

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

APPLICATION NO:	APP-0002146571
APPLICATION FOR:	Liquor – on-premises restaurant and catering service
TRADING HOURS:	Monday to Saturday 10:00 AM to 12:00 AM Sunday 10:00 AM to 10:00 PM
APPLICANT:	Mr ELRAN, Oren
LICENCE NAME:	Popina Kitchen Pty Ltd
PREMISES ADDRESS:	Shop L201 & L301 Level 2 & 3 (Podium Level 7 & 8) The Gateway Centre 1 Macquarie Place 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
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR
ON-PREMISES LIQUOR LICENCE**

POPINA KITCHEN PTY LTD

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 an on-premises liquor licence, APP-0002146571.

On 23 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. 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.

3. The premises are to be operated at all times in accordance with the Plan of Management dated 1 September 2016 as may be varied from time to time after 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 CCTV surveillance system will be installed at the premises. Physical access to and copies of recordings from the CCTV system are to be made available upon request from NSW Police. There is to be a member of staff present when the premises is operating that can gain access to and operate the CCTV system to allow for immediate playback of footage to assist with identification and investigations. CCTV recordings should be retained for a period of 28 days before being reused or destroyed.
6. Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing an injury to a person on the premises, the person must:
 - a. Take all practical steps to preserve and keep intact the area where the act of violence occurred
 - b. Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police
 - c. Make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident and
 - d. Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.
7. No drinks commonly referred to as shots, shooters, slammer, and/or bombs are to be sold or supplied.
8. The business of providing the Catering Service must be for fee, gain or reward. Functions held pursuant to the Catering Service must be pre-booked. A Catering Service booking register must be maintained.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the application, the accompanying community impact statement (CIS-Category A) and other relevant material:

- (1) Application form – Lodged 2 September 2016 (DOC16/098638)
- (2) Plan of Management for the Premises dated 1 September 2016 (DOC16/098648)
- (3) Premises plan of the proposed licensed area (DOC16/098642)
- (4) NSW National Police Certificate dated 28 June 2016 (DOC16/098646)
- (5) Identification documentation lodged with application (DOC16/098643-645)
- (6) Responsible Service of Alcohol competency card with an expiry date of 24 July 2021 (DOC16/098647)
- (7) Notice of Determination D/2016/1158, issued on 19 October 2016 by City of Sydney Council (DOC16/148070)
- (8) Submissions from City of Sydney Council dated 7 September 2016 and 11 November 2016 (DOC16/104174, DOC16/149539)
- (1) Submission from Sydney City Local Area Command dated 21 September 2016 (DOC16/131222)
- (2) Email correspondence dated 25 October 2016 from the Authority to the applicant's Agent requesting further information in relation to the application. (OUT16/51887)
- (3) Email correspondence from Agent of the applicant providing responses to request for additional information, imposition of conditions and response to submissions, received 3 November 2016 (INW16/51370)

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 State suburb of Sydney CBD and the Broader Community of Sydney LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on-premise liquor licence restaurant with catering service is a low risk business model.
- (2) The licence will be exercised in accordance with a Plan of Management that provides operational practices in place to; minimise the potential for adverse impacts to the neighbourhood; that complies with conditions of the licence; and to ensure compliance with the *Liquor Act 2007* and Liquor Regulations to ensure liquor is consumed responsibly; to minimise the potential for intoxication; that intoxicated persons are not permitted entry; and that liquor is not sold to minors.
- (3) Submissions were received from the Secretary, Department of Justice, Sydney City Council and NSW Police Force. The applicant was given the opportunity to provide responses to the submissions. The applicant consents to conditions proposed by the Delegate and provides a detailed Plan of Management.
- (4) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

Having examined the material provided with the application, I am satisfied that the grant of the liquor licence will be offering a restaurant with 'trendy' style and picturesque rooftop dining experience in Sydney, including the provision of catering services on the licensed premises.

(2) Negative impacts

Police reviewed the application and did not object to the granting of the on premise licence. The licensing of this restaurant is unlikely to be of negative impact 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) 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 on-premises liquor licence application with conditions.

Decision Date: 22 November 2016



Olga 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>