

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

APPLICATION NO:	1-5482964018
APPLICATION FOR:	Small bar liquor licence
TRADING HOURS:	Indoor Monday to Saturday: 4:00 PM to 12:00 AM Sunday: 4:00 PM to 10:00 PM Outdoor Monday to Sunday: 4:00 PM to 7:00 PM
APPLICANT:	Where's Nick Pty Limited
APPROVED MANAGER:	Julian Abouzeid
LICENCE NAME:	Where's Nick
PREMISES ADDRESS:	Shop 1, 236 Marrickville Road Marrickville NSW 2204
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
LEGISLATION:	Section 45(1) of the <i>Liquor Act 2007</i>

ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

WHERE'S NICK

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 1-5482964018.

On 23 June 2017, 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 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

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December 31st Normal trading

Note: Trading is also 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. All liquor sales are to cease half an hour prior to the end of trade.
4. All liquor shall be opened by staff and no liquor shall be sold or supplied under the licence in unopened cans or bottles.
5. No live entertainment or amplified music is to be permitted within the premise at any time. Any music provided shall be by way of background music only.
6. A minimum of one (1) Licensed Security/Crowd Controller is to patrol the premise from 9.00pm to 30 minutes after close on Thursday, Friday and Saturday nights.
7. The licensee must notify the Local Area Commander, NSW Police Force or his/her representative, of all serious incidents.

Serious incidents include any incidents involving an act of violence causing an injury to a person on the premises, including, but not limited to, any injury sustained by a patron that requires medical treatment.

The licensee must ensure that, immediately after the licensee or a staff member becomes aware of an incident on the licensed premises involving an act of violence against any person or property, the following is adhered to:

- a. The licensee or a staff member must take all practical steps to preserve and keep intact the area where the act of violence occurred, in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police Force.
- b. The licensee or a staff member must make direct and personal contact with the Local Area Commander, NSW Police Force or his/her delegate and advise the Commander or delegate of the incident.
- c. The licensee or the staff member must comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

For the purpose of this condition, “staff member” 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.

STATEMENT OF REASONS

1. Material before the ILGA delegate RM8 Ref: 2017/000007

- (1) Small Bar application form and covering email, received on 13 December 2016
- (2) Certification of Advertising Application signed and dated by the applicant on 10 April 2017
- (3) Plan of the proposed licensed premises
- (4) Signed Appointment of Manager Notice appointing Mr Julian Abouzeid to manage the licence
- (5) Copies of Mr Abouzeid's National Police Certificate, RSA Competency Card and identification
- (6) ASIC Current Company Extract for the applicant and business owner, Where's Nick Pty Limited
- (7) ASIC Current Business Name Extract for "Where's Nick"
- (8) Development Application No. 201600642 granted by Inner West Council 8 March 2017 for the use of the premises as a café and wine bar
- (9) Footway Licence Agreement issued by Inner West Council on 29 May 2017
- (10) RSA Plan of Management for the premises, dated 12 December 2016
- (11) Sample food and drink menu for the venue
- (12) Submission from Inner West Council, received on 30 December 2016
- (13) Environment and Venue Assessment Tool (EVAT) Assessment Report as prepared by the Compliance team at L&GNSW, received on 11 January 2017
- (14) Submission from the licensing officer at Marrickville Local Area Command, received on 31 January 2017
- (15) Email correspondence from the Authority to the applicant requesting additional information in support of the application dated 6 April 2017, 20 April 2017, and 16 June 2017
- (16) Email correspondence from the applicant to the Authority in response to the request for additional information, dated 19 April 2017, 15 June 2017, and 17 June 2017

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 3A 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.

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- (2) The test applying under section 48(5) relates to delegated decisions in relation to the granting or removal of:
 - a. a small bar licence,
 - b. a packaged liquor licence (limited to telephone/internet sales),
 - c. an on-premises licence relating to a restaurant that, in the case of a new licence, includes an application for a primary service authorisation,
 - d. an on-premises licence relating to a karaoke bar, a catering service or a vessel,
 - e. an application for a producer/wholesaler licence that, in the case of a new licence, includes an application for a drink on-premises authorisation
 - f. an application for ongoing extended trading hours to permit the sale of liquor after midnight in relation to any of the above licence types.
- (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 Marrickville, and the "broader community" of the Inner West LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all 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.
- (2) Where's Nick is a new small bar with 60 patron capacity located in Marrickville. The venue will operate as unlicensed cafe before 4:00 PM, and a small bar from 4:00 PM onwards, with liquor sales to cease half an hour prior to the end of trade.
- (3) Development consent is in place for the proposed use of a small bar. The applicant has obtained a Footway Licence Agreement from Council for use of the outdoor dining area.
- (4) Marrickville Licensing Police made a submission raising no objections to the application, however did propose a number of licence conditions, all of which have been duly considered by the applicant and Authority.
- (5) Council made a submission stating that development consent is required but not in place, however the applicant subsequently had their Development Application granted by Council.
- (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 contribute to the diversity of small low risk venues in Inner West, which will enable patrons to enjoy a drink with or without a meal in a safe and sophisticated setting.

(2) Negative impacts

There have been no objections to the granting of this licence. The Plan of Management provided by the applicant and conditions imposed on the licence provide a level of certainty that there are unlikely to be any major impacts on the local community.

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 of the Authority, all statutory objects and considerations prescribed by section 3 of the Act were considered and accordingly, I have determined to grant with conditions the licence application.

Decision Date: 23 June 2017



Joanne Zammit
Coordinator, Licensing (Business Licensing) Olgica Lenger
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.justice.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.justice.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>