



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

DOC16/092184

APPLICATION NO:	1-4048912291
APPLICATION FOR:	On-premises licence for a restaurant with a primary service authorisation
PROPOSED TRADING HOURS:	10:00 AM to 9:00 PM Monday to Sunday
APPLICANT:	Chloe Donnelly
PROPOSED LICENSED PREMISES NAME:	The Penny Royale
PROPOSED PREMISES ADDRESS:	565 Military Rd, Mosman NSW 2088
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for Liquor - packaged liquor licence (on-line).
LEGISLATION:	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION - APPLICATION FOR AN ON-PREMISES,
RESTAURANT – THE PENNY ROYALE**

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 application for on-premises licence for a restaurant with a primary service authorisation, application number 1-4048912291.

On 6 September 2016, 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 PM (noon) to 10:00 PM
(liquor can only be served with or ancillary to a meal in a dining area) |
| Christmas Day | 12:00 PM (noon) to 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) The licensee must conduct the licence at all times in accordance with the Plan of Management dated 1 June 2016, as may be varied from time to time in consultation with the Local Area Commander.
- (5) The premises is to operate with its principal business being that of a restaurant as defined by the Liquor Act and not as a bar.
- (6) The kitchen is to remain open with substantial food service available to patrons during the approved hours of operation.
- (7) Patrons in the outdoor dining area are only permitted to consume alcohol whilst seated at a table in that area.
- (8) When the outdoor dining tables are vacated by patrons, the licensee or its representative must ensure that all glass drinking vessels and/or bottles are removed immediately from the tables.
- (9) No amplified music or entertainment is to be played in the outdoor area and no music or live entertainment from within the premises is to be heard at the boundary of the closest residential premises.
- (10) The licensee or its representative must join and be an active participant in the Local Liquor Accord.

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) Application form, dated 4/2/2016.
- (2) Community Impact Statement (CIS) document and supporting material that accompanies the Application, dated 4/2/2016.
- (3) Development Approval No 8.2016.19.1 dated 30/03/2016 issued by Mosman Council.
- (4) Plan of Management for the Premises including a venue specific Responsible Service of Alcohol (RSA) policy dated 1 June 2016.
- (5) Submission from Secretary dated 07/03/2016
- (6) Submission from NSW Police dated 24/2/2016, requesting several conditions to be imposed on the licence.
- (7) Site plan
- (8) NPC, RSA competency card details and ID of the proposed licensee Chloe Donnelly

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:
 - (a) the grant or removal of a small bar licence (where required),
 - (b) a packaged liquor licence (limited to telephone/internet sales),
 - (c) 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 State suburb of Mosman and the "broader community" comprises the Mosman Municipal LGA.

5. Analysis of Submissions and other Materials

The application is for an on-premises restaurant licence with a primary service authorisation for a premises located on a commercial/residential complex in Mosman. The primary purpose of the business is to operate as a restaurant serving meals, alcoholic and non-alcoholic beverages to seated patrons.

The licence will be exercised in accordance with the Plan of Management that addresses the responsible services of alcohol, management of patron behaviour and noise mitigation.

6. Overall social impact

No public submissions have been received opposing the grant of the licence. Harbourside Local Area Command, Mosman Council and the Secretary have not raised any concerns or objections relating to the application.

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. The interested parties are NSW Police, the Licensee and (other parties who may be affected).

- (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 other 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) Having considered together the positive benefits and negative impacts that 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.
- (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 with conditions the licence application.

Decision Date: 6 September 2016



Olga Lengher
Manager Licensing
Liquor & Gaming NSW
Delegate of the Independent Liquor & Gaming Authority