



Liquor & Gaming NSW

NSW Department of Enterprise Investment and Trade

Liquor & Gaming NSW

Application No.	APP-0010155880
Application for	On-premises liquor licence for catering service with sale on other premises authorisation (SOOPA) – Restaurant - Tourist and Cultural precinct - Art gallery - Tourist facility - Take away sales authorisation
Trading hours	Indoor Monday to Saturday 10:00 AM to 12:00 AM Sunday 10:00 AM to 10:00 PM Outdoor Monday to Sunday 10:00 AM to 10:00 PM
Applicant	The Trustee for ART GALLERY OF NSW TRUST
Licence name	Sydney Modern
Premises address	Sydney Modern, Art Gallery Road, 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 an on-premises liquor licence for On-premises liquor licence for catering service with sale on other premises authorisation (SOOPA) – Restaurant - Tourist and cultural precinct - Art gallery - Tourist facility - Take away sales authorisation
Legislation	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 for catering service with sale on other premises authorisation (SOOPA) – Restaurant - Tourist and cultural precinct - Art gallery - Tourist facility - Take away sales authorisation, subject to conditions set out at Schedule 1 imposed on the licence.

Decision Date: 07 September 2022

Anthony Vescio
A/Manager Licensing
Liquor and Gaming NSW
Hospitality and Racing
Department of Enterprise, Investment and Trade
Delegate of the Independent Liquor & Gaming Authority

STATEMENT OF REASONS

Analysis of application requirements

1. development approval is in place for the use of the proposed construction of the new art gallery building for the Sydney Modern.
3. Public submissions were received relating to any matters with the application and address by the applicant.
4. Council advised that they have no objection to the liquor licence.
5. I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions imposed in the licence document.
6. I am satisfied that the statutory advertising requirements have been met.

Materials considered by the ILGA delegate

Information considered

1. Application form received: 4 June 2022
2. Plan of proposed licensed area: Compliant
3. Certificate of advertising: Compliant
4. Plan of management
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 Council
11. Applicant's response to submissions received
12. Applicant's consent to conditions

Analysis of stakeholder submissions

1. NSW Police:
Not received
2. Local consent authority
No objection
3. Public
Two public submissions received.
- No objection but noise mitigation within the open areas of the licensed boundary should be addressed.
-The second submission has raised concerns regarding the proposed trading times to 12 midnight which will impact the immediate neighbourhood. Patrons should only be permitted to exit the venue via Art Gallery Rd after 9pm, rather than via other exits through local neighbourhoods.

Overall social impact

1. Positive benefits

The Sydney Modern project is considered a significant cultural development for Sydney and will entice both international and local visitors to the art gallery. The granting of this liquor licence will complement the existing services provided by this prestigious venue.

2. Mitigation of potential negative impacts

I am satisfied that the granting of the liquor licence, with the conditions imposed, will ensure 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 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 as set out at Schedule 1.

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:

- whether the need for the condition has been adequately established
- whether the benefits of imposing the condition are likely to outweigh the costs and
- whether the proposed condition is proportionate to the potential harm identified.

(Sydney Modern)

Licence conditions to be imposed	Details
Restricted trading & NYE (airport, catering - std)	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.
6-hour closure period	Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours (known as the 6-hour closure period). The 6-hour closure period is 04:00 AM to 10:00 AM each day, or as determined by the Independent Liquor & Gaming Authority (ILGA). During the 6-hour closure period, the licensed premises are not authorised to stay open for the retail sale of liquor on the premises. This condition only applies to: <ul style="list-style-type: none">an on-premises licence granted on or after 30 October 2008an on-premises licence in force before 30 October 2008, but only where an extended trading authorisation was granted for the licence on or after 30 October 2008 and is in force
Consumption on premises	Consumption on premises Good Friday 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area) Christmas Day 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area) 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 also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or

	ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day
On-Premises Catering with a sale on other premises authorisation	The licensee must not exercise the sale on other premises authorisation at locations/venues where there is already a current and valid liquor licence in force.
Sale of liquor on other premises under an on-premises licence	Where liquor is sold on any premises other than the actual licensed premises under a sale on other premises authorisation, those other premises are taken to be part of the licensed premises.
Food must be made available	Food of a nature and quality consistent with the responsible sale, supply and service of alcohol must be made available whenever liquor is sold or supplied, including liquor being sold or supplied on premises other than the licenced premises.
Free drinking water must be available	Drinking water must be available free of charge at all times while liquor is sold or supplied for consumption on the licensed premises. The drinking water must be available to patrons at or near liquor service points, or by the same means of service that liquor is available (e.g., waiter service).
Notice of functions must be provided to Liquor & Gaming NSW, local police and local council	<p>The licensee must give written notice of certain proposals to provide catering services at a function to be held on premises that are not the permanent licensed premises to Liquor & Gaming NSW, local police and the local council for the area in which the function is to be held.</p> <p>The notice must be given in accordance with the following:</p> <ol style="list-style-type: none"> 1. Functions open to the public (including ticketed and non-ticketed functions) <ol style="list-style-type: none"> a. Up to 100 people: 14 days b. 101-1,999 people: 14 days c. 2,000+ people: 28 days 2. Private functions (including weddings, birthdays, office functions and others not open to the public) <ol style="list-style-type: none"> a. Up to 100 people: No notice required b. 101-1,999 people: 14 days c. 2000+ people: 14 days <p>Notice is not needed for smaller, private functions for 100 or fewer people that may often be held on private residences. However, there may be times where a licensee is unclear whether liquor can be sold or supplied on certain premises under the related development consent (e.g., on a business premises). In these instances, the licensee should still notify the local council, or seek clarification from the council about what is permitted.</p> <p>Written notice to L&GNSW should be made by email to compliance.info@liquorandgaming.nsw.gov.au and should include the following details:</p> <ul style="list-style-type: none"> • the address of the premises on which the function is to be held

	<ul style="list-style-type: none"> the name of the occupier of those premises the nature of the function the number of persons for whom catering services are to be provided at the function the date on which, and the hours during which, the function is to be held.
Landowner consent	This licence may only be exercised at events where landowner consent has been obtained.
Further notification for large events	For events with 5000 or more patrons, the licensee must give 6 weeks written notice of any proposed function to be held on premises that are not the permanent licensed premises of the licensee to Liquor & Gaming NSW, local police and the local council for the area in which the function is to be held.
Notification to L&GNSW	The licensee must notify L&GNSW at least 90 days prior to holding any event defined as a Music Festival under the Music Festivals Act 2019. Written notice to L&GNSW should be made by email to music.festivals@liquorandgaming.nsw.gov.au .
Security condition, 300+ patrons	<p>The following applies to all events with a patron capacity of over 300 and 1,999 or fewer:</p> <ol style="list-style-type: none"> The licensee must employ a fully licensed security guard at the ratio of 1:100 whenever the patron capacity of any given non-private function/event exceeds 300. A plan of management for an event may provide for alternative security arrangements if the plan has been developed in consultation with the local Police Area Command. <p>If any event includes a patron capacity of 2,000 or more the following sub conditions also apply:</p> <ol style="list-style-type: none"> The licensee and their staff must comply with any lawful direction relating to the sale and supply of liquor made by a NSW Police Officer, being the senior officer on-site, or inspector from Liquor & Gaming NSW. 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: <ol style="list-style-type: none"> 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; Inform the NSW Police Force of the incident; Comply with any directions given by a police officer to preserve or keep intact the area where the violence occurred. <p>In this sub condition, 'staff member' includes any person conducting activities as a crowd controller or bouncer at the function.</p>

	<p>3. The licensee must not permit any person to enter the premises, or to remain on the premises, if the person is wearing or carrying any clothing, jewellery or accessory displaying:</p> <ol style="list-style-type: none"> the name of any of the following motorcycle-related and similar organisations: Bandidos, Black Uhlands, Coffin Cheaters, Comanchero, Finks, Fourth Reich, Gladiators, Gypsy Jokers, Highway 61, Life & Death, Lone Wolf, Mobshitters, Nomads, Odins Warriors, Outcasts, Outlaws, Phoenix, Rebels, Hells Angels, Scorpions, Mongols, Notorious, Muslim Brotherhood Movement; or any “declared organisation” within the meaning of the Crimes (Criminal Organisation Control) Act 2009. the colours, club patch, insignia or logo of any such organisation, or the “1%” or “1%er” symbol, or any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, any of the organisations specified in a. <p>Any incident where a person is refused entry or removed from the premises in relation to this condition must be recorded in the incident register</p>
Plan of Management	<p>A plan of management is required in the following circumstances:</p> <ul style="list-style-type: none"> For events over 300 people and 1,999 or fewer people: a plan of management must be prepared by the Licensee. For events with 2,000 people or more: the Licensee must prepare a separate comprehensive plan of management and security management plan for the event in consultation with the Police Area Command. For events held after midnight: a plan of management must be prepared by the Licensee regardless of the number of people attending. <p>For any event where a plan of management is required, the premises is to be operated at all times in accordance with the plan of management. A copy of the plan of management is to be kept on the licensed premises for the duration of the event and made available for inspection on the request of a police officer, council officer, or Liquor & Gaming NSW inspector.</p>
Service of Liquor	<p>For all events held under the license the following condition applies:</p> <ol style="list-style-type: none"> No more than four (4) alcoholic drinks may be sold, supplied or served to a patron per visit to the bar.

	<p>For any event with a patron capacity of 1,999 or fewer and proposes to trade past 12 midnight, the following condition applies:</p> <p>2. The following drinks must not be sold or supplied on the Licensed Premises: Any drink (commonly referred to as a “shot” or a “shooter” (with the exception of cocktails) that contains more than 30ml of spirits or liqueur and that is designed to be consumed rapidly.</p> <p>For any event that includes a patron capacity of 2,000 or more the following sub conditions 3 – 7 shall apply unless otherwise stated in an event specific plan of management and agreed to with the Police Area Command:</p> <p>3. The following drinks must not be sold or supplied:</p> <ol style="list-style-type: none"> drinks commonly referred to as shots, shooters, slammers, and/or bombs; any drink containing more than 40% spirits or liqueur; beer / cider and pre-mixed spirit beverages of alcohol by volume of more than 4.0%; or wine or champagne in a pour more than 150ml (i.e., no more than 1.5 standard drinks) or by the bottle. any drink prepared on the premises that contains more than 30 ml of spirits or liqueur. <p>4. Low alcoholic (alcohol beverage which contains less than 2.7% alcohol by volume) and non-alcoholic beverages must be available and advertised for sale at each bar area.</p> <p>5. All drinks must be supplied in plastic, polycarbonate or aluminium drinking vessels.</p> <p>6. The licensee must provide at least one (1) RSA Marshall per bar service area for the duration of the function.</p> <p>7. Sale of alcohol must cease 30 minutes before the end of the function.</p>
Plan of Management	<p>The premises is to be operated at all times in accordance with the Plan of Management dated July 2022 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 and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.</p>

Proposed conditions not imposed on the licence	Proposed by	Reason code (see reasons for not imposing requested conditions below)
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N/A		

Reasons 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