



Mr Grant Cusack

Hatzis Cusack Lawyers

By email to: gc@hatziscusack.com.au

30 January 2023

Dear Mr Cusack,

Application No.	APP-0010103665
Applicant	Pontiac Land (Australia) Pty Ltd
Application for	New on-premises licence (catering) + sale on other premises authorisation
Licence name	Capella Sydney
Trading hours	<u>Consumption on premises (catering)</u> Monday to Saturday 10:00 AM – 12:00 Midnight Sunday 10:00 AM – 10:00 PM <u>Sale on other premises authorisation (SOOPA)</u> Monday to Saturday 10:00 AM – 12:00 Midnight Sunday 10:00 AM – 10:00 PM
Premises	35-39 Bridge Street, SYDNEY NSW 2000
Legislation	Sections 3, 11, 12, 25, 40, 44, 45 and 48(5) of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority
Application for a new on-premises licence (catering) + sale on
other premises authorisation – Capella Sydney**

The Independent Liquor & Gaming Authority considered the application above and decided on 23 December 2022 to **approve** the application under section 45 of the *Liquor Act 2007*, subject to imposing conditions as set out in Schedule 1.

Approved manager or individual licensee

Please note that the licence cannot be exercised unless and until the Authority or Liquor & Gaming NSW has been notified of the appointment of an approved manager to the licence, or the licence has been transferred to an individual licensee.

Concise statement of reasons

A concise statement of reasons for this decision is attached at the end of this letter.

In the interest of efficient finalisation of determined matters in a high-volume liquor and gaming jurisdiction, the Authority will only produce a detailed statement of reasons for applications which are refused, partially approved or the subject of agency stakeholder objections.

A concise statement of reasons is produced for non-contested applications that have been approved by the Authority, in cases where a statement of reasons is required to be published for the application under section 36C of the *Gaming and Liquor Administration Act 2007*.

The concise statement of reasons briefly sets out the material considered by the Authority, the legislative requirements, and the Authority's key findings.

If you have any questions, please contact the case manager, Leonie Jennings, at leonie.jennings@liquorandgaming.nsw.gov.au

Yours faithfully



Murray Smith
Deputy Chairperson
For and on behalf of the **Independent Liquor & Gaming Authority**

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the [Liquor & Gaming NSW website](#) and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The [NCAT website](#).

Concise statement of reasons

Key facts

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Application date	27 June 2022
Decision	Approved under section 45 of the <i>Liquor Act 2007</i>
Decision date	23 November 2022

Material considered by the Authority

The Authority has considered the following material in determining the application:

- Application material, including evidence of notification to specified stakeholders and the community about the application;
- Premises plan setting out the proposed boundaries of the licensed premises and any applicable authorisations;
- Plan of management for the licensed business at the premises;
- Development consent for the premises;
- Statistics sourced from Liquor & Gaming NSW, Bureau of Crime Statistics and Research, NSW Health and Australian Bureau of Statistics in respect of the socio-economic status, liquor licence density, alcohol-related crimes rates, and health issues in the relevant local and broader communities; and
- Stakeholder submissions in relation to the application, and the applicant's response to those submissions.

Legislative requirements

The Authority has considered the application in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018:

- Section 3: Statutory objects of the Act and relevant considerations.
- Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.

- Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
- Section 44: Submissions to Authority in relation to licence applications.
- Section 45: Criteria for granting a liquor licence.

The Authority has also had regard to its Guideline 6 in considering the overall social impact of approving the application pursuant to section 48 of the Act.

Key findings

In accordance with its Guideline 6, the Authority finds that the relevant local community for the purposes of this decision is the suburb of Sydney, and the broader community is the Local Government Area of Sydney.

Positive social impacts

The Authority is satisfied on the material before it that the proposal set out in the application, if approved, would likely benefit the local and broader communities through the provision of increased convenience and choice.

The business owner seeks to operate a modern world-class luxury hotel in Sydney offering the capacity for functions, events and outside catering.

The liquor licence will be based in a small commercial office and will permit the applicant to manage the sales and coordination of offsite catering for both private and public functions, occasions, and events in the Sydney CBD and surrounding suburbs.

Negative social impacts

The Authority accepts that the proposal may, over time, contribute to an increase in alcohol-related harm in the local and broader communities, including alcohol-fuelled violence, health problems and/or social and amenity issues, having regard to the following:

- one objection was received from a member of the public who claims to represent the owners of 8 Loftus Street, nearby residents citing issues with increased licence saturation, traffic and noise;
- the premises is located in high-density crime hotspots for incidents of non-domestic assault, malicious damage to property and domestic assault, and in a medium-density hotspot for incidents of alcohol-related assault;
- there are higher crime incident rates in the suburb compared to NSW across all four categories usually considered by the Authority, and
- there are higher alcohol-attributable hospitalisation rates in the Sydney LGA compared to NSW.

The Authority is nevertheless satisfied that these risk factors are sufficiently mitigated by the following:

- no agency objections were received in relation to the application;
- health data indicates an above average level of relative socio-economic advantage and disadvantage in both the Sydney suburb and Sydney LGA;
- there are lower alcohol-attributable death rates in the Sydney LGA compared to NSW, and
- the business owner and licensee are an experienced and well-established operator currently managing the Pontiac Land Group and affiliate.

Overall social impacts and conclusion

Having considered the positive and negative social impacts that are likely to flow from the applicant's proposal, the Authority is satisfied that the overall social impact of approving the application will not be detrimental to the well-being of the local or broader community.

The Authority is also satisfied that the other legislative requirements for the approval of the application have been met.

The Authority finds, having regard to the above, that approving the application is consistent with the statutory objects and considerations of the Act to regulate the liquor industry in line with the community's expectations, needs and aspirations, and will facilitate the balanced and responsible development of the liquor industry and related industries.

Accordingly, the Authority approves the application under section 45 of the Act.

Yours faithfully



Murray Smith

Deputy Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

Schedule 1 – Licence conditions to be imposed Capella Sydney

1. 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:

- an on-premises licence granted on or after 30 October 2008
- an 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.

2. Restricted trading & NYE (airport, catering - std)

Restricted trading & NYE (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

3. Liquor plan of management

The premises is to be operated at all times in accordance with the Plan of Management dated May 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 & Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

4. 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.

5. 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

6. Premises owner consent

This license may only be exercised at events where landowner consent has been obtained.

7. 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

8. 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).

9. Notice of functions must be provided to Liquor & Gaming NSW, local police and local council

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.

The notice must be given in accordance with the following:

- 1) Functions open to the public (including ticketed and non-ticketed functions)
 - a. Up to 100 people: 14 days
 - b. 101-1,999 people: 14 days
 - c. 2000+ people: 28 days
- 2) Private functions (including weddings, birthdays, office functions and others not open to the public)
 - a. Up to 100 people: No notice required
 - b. 101-1,999 people: 14 days
 - c. 2000+ people: 14 days

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.

Written notice to L&GNSW should be made by email to

compliance.info@liquorandgaming.nsw.gov.au and should include the following details:

- the address of the premises on which the function is to be held
- 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

10. Further notification for large events

For events with 5,000 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.

11. Music Festival notification

Notice of Music Festivals 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

12. Security condition, 300+ patrons

The following applies to all events with a patron capacity of over 300 and 1,999 or fewer:

- 1) 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.
- 2) 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.

If any event includes a patron capacity of 2,000 or more the following sub conditions also apply:

1. 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 and Gaming NSW.
2. 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:
 - a) 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;
 - b) Inform the NSW Police Force of the incident;
 - c) Comply with any directions given by a police officer to preserve or keep intact the area where the violence occurred.

In this sub condition, 'staff member' includes any person conducting activities as a crowd controller or bouncer at the function.

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:
 - a) 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.
 - b) the colours, club patch, insignia or logo of any such organisation, or
 - c) the "1%" or "1%er" symbol, or
 - d) 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).

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.

13. Plan of Management

A plan of management is required in the following circumstances:

- 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.

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

14. Service of Liquor

For all events held under the license the following condition applies:

1. No more than four (4) alcoholic drinks may be sold, supplied or served to a patron per visit to the bar.

For any event with a patron capacity of 1,999 or fewer and proposes to trade past 12 midnight, **the following condition applies:**

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.

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:

3. The following drinks must not be sold or supplied:
 - a) drinks commonly referred to as shots, shooters, slammers, and/or bombs;
 - b) any drink containing more than 40% spirits or liqueur;
 - c) beer / cider and pre-mixed spirit beverages of alcohol by volume of more than 4.0%; or
 - d) wine or champagne in a pour more than 150ml (i.e., no more than 1.5 standard drinks) or by the bottle.
 - e) any drink prepared on the premises that contains more than 30 ml of spirits or liqueur.
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.
5. All drinks must be supplied in plastic, polycarbonate or aluminium drinking vessels.
6. The licensee must provide at least one (1) RSA Marshall per bar service area for the duration of the function.
7. Sale of alcohol must cease 30 minutes before the end of the function.