

**NSW Department of Customer Service**

**Liquor & Gaming NSW**

Application number:	APP-0009393895
Application for:	Liquor – on-premises- Vessel
Trading hours:	Monday – Saturday 09:00AM – 12:00AM Sunday 10:00AM – 10:00PM
Applicant:	Andrew Keith Tinnock
Licence name:	Broken Bay Charters
Premises address:	Clarence head ma011 Hardys Bay NSW 2257 Australia
Issue:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a Liquor – on-premises - Vessel
Legislation:	Section 45(1) of the Liquor Act 2007

**Liquor – on-premises- Vessel**

**Broken Bay Charters**

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 Customer Services, has decided to grant the application for a Liquor – on-premises- Vessel, application number APP-0009393895

After careful consideration of the application and other material, the Delegate decided to approve the application, subject to conditions listed in table 1.

Decision Date: 11 January 2022



**Anthony Vescio, A/Manager, New Licensing and Special Events  
Liquor and Gaming NSW  
Delegate of the Independent Liquor and Gaming Authority**

## STATEMENT OF REASONS

### Analysis of submissions and statutory requirements

- (1) No submissions were received objecting to the application.
- (2) Appropriate consent is in place for the use of the premises as on premises vessel liquor licence – Certificate of Survey.
- (3) Council confirmed the tourist use (sightseeing cruises) of the waterway does not require any DA Consent.
- (4) I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions contained in the licence document.
- (5) I am satisfied that the statutory advertising requirements have been met.
- (6) Having reviewed all the material, I am satisfied that granting this application for a Liquor – on-premises - Vessel will not be detrimental to the local or broader community of NSW.

### Overall social impact

- (1) Positive benefits

The proposed licence will provide broader choice for chartering a vessel, to conduct sightseeing tours and passenger transfers from one location to another.

- (2) Mitigation of potential negative impacts

I am satisfied that the business model, conditions imposed, and any other information contained in the application will provide that the lawful operation of the premises will not be detrimental to the local or broader community.

### Conditions considered by the ILGA delegate

All requests to impose conditions on the licence are reviewed on a case-by-case basis and a merit-based assessment is conducted.

In considering whether a proposed condition has merit, Delegate's consider: (a) whether the need for the condition has been adequately established (b) whether the benefits of imposing the condition are likely to outweigh the costs and (c) whether the proposed condition is proportionate to the potential harm identified.

Table 1 sets out the conditions which I have decided to impose on the licence, and the Table 2 sets out conditions put forwarded for consideration which I have decided not to impose, and the reasons for that decision.

TABLE 1 - Proposed conditions imposed on the licence:	
1.	<p><b>Retail closure period</b></p> <p>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 03:00 AM and 09:00 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.</p>
2.	<p><b>Restricted trading days and NYE</b></p> <p>Consumption on premises</p> <p>Good Friday      Normal trading</p> <p>Christmas Day    Normal trading</p> <p>December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later.</p>
3.	<p><b>Liquor must be sold/supplied with another product or service</b></p> <p>Liquor may only be sold or supplied for consumption on the licensed premises with, or ancillary to, another product or service that is sold, supplied, or provided to people on the licensed premises.</p> <p><b>Note: This requirement does not apply if a primary service authorisation has been approved by ILGA.</b></p>
4.	<p><b>Requirement to provide food on licensed premises</b></p> <p>Food of a nature and quantity consistent with the responsible sale, supply and service of alcohol must be available whenever liquor is sold or supplied.</p>
5.	<p><b>Drinking water to be available free of charge</b></p> <p>The Licensee must ensure that free drinking water is available at all times at or near the bar areas.</p>
6.	<p><b>No liquor to be removed from the vessel</b></p> <p>The licensee must ensure liquor is not removed from the licensed premises.</p>
7.	<p>Licensee training must be completed no later than six months from the date of grant of the liquor licence.</p>
8.	<p><b>Incident register</b></p> <p>For vessels authorised to make retail on-premises sales after midnight at least once a week, the licensee must maintain an incident register.</p> <p>The licensee must record any incidents that occur after midnight and details of the action taken</p>
9.	<p><b>Plan of management</b></p>

	<p>The premises is to be operated at all times in accordance with the Plan of Management dated December 2021 as may be varied from time to time after consultation with your local Police.</p> <p>A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, or Liquor, Gaming and Racing inspector.</p>
10.	<p><b>Crime scene preservation</b></p> <p>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:</p> <ol style="list-style-type: none"> <li>1. 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 accordance with the Crime Scene Preservation Guidelines issued by NSW Police, and</li> </ol> <p>make direct and personal contact with your local Police Supervisor or his/her delegate, and advise the Supervisor or delegate of the incident, and comply with and directions given by the Supervisor or delegate to preserve or keep intact the area where the act of violence occurred.</p>
11.	<p><b>Staff not to consume liquor</b></p> <p>The licensee must not permit staff to consume liquor on the licensed premises while engaged in the sale or supply of liquor (including during any meal or other break).</p>
12.	<p><b>No dance parties</b></p> <p>The licensee must not permit dance party events to be conducted on the premises. For the purpose of this condition a dance party event means an event, whether a ticketed event or otherwise, which is open to the public and where the primary activity is entertainment provided by live DJ/DJ's and/or other live performance/s for the purpose of dancing. This includes the vessel being part of a group of vessels or part of a land-based activity which involves an event that could be described as a "Dance Party" or where amplified music is the main reason for the event or gathering.</p> <p>Note: The above condition is not intended to include wedding ceremonies/receptions, corporate events, and school formals at which DJ entertainment or other live performances/s of electronic dance music is provided ancillary to the event.</p>
13.	<p><b>Identification of bar staff</b></p> <p>The licensee must ensure that all staff will wear clothing that clearly identifies them as employees of the Licensee.</p>

TABLE 2 – Proposed conditions not imposed on the licence:		Proposed by:	Reason code (see table 9)
1.	<ul style="list-style-type: none"> <li>• Nil</li> </ul>		

Materials considered by the ILGA delegate

TABLE 3: Analysis of submissions	
Stakeholder submissions	
1.	NSW Police <ul style="list-style-type: none"> <li>• Nil</li> </ul>
2.	Council <ul style="list-style-type: none"> <li>• “The tourist use (sightseeing cruises) of the waterway does not require any DA Consent.”</li> </ul>

TABLE 4: Document analysis		
Details		Dated received/comment
1.	Application form	11/11/2021
2.	Plan of proposed licensed area	Compliant
3.	Certification of Advertising	Compliant
4.	Plan of management	Compliant
5.	National Police Certificate	Compliant
	ID	Compliant
	RSA competency card	Compliant
	Licensee training	Agreed to condition
	Development consent	Certificate of Survey

Conclusion

- (1) I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether to grant the application. 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 decision was made by the delegate having reviewed the application

statement, business model and risk analysis, stakeholder submissions and other relevant material.

- (2) In accordance with section 45(3)(a) of the Act I am satisfied that the proposed licensee is a fit and proper organisation to carry on the business or activity to which the proposed licence relates.
- (3) Having considered the Plan of Management 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) 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 liquor licence application with conditions.

TABLE 5: Relevant extracts from the Liquor Act 2007

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. 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.
- d. the need to support employment and other opportunities in the—
  - (i) live music industry, and
  - (ii) arts, tourism, community, and cultural sectors.

TABLE 6: 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 organisation 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 4 Division 4.1 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.
  - (d) the proposed approved manager/licensee has completed the relevant tiered industry training as per legislative requirements.

TABLE 7: 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.

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.

TABLE 8: 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.nsw.gov.au/Pages/public-consultation/online-application-noticeboard/online-application-noticeboard.aspx>. The Review Application form can be accessed online via the Application Number hyperlink.

Further information can be obtained from the Reviews page on the Liquor & Gaming website at: <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>

TABLE 9: - Reasons for not imposing requested conditions.

A	Do not impose. Already covered by the Liquor Act.
B	Do not impose. Already covered/already a condition in the DA.



C	Do not impose. Not a relevant condition for this licence type. Condition sought is generally only imposed on high-risk licence type or in exceptional circumstances. Exceptional circumstances have not been sufficiently made out by the person putting forward the condition.
D	Do not impose. This condition would be more restrictive than similar venues in Kings Cross which remains subject to the lockout laws in 2020.
E	Do not impose. Small Bars are considered low risk.  2016 Review of Small Bars found Venues with a small bar licence have a lower incidence of alcohol-related violence than venues operating as a small bar under another type of liquor licence. Smaller bars have a lower incidence of alcohol-related violence than other types of licensed venue.
F	Do not impose. Already covered in the Plan of Management. Plan of management condition has been imposed.
G	Do not impose. Not in alignment with the business type, risk associated and would impose disproportionate unnecessary financial and operational burden (small business).
H	Do Not Impose. Being part of a liquor accord is not compulsory / on a voluntary basis only. Exceptional circumstances for imposing conditions have been sufficiently made out by the person putting forward to the condition.
I	Do not impose – wording not consistent with ILGA/L&GNSW licence conditions – ILGA/L&GNSW licence condition wording has been imposed instead.