

LICENCE DETAILS

Application No.	APP-0011684107
Application type	Small bar liquor
Trading hours	Monday to Sunday 12:00 PM to 12:00 AM
Applicant	PERISHER HOLDINGS PTY LIMITED
Licence name	The Flower Shop Penrith
Premises address	437 HIGH ST, PENRITH, NSW 2750 AUSTRALIA
Matter	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for small bar liquor licence
Legislation	Section 45(1) of the <i>Liquor Act 2007</i>
Decision details	Under delegation issued by the Independent Liquor and Gaming Authority under section 13 of the <i>Gaming and Liquor Administration Act 2007</i> , 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 a small bar liquor licence, subject to conditions set out at Schedule 1 imposed on the licence.
Decision date	25/07/2023
Delegate details	



Kieran McSherry, A/Coordinator - Licensing
Liquor and Gaming NSW
Delegate of the Independent Liquor & Gaming Authority

STATEMENT OF REASONS

ANALYSIS OF SUBMISSIONS AND STATUTORY REQUIREMENTS

1. Development approval is in place for a small bar at the venue.
2. A Police submission was received and considered as summarised at **submission analysis** below.
3. No public submissions were received relating to any issues with the application.
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 small bar liquor licence will not be detrimental to the local or broader community.

MATERIALS CONSIDERED BY THE ILGA DELEGATE

Information considered

1. Application form received: 19 June 2023
2. Plan of proposed licensed area: Compliant
3. Certification of Advertising: Compliant
4. Plan of management: Compliant
5. Documents
 - a. National Police Certificate: N/A
 - b. ID: N/A
 - c. RSA competency card: Compliant
6. Approved Manager: Compliant
7. Licensee Training: Compliant
8. Development consent: Compliant
9. Correspondence between Liquor & Gaming NSW and the applicant
10. Correspondence from Police.
11. Applicant's response to submissions received.
12. Applicant's consent to conditions

Analysis of stakeholder submissions

1. NSW Police:

Although police do not object to the grant of this small bar liquor licence, they have recommended a suite of conditions to ensure that the liquor licence will be exercised according to the responsible services of Alcohol guidelines.

Local consent authority

Not provided

2. Public

Not provided

OVERALL SOCIAL IMPACT

1. Positive benefits

The granting of the licence will provide patrons with an additional venue to socialise within Penrith. The novelty factor of entering the small bar through a flower shop, is inspired by the Prohibition Era Speak Easy's at the turn of the 20th century and will add to the ambiance of the venue.

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.

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 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 will be 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.

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 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. 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.

Applications for review of ILGA delegated decisions, can be made 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.

(The Flower Shop Penrith)

Licence conditions to be imposed	Licence condition details
Retail closure period	Section 11A of the <i>Liquor Act 2007</i> applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 04:00 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.
Restricted trading & NYE (std)	Consumption on Premises Good Friday 12:00 noon – 10:00 PM Christmas Day 12:00 noon – 10:00 PM December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later. Note: Trading is allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5.00 AM
Crime scene preservation conditions	Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must: <ol style="list-style-type: none">1) take all practical steps to preserve and keep intact the area where the act of violence occurred,2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor & Gaming NSW website,3) make direct and personal contact with NSW Police to advise it of the incident, and4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.5) In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (e.g., crowd controller or bouncer) on or about the premises.

Licence conditions to be imposed	Licence condition details
Closed-circuit television system	<p>1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:</p> <ul style="list-style-type: none"> (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), (b) recordings must be in digital format and at a minimum of ten (10) frames per second, (c) any recorded image must specify the time and date of the recorded image, (d) the system's cameras must cover the following areas: <ul style="list-style-type: none"> i. all entry and exit points on the premises, ii. the footpath immediately adjacent to the premises, and iii. all publicly accessible areas (other than toilets) within the premises. <p>2) The licensee must also:</p> <ul style="list-style-type: none"> (a) keep all recordings made by the CCTV system for at least 30 days, (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 (c) provide any recordings made by the system to a police officer or Liquor & Gaming NSW inspector within 24 hours of any request by the police officer or Liquor & Gaming NSW inspector to provide such recordings
Plan of management condition	<p>The premises is to be operated at all times in accordance with the Plan of Management dated April 2023 as may be varied from time to time after consultation with NSW Police. 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, Liquor & Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.</p>

Licence conditions to be imposed	Licence condition details
Security:	<p>a) The licensee shall ensure that the premises are operated in accordance with the Flower Shop Plan of Management, as amended from time to time, which must be approved by the Commander or his delegate of The Nepean Policing Area Command.</p> <p>b) The licensee shall provide at least the following licensed security officers at the venue:</p> <ul style="list-style-type: none"> - On Friday and Saturday nights from 8:00 pm until the last patron has left the vicinity of the licensed premises: 1) Once (1) licensed security officers at the main entrance; and - One (1) licensed security officer per one hundred (100) persons to patrol the inside of the licensed premises. - At one (1) further licensed security officer is to continually patrol in the vicinity of the venue from thirty (60) minutes prior to closure and until the last patron has left the premises or the vicinity of the venue, or half an hour after the venue has closed, whichever is the later, to ensure that patrons do not loiter or linger in the area or cause nuisance or annoyance to the neighbourhood. <p>c) The vicinity of the venue is defined as, 437 High Street Penrith NSW 2750 between 443 High Street and Woodriff Street Mall and twenty-five (25) metres South (Memory Park and north of the premises, including Allan Place Carpark as required.</p>

Licence conditions to be imposed	Licence condition details
Incident register	<p>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:</p> <p>(a) Any incident involving violence or anti-social behaviour occurring on the premises,</p> <p>(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,</p> <p>(c) Any incident that results in a person being turned out of the premises under section 77 of the Act,</p> <p>(d) Any incident that results in a patron of the premises requiring medical assistance.</p> <p>2) The licensee must, if requested to do so by a police officer or Liquor & Gaming NSW inspector:</p> <p>(a) Make any such incident register immediately available for inspection by a police officer or Liquor & Gaming NSW inspector, and</p> <p>(b) Allow a police officer or Liquor & Gaming NSW inspector to take copies of the register or to remove the register from the premises.</p> <p>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.</p>

Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)
<p>Closed-circuit television system</p> <p>1) The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises ("the premises") in accordance with the following requirements:</p> <p>(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),</p> <p>(b) recordings must be in digital format and at a minimum of ten (10) frames per second,</p> <p>(c) any recorded image must specify the time and date of the recorded image,</p> <p>(d) the system's cameras must cover the following areas:</p> <p>(i) all entry and exit points to the premises,</p> <p>(ii) The footpath immediately adjacent to the premises, and</p> <p>(iii) all publicly accessible areas (other than toilets) within the premises.</p> <p>2) The licensee must also:</p> <p>(a) keep all recordings made by the CCTV system for at least 30 days,</p> <p>(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</p> <p>(c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector immediately of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.</p>	Police	G

Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)
<p>The licensee must ensure that immediately after the licensee or a staff member becomes aware of any incident involving an act of violence causing an injury to a person on the premises, the following is adhered to:</p> <p>a) The licensee and/or staff take all practical steps to preserve and keep intact the area where the act of violence occurred, retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police, as published from time to time on the website of Liquor & Gaming NSW. Staff must report incidents and support police investigation's</p> <p>b) The licensee and/or staff make direct and personal contact with the Police Area Commander or his/her delegate and advise the Commander or delegate of the incident.</p> <p>c) The licensee and/or staff comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred. In this condition: "staff", in relation to subject premises, means any person employed by or acting on behalf of the licensee of the premises, and includes any person who is employed to carry on activities as a crowd controller or bouncer on or about the premises.</p>	Police	G

<p>After 8.00pm on nights when live entertainment is being provided, a patron must not be permitted entry to the licensed area unless they have a valid photo ID scanned by a licensed security officer using the patron ID scanner.</p> <p>The scanning of each patron ID must:</p> <p>Be visible to the patron and only take place whilst the patron is present.</p> <p>Be recorded on CCTV, provided that personal information is scanned is not visible on the recording, Include a 'live' photograph of the patron, captured by the patron ID scanner prior to entry.</p> <p>Be undertaken by a class C licensed security guard, Only evidence of age documents, as defined by the Liquor Act 2007, are acceptable for the purposes of ID scanning, and must contain the following information relating to the patron: Name, Photograph, and Date of birth and/or address.</p> <p>Evidence of age documents are limited to the following:</p> <p>a motor vehicle driver or rider's licence or permit, issued by Roads and Maritime Services under the Road Transport Act 2013 or by the corresponding public.</p> <p>Authority of another State or Territory, or under the law of another country.</p> <p>A digital driver licence within the meaning of the Road Transport Act 2013.</p> <p>A Photo Card issued under the Photo Card Act 2005.</p> <p>A digital Photo Card within the meaning of Part 2A of the Photo Card Act 2005.</p> <p>A proof of age card (however described) issued by a public authority of the Commonwealth or of another State or Territory for the purpose of attesting to a person's identity and age.</p> <p>An Australian or foreign passport, or a proof of age card issued by Australia Post (known as a "Keypass Identity Card").</p> <p>A person must be refused entry to the venue (as a patron) if they:</p> <p>Attempt to enter the venue without acceptable photo ID,</p> <p>Refuse to produce their photo ID for scanning.</p> <p>Refuse to have a live photograph captured by patron ID scanner immediately prior to entry.</p>	<p>Police</p>	<p>C</p>
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Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)
In the instance that the ID scanner fails to operate, a Class C security guard is to be positioned at each entrance to the venue to supervise patrons entering the premises and to check identification documents.		
<p>The premise owner must engage a person who holds a current class 2A security licence, or is otherwise suitably qualified, to prepare a plan of management for the licensed premises.</p> <p>The Plan should be systems based and adopt a continuing approach to address:</p> <ul style="list-style-type: none"> a) Compliance with licence conditions and liquor laws b) The responsible service of alcohol c) Minimising disturbance to the neighbourhood particularly addressing effective management of patrons: <ul style="list-style-type: none"> i. Who are intoxicated, violent, quarrelsome and Disorderly, ii. Queuing to gain entry to the premises, and iii. Within and Departing the Premises <p>Effective management and deployment of venue staff particularly addressing:</p> <ul style="list-style-type: none"> i. Maintaining an incident register, ii. Security and Patron Safety, iii. Crime Scene management procedures, and iv. Induction and training <p>Appropriate responses to concerns as they arise from the Police area Commander (of the relevant Police Area Command in which the premises is situated) or residents and other business affected by the operation of the licensed premises. The plan should be updated from time to time as required but only, with the agreement of the Police area Commander (of the relevant Police Area Command in which the premises is situated).</p> <p>A copy of the Plans of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.</p>	Police	C

List of reasons and codes for not imposing requested conditions

A Already covered by the *Liquor Act 2007*.

- B** Already a condition in the development consent.
- C** 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 proposed by the person putting forward the condition.
- D** Already covered in the plan of management. Plan of management condition has been imposed.
- E** Not aligned with the business type and would impose disproportionate unnecessary financial and operational burden.
- F** Being part of a liquor accord is on a voluntary basis only. Exceptional circumstances have not been proposed by the person putting forward the condition.
- G** ILGA/L&GNSW condition wording has been imposed.