



## Liquor & Gaming NSW

### NSW Department of Enterprise Investment and Trade

#### Liquor & Gaming NSW

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<b>Application No.</b>	APP-0009781503
<b>Application for</b>	On-premises liquor licence - Vessel
<b>Trading hours</b>	Monday to Saturday 08:00 AM to 12:00 AM Sunday 10:00 AM to 10:00 PM
<b>Applicant</b>	Noorton Pty Ltd
<b>Licence name</b>	Ocean Flyer
<b>Premises address</b>	Pier 26, Darling Harbour NSW 2000
<b>Issue</b>	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 liquor licence - Vessel
<b>Legislation</b>	Section 45(1) of the <i>Liquor Act 2007</i>

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 Enterprise Investment and Trade, has decided to grant the application for an on-premises liquor licence - vessel, subject to conditions set out at Schedule 1 imposed on the licence.

Decision Date: 21 June 2022

Nicola Taylor

**Manager Licensing  
Liquor and Gaming NSW  
Delegate of the Independent Liquor & Gaming Authority**

## STATEMENT OF REASONS

### Analysis of submissions and statutory requirements

1. Appropriate consent is in place for the use of the vessel as a liquor - on-premises licence - vessel
2. Police have no objection subject to conditions.
3. Council have no objection
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. Plan of the vessel provided
6. I am satisfied that the statutory advertising requirements have been met.
7. Having reviewed all the material, I am satisfied that granting this application for a Liquor - on-premises licence - vessel will not be detrimental to the local or broader community.
8. Plan of Management provided
9. Current certificate of survey provided

### Materials considered by the ILGA delegate

#### Information considered

1. Application form received: 4 March 2022
2. Plan of proposed licensed area: Compliant
3. Certification of Advertising: Compliant
4. Plan of management
5. Approved Manager: N/A to be appointed later date
6. Certificate of survey: Compliant
7. Correspondence from Liquor & Gaming NSW to the applicant requesting additional information and consent to conditions.
8. Correspondence from the applicant in response to Liquor & Gaming NSW.
9. Correspondence from Police.
10. Correspondence from Council
11. Applicant's Response to Police's Submission
12. Applicant's consent to conditions

### Analysis of stakeholder submissions

1. NSW Police:  
No objection subject to conditions
2. Local consent authority:  
No objection
3. Public:  
Did not submit

## Overall social impact

### 1. Positive benefits

The granting of the licence will provide patrons with increased choice to socialise, including to enjoy a meal and/or a social drink and other entertainment consistent with the licence, which encompasses standard New South Wales transport for the public and cruises within the Sydney harbour and other waterfronts

### 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.

In particular, the Plan of Management and licence conditions will serve to mitigate any potential negative impacts

## 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. Having considered the venue management plan /and related material, under section 45(3)(b) of the Act, I am satisfied those 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.
3. 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.
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.

## 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:

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

### **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 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.

### **Community impact test**

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.

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.

### **Important Information**

In accordance with Clause 5 of the Gaming and Liquor Administration Regulation 2016, 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. In the case of the applicant, the fee payable is the fee applying to the original application. In all other cases, the fee is \$100.

For ILGA reviews of delegated decisions, make an application for review via the [Liquor and Gaming Application Noticeboard](#). The Review Application form can be accessed online via the [make a submission](#) button.

Further information can be obtained from the [Reviews of liquor and gaming decisions](#) page on the Liquor & Gaming website.

## **Schedule 1**

### **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, delegates 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.

### **Licence conditions to be imposed**

#### **Ocean Flyer**

**1. Liquor must be sold/supplied with another product or service**

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.

**2. Requirement to provide food on licensed premises**

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.

**3. Drinking water to be available free of charge**

The licensee must ensure that free drinking water is available at all times at or near the bar areas.

**4. Sydney CBD entertainment precinct**

The licensee must not cause or permit any passengers to board from or disembark to any part of the Sydney CBD entertainment precinct (whether from the berthed vessel or by a tender or other means) during the general late trading period (after midnight). The restriction does not apply in relation to the period between midnight and 3am on 1 January in any year (New Year's Eve).

**5. No liquor to be removed from the vessel**

The licensee must ensure liquor is not removed from the licensed premises

**6. Retail closure period**

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 02:00 AM and 08:00 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.

**7. Restricted trading days and NYE**

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 the later

**8. Plan of management condition**

the premises is to be operated at all times in accordance with the Plan of Management dated March 2022 as may be varied from time to time after consultation with the NSW Police Marine Area Commander. 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.

**9. Crime scene preservation**

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: 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 2. Make direct and personal contact with the NSW Marine Area Command Supervisor or his/her delegate, and advise the Supervisor or delegate of the incident, and comply with any directions given by the Supervisor or delegate to preserve or keep intact the area where the act of violence occurred.

**10. Staff not to consume liquor**

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).

**11. No dance parties**

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 performances 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. 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 of electronic dance music is provided ancillary to the event.

**12. Identification of bar staff**

The licensee must ensure that all staff will wear clothing that clearly identifies them as employees of the Licensee

**13. Liquor accord (Sydney Harbour)**

The licensee or their representative is to join and be an active participant in the Vessels Liquor Accord

**14. Appointment of manager**

The licence cannot be exercised unless an individual has been appointed by Liquor and Gaming NSW as approved manager to exercise the liquor licence or the licence is transferred to a suitably qualified individual

**15. Incident register**

1. The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident
  - a. any incident involving violence or anti-social behaviour occurring on the premises,
  - b. any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,

- c. any incident that results in a person being turned out of the premises under section 77 of the Act,
  - d. any incident that results in a patron of the premises requiring medical assistance
2. The licensee must, if requested to do so by a police officer or inspector provide police or inspectors with an electronic extract of liquor-related incidents recorded in the Incident Register as soon as practical following receipt of such a request
  3. The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

**16. AIS Activated**

A vessel that is licensed commercial charter vessel over 24 metres must have the automatic identification system (AIS) installed and activated during operation with patrons onboard

Proposed conditions not imposed on the licence	Proposed by	Reason
<p>Closed-circuit television system</p> <ol style="list-style-type: none"> <li>1. The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:               <ol style="list-style-type: none"> <li>a. the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),</li> <li>b. recordings must be in digital format and at a minimum of ten (10) frames per second,</li> <li>c. any recorded image must specify the time and date of the recorded image,</li> <li>d. the system’s cameras must cover the following areas:                   <ol style="list-style-type: none"> <li>i. all entry and exit points on the premises,</li> <li>ii. the footpath immediately adjacent to the premises, and</li> <li>iii. all publicly accessible areas (other than toilets) within the premises.</li> </ol> </li> </ol> </li> <li>2. The licensee must also:               <ol style="list-style-type: none"> <li>a. keep all recordings made by the CCTV system for at least 30 days,</li> <li>b. ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and</li> <li>c. provide any recordings made by the system to a police officer or Liquor &amp; Gaming NSW inspector within 24 hours of any request by the police officer or Liquor &amp; Gaming NSW inspector to provide such recordings.</li> </ol> </li> </ol>	<p>Authority</p>	<p>Determined not to impose with consideration to the applicant’s comments, plan of management measures and other conditions applied.</p>