



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

DOC/16/0xxxxx

**APPLICATION NO:** 1-4214121497  
**APPLICATION FOR:** On premises + Primary service authorisation  
**PROPOSED TRADING HOURS:** Indoors-Monday-Saturday 12midday-12  
midnight, Sunday 12 midday-10pm  
Outdoors- Monday-Sunday 12 midday-10pm.

**APPLICANT:** Mr Michael Clare  
**PROPOSED LICENSED  
PREMISES NAME:** The Harvest at Milton  
**ISSUE:** Whether a delegated Liquor & Gaming  
employee on behalf of the Independent  
Liquor & Gaming Authority (ILGA) should  
grant or refuse an application for an on  
premises licence and/or grant/or refuse a  
primary service authorisation for that licence.

**LEGISLATION** S45(1) Liquor Act 2007

**ILGA DELEGATED DECISION - APPLICATION FOR AN ON  
PREMISES– THE HARVEST AT MILTON**

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 to the on premises, application number 1-4214121497.

On 07 June 2016 and after careful consideration of the Application and other material, the delegate decided to approve the Application.

**LIQO660032935 The Harvest at Milton**



**Conditions imposed:**

- 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.
- Consumption on premises  
Good Friday 12:00 noon - 10:00 PM, Christmas Day 12:00 noon - 10:00 PM  
(liquor can Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later.
- The business authorised by this licence must not operate with a greater overall level of social impact on the well being 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.
- 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.
- The kitchen is to remain open with substantial food service to be available to patrons at all times during the approved hours of operation. The sale and supply of liquor must cease when the kitchen ceases to operate. All patrons must have an allocated seat.
- The premises are to be operated at all times in accordance with the Plan of Management dated May 2016 as may be varied from time to time after consultation with the Local Area Commander.
- Amplified music or other entertainment is not permitted in the outdoor dining area.
- 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.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate

The decision made by the delegate had the Application, the accompanying community impact statement (CIS) and other relevant material:

- 1.1. Application form – date-14/03/2016
- 1.2. Community Impact Statement (CIS) document and supporting material that accompanies the Application, dated 7/01/2016.
- 1.3. Development Approval No DA13/2252 dated 19/03/2014 issued by the Shoalhaven City Council,
- 1.4. Plan of Management for the Premises including a venue specific Responsible Service of Alcohol (RSA) policy dated 13/05/2016.
- 1.5. Submission from Secretary, OLGR dated 08/04/2016
- 1.6. Submission from council, dated 8/3/2016.
- 1.7. Submission from police 8/3/2016.

### 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.

When determining the application, the delegate has also considered s53(1)(b) of the Liquor Act 2007, which states that the Authority may, on its own initiative, impose conditions on a licence.

### 3. Statutory tests

3.1 In determining an application for a licence, under section 45(3) of the *Liquor Act 2007*, the delegate must also be satisfied that:

- 3.1.1 the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates,
- 3.1.2 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
- 3.1.3 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

4.1 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.

4.2 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.
- 4.3 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.

4.4 Local and Broader Community - for the purposes of this decision, the delegate is satisfied that the relevant "local community" is the community within the State suburb of Milton and the "broader community" comprises the Shoalhaven LGA.

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

Having reviewed all the material, I am satisfied that this application for an on-premises licence with a primary service authorisation is for a low risk business model.

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.

The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol, management of patron behaviour security when required and restricts entertainment to acoustic music within the venue only.

There were no submissions opposing the grant of this licence and I am satisfied that the statutory advertising requirements have been met.

## **6. Overall social impact**

### **6.1 Positive benefits**

This licence will replace a Small Bar Licence (LIQS220000013, surrendered 07 June 2016) which operated on the same premises and was managed by this applicant. The licence had been operating for 14 months with no known incidents.

### **6.1 Negative impacts**

No identified negative impacts. There were no issues raised by key stakeholders during the consultation period.

## **7. Conclusion**

7.1 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. The interested parties are NSW Police, Ku-ring-gai Council, the Secretary, Department of Justice and the Licensee.

7.2 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.

7.3 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.

- 7.4 Having considered together the positive benefits and negative impacts that I am satisfied are likely to flow from granting the Application, I am satisfied that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.
- 7.5 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.
- 7.6 I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- 7.7 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 for an on premises licence.

Decision Date: 07 June 2016

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>