



Customer  
Service

Liquor & Gaming NSW

**NSW Department of Customer Service  
Liquor & Gaming NSW**

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**APPLICATION NO:** APP-0006068218

**APPLICATION FOR:** Small bar liquor licence

**TRADING HOURS:**  
**Indoors**  
Monday-Sunday 12:00 PM- 02:00 AM  
**Outdoors**  
Monday-Sunday 12:00 PM- 12:00 AM

**APPLICANT:** AUSINO PROPERTIES PTY LTD

**LICENCE NAME:** **Clarence St Rooftop Bar**

**PREMISES ADDRESS:** Level 9, 283-285 Clarence Street, SYDNEY,  
NSW 2000

**ISSUE:** Whether a delegated Liquor & Gaming employee  
on behalf of the Independent Liquor & Gaming  
Authority (ILGA) should grant or refuse an  
application for a small bar liquor licence.

**LEGISLATION** Section 45(1) of the *Liquor Act 2007*

**ILGA DELEGATED DECISION – APPLICATION FOR  
SMALL BAR LIQUOR LICENCE  
Clarence St Rooftop Bar**

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 small bar liquor licence, application number APP-0006068218

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On 08 October 2019 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 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.

2. **Consumption on premises**

Good Friday      Not permitted

Christmas Day    Not permitted

December 31st    Normal trading

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

3. **Crime Scene Preservation**

Immediately after the person in charge of the Licensed Premises become aware of an incident involving an act of violence causing an injury to a person on the premises, the person must:

- a) Take all practical steps to preserve and keep intact the area where the act of violence occurred
- b) Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police
- c) Make direct and personal contact with the Police Area Commander or his/her delegate and advise the Commander or delegate of the incident and
- d) Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

4. **Closed-circuit television (CCTV) system**

The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

- (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 six (6) frames per second,

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- (c) any recorded image must specify the time and date of the recorded image,
- (d) the system's cameras must cover the following areas:
  - a. all entry and exit points on the premises,
  - b. the footpath immediately adjacent to the premises, and
  - c. all publicly accessible areas (other than toilets) within the premises.
- (e) The licensee must also:
  - 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 and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate (DF19/013629)

The decision made by the delegate having reviewed the application statement and other relevant material:

- (1) Application form lodged on 12 August 2019
- (2) Evidence of Notification to both Police and the Secretary to Liquor & Gaming NSW within 2 days of the development application being lodged with Council.
- (3) Plan of proposed licensed area
- (4) Certification of Advertising
- (5) ASIC Extract for the proposed organisational licensee- AUSINO PROPERTIES PTY LTD
- (6) Plan of Management
- (7) A submission dated 20 August 2019, has been received from the City of Sydney Council with no concerns.
- (8) Correspondence from Liquor & Gaming NSW to the applicant's agent requesting additional information and consent to conditions to be imposed on the licence.
- (9) Correspondence from the applicant's agent in response with consent given to the conditions to be imposed on the licence.

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### 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 4 Division 4.1 or Part 5.1 of that Act

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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.

### 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 suburb of Sydney CBD and the City of Sydney LGA.

### 5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for a small bar liquor licence is unlikely to result in any significant increase in alcohol-related harms in the local community.

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- (2) No submissions have been received objecting to the application.
- (3) Appropriate consent is in place for the use of the premises as a small bar
- (4) City of Sydney Council have forwarded a submission with no concerns.
- (5) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (6) I am satisfied that the statutory advertising requirements have been met.

### 6. Overall social impact

#### (1) Positive benefits

The granting of the licence will provide patrons with increased choice to enjoy a meal/drink in Sydney CBD, in a relaxed roof-top setting.

#### (2) Negative impacts

A range of factors suggest that the small bar is unlikely to have any significant negative impact on the local or broader community, including, the small patron capacity. Further, the Plan of Management and licence conditions will serve to mitigate any potential negative impacts.

### 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.
- (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 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.

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- (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.

Decision Date: 08 October 2019



Wendy Yeung Wye Kong

**A/Manager Licensing (Business Licensing)**  
**Liquor, Gaming and Racing 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.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.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>