



**NSW Department of Industry  
Liquor & Gaming NSW**

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<b>APPLICATION NO:</b>	APP-0004934386
<b>APPLICATION FOR:</b>	Small bar liquor licence with extended trading (10AM-12PM)
<b>TRADING HOURS:</b>	Monday to Sunday: 10.00AM to 2:00 AM
<b>APPLICANT:</b>	MOTHER CLUCKER CHARCOAL CHICKEN PTY LTD
<b>LICENCE NAME:</b>	<b>Forty Licks</b>
<b>PREMISES ADDRESS:</b>	Lower Ground 22-26 York Street SYDNEY 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 a small bar liquor licence.
<b>LEGISLATION</b>	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR  
SMALL BAR LIQUOR LICENCE**

**Forty Licks**

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 Industry, has decided to grant the application for a small bar liquor licence, application number APP-0004934386

On 21 February 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 4:00 AM and 10:00 AM during each consecutive period of 24 hours. The licensee must comply with

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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 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:

- 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 the NSW Police Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
- 4) 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 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 (eg. crowd controller or bouncer) on or about the premises.

4. The licence is authorised for the trading hours fixed by the Authority or such lesser hours as may be approved by the consent authority from time to time.

## STATEMENT OF REASONS

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### 1. Material before the ILGA delegate (DF18/020093)

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

- (1) Application form, lodged 15 November 2018.
- (2) Application Notices
- (3) Notice of Development Application dated 26 September 2018
- (4) Plan of proposed licensed premises and DA approved plans
- (5) ASIC for MOTHER CLUCKER CHARCOAL CHICKEN PTY LTD
- (6) Approved Manager Mowad, Anthony Joseph
- (7) Certificate of Advertising Application, signed and dated 16 November 2018
- (8) Development Application D/2018/1172, granted by City of Sydney Council on 19 December 2018, to Change of use of part basement level to a licensed restaurant and bar and associated alterations and signage
- (9) Plan of Management for Forty Licks dated September 2018 and addendum dated November 2018.
- (10) Consent to proposed conditions

### 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:

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- (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 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),

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- 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 "broader community" of City of Sydney Council 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 licence is unlikely to result in any significant increase in alcohol-related harm in the local community.
- (2) The small bar use is an appropriate use of the subject premises given the site is located within the B8 Metropolitan Centre Zone and surrounded by a variety of commercial uses including restaurants, cafes and bars.
- (3) The site was previously occupied by LIQO624009952 Bavarian Beerhaus. A change of boundaries application was lodged on the 5/2/2018 to exclude the lower ground floor and reduce patrons by 322 (from 572 to 250). The addition of the new licence for this application (92 patrons) still represents a significant reduction (230 patrons less) than what was previously authorised for the site.
- (4) The applicant provided recently approved development consent for a Small Bar and Restaurant, which has been granted by City of Sydney Council. A plan of management has been developed with the City of Sydney Council and is enshrined in the DA approval.
- (5) No objections to the application were raised.
- (6) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (7) I am satisfied that the statutory advertising requirements have been met.

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### 6. Overall social impact

#### (1) Positive benefits

The granting of the licence will enable the applicant to establish a small bar, which will enable patrons to enjoy a drink with or without a meal in a safe setting. There will be a bone fide restaurant atmosphere and food will be served to patrons until trade ceases at 2am. The site is currently vacant and the licence will revitalise the surrounding area, offering the workforce and residents with a high quality dining experience.

#### (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, the emphasis on a restaurant service, the basement location, and the sites established trading history as a restaurant with PSA. 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.
- (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.



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Decision Date: 21 February 2019

**Joanne Zammit**

**Manager - Business Licensing**

**Liquor & Gaming 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>