL BAY, NSW 2089
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

Whisky Uncovered

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-premises licence for Catering Service with Sale on other Premises Authorisation, application number APP-0002245477.

On 21 April 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	Normal Trading
Christmas Day	Normal Trading
December 31st	Normal opening time until normal closing time or 2.00 AM on New Year's Day, whichever is later
3. The sale on other premises authorisation can only be utilised for functions, occasions or events, which are by invitation only.



4. 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.
5. No alcohol for purchase will be stored and/or served for consumption at the licensed premises.
6. Sale on Other Premises - Alcohol can only be sold/supplied in conjunction with educational information relating to whiskey and the techniques behind whisky distillation and production.
7. Patrons can only be served 15ml Nips of spirits. No other alcohol is to be sold/supplied.
8. Patrons can only be served a maximum of six (6) 15ml Nips of spirits.
9. The premises are to be operated at all times in accordance with the Plan of Management dated March 2017 as may be varied from time to time in consultation with the Local Area Commander of NSW Police.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 18 October 2016 (DOC16/130871)
- (2) Certificate of Advertising declaration by applicant on 5 October 2016 (DOC16/136911)
- (3) Plan of Management dated March 2017 (DOC17/081260)
- (4) Submission from North Sydney Council dated 22 October 2016 (DOC17/070743)
- (5) Submission from Harbourside Local Area Command was received on 4 April 2017 with no objections but proposes a number of conditions (DOC17/073707)
- (6) Plan at grant of proposed premises (DOC17/081262)
- (7) ASIC Record of Registration for Business Name 'Whisk Education Pty Ltd' dated 24 January 2017 (DOC17/018531)
- (8) Responsible Service of Alcohol Competency Card with an expiry of 29 September 2021 lodged with application (DOC16/130877)
- (9) National Police Certificate dated 5 October 2016 lodged with the application (DOC16/130876)
- (10) Email correspondence dated 21 October 2016 (DOC16/130947), from the Authority to the applicant requesting additional information, and subsequent requests on 31 October 2016 (DOC16/137033), 24 January 2017 (DOC17/016991), 1 April 2017 (DOC17/070316), 5 April 2017 (DOC17/073709), 10 April 2017 (DOC17/076051).
- (11) Email correspondence from the applicant dated 30 October 2016 (DOC16/136907/136960), 24 January 2017 (DOC17/018530), 7 April 2017 (DOC17/076047), 10 April 2017 (DOC17/077274), 11 April 2017 (DOC17/078879). and 13 April 2017 (DOC17/081259 and DOC17/081583) in response to the requests for additional information and supporting documentation.

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 Neutral Bay, and the "broader community".

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on-premises licence catering class with a sale on other premises authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) North Sydney Council have provided information that Development Consent is not required for the proposed activity.
- (3) Harbourside Local Area Command raised no objections to the grant of the licence; however recommend a number of conditions to be imposed on the licence which have been duly considered.
- (4) 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 catering company does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (5) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

This contemporary company provides a new and fresh approach to whiskey appreciation and education. Whiskey Uncovered will provide customers with a unique

experience comprising a six course degustation where each course is carefully paired with a 15 mL sample of whiskey.

(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 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: 21 April 2017



Santina Causa
A/Coordinator 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>