

**NSW Department of Justice
Liquor & Gaming NSW**

APPLICATION NO: 1-4417817077

APPLICATION FOR: Liquor – Small Bar

TRADING HOURS: Indoors:
Monday to Thursday: 12:00 PM to 11:00 PM
Friday to Sunday: 12:00 PM to 12:00 AM
Outdoors:
Monday to Sunday: 12:00 PM to 10:00 PM

APPLICANT: Complete Package Australia Pty Limited

LICENCE NAME: 128 Military Road

PREMISES ADDRESS: 1/128 Military Road
NEUTRAL BAY NSW 2089

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
128 Military Road**

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 Justice, has decided to grant the application for a small bar liquor licence, 1-4417817077.

On 15 November 2016, 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. Restricted trading & NYE (std)
Consumption on premises
Good Friday Not permitted
Christmas Day Not permitted
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. The premises are to be operated at all times in accordance with the Plan of Management dated April 2016 as may be varied from time to time in consultation with the Local Area Commander.
4. The licensee or its representative must join and be an active participant in the local liquor accord.
5. A maximum number of sixty (60) patrons are permitted in the premises at any one time.
6. Patron numbers are restricted to six (6) in the outdoor area.
7. The licensee or its representative will ensure that no live entertainment is performed within the premises and that no music (amplified or otherwise) played within the premises is heard at the boundary of the closest residential premises.

STATEMENT OF REASONS

1. Material before the ILGA delegate

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

- (1) Application form – Lodged 5 May 2016 (DOC16/047904)
- (2) Evidence of service of application to Council and Police (DOC16/047905)
- (3) Plan of Management for the Premises dated April 2016 (DOC16/047907)
- (4) Notice of Development Application dated 19 April 2016 (DOC16/096865)
- (5) Certificate of advertising signed 20 October 2016 (DOC16/148853)
- (6) Proposed premises - floor plan at grant (DOC16/047906)
- (7) DA outdoor dining Plan approved by Council dated 12 August 2016 (DOC16/096868)
- (8) EVAT report submitted by Director Compliance dated 19 May 2016 (DOC16/056922)
- (9) Premises plan of the proposed licensed area (DOC16/114911)
- (10) ASIC documentation dated 22 April 2016 (DOC16/047908)
- (11) Submission from Harbourside Local Area Command dated 27 April 2016 (DOC16/056857)
- (12) Submission from North Sydney Council dated 19 May 2016 (DOC16/056922)
- (13) Submission from the delegate of the Secretary, Department of Justice dated 14 September 2016 (DOC16/103629)
- (14) Email correspondence from the Authority to the applicant requesting information in relation to the application sent 19 October 2016 (OUT16/51805)
- (15) Email correspondence from Agent on behalf of the applicant providing responses to request for additional information, imposition of conditions and Police submission, received 2 November 2016 (INW16/51344)

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.
- (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 Neutral Bay and the Broader Community, the City of North 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 in Neutral Bay, with appropriate Development Consent in place.
- (2) A submission was received from Harbourside Local Area Command. Whilst Police did object to the granting of the licence, the imposition of various conditions upon the licence have been consented to in order to allay concerns raised.
- (3) A submission from North Sydney Council objected to the application as valid development consent was not in place at the time. Applicant has since lodged and has approved development consent for the proposed small bar.

- (4) The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol, management of patron behaviour, prevention of liquor service to minors and security when required.
- (5) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The licence will be operated from Military Road in Neutral Bay. Council provide consent for the operation of the small bar. The hours of operation are less than the allowable standard hours for a small bar and the sale of liquor in the outdoor area is restricted to 10:00 PM.

(2) Negative impacts

No identified negative impacts have been identified. There were no issues raised by key stakeholders during the consultation period.

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) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.

- (6) 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 small bar liquor licence application with conditions.

Decision Date: 15 November 2016



Olgica Lenger

Manager, Licensing (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.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>