



Mr Jon Martin  
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4 September 2017

Dear Mr Martin

|                        |   |
|------------------------|---|
| <b>Application No.</b> | 1-5734281721  |
| <b>Application for</b> | Small bar liquor licence  |
| <b>Trading hours</b>   | <u>Consumption on premises – indoor</u><br>Monday to Sunday 12:00 midday – 12:00 midnight<br><u>Consumption on premises – outdoor</u><br>Monday to Sunday 12:00 midday – 10:00 pm |
| <b>Licence name</b>    | The Arc Factory   |
| <b>Applicant</b>       | The Arc Factory Pty Limited   |
| <b>Premises</b>        | Ground Floor, 58 Riley Street<br>DARLINGHURST NSW 2010  |
| <b>Issue</b>           | Whether to grant a small bar liquor licence   |
| <b>Legislation</b>     | Sections 3, 11A, 12, 20A, 20B, 20C, 40, 45 and 48 of <i>Liquor Act 2007</i>   |

**Decision of the Independent Liquor and Gaming Authority  
Application for a small bar liquor licence – The Arc Factory**

The Independent Liquor and Gaming Authority has considered your application on behalf of the Applicant for a small bar liquor licence and, pursuant to section 45 of the *Liquor Act 2007*, has decided to **grant** the licence subject to the following conditions:

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  |
| December 31 <sup>st</sup> | Normal trading |

Note: Trading is 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 business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4. A maximum number of sixty (60) patrons are permitted in the premises at any one time. No more than two (2) patrons can be located outside on the footpath and those patrons are to be seated.
5. The licence is authorised for the trading hours fixed by the Independent Liquor and Gaming Authority or such lesser hours as may be approved by the consent authority from time to time.
6. The licensee must join and be an active participant in the local liquor accord.

7. The premises is to be operated at all times in accordance with the Plan of Management dated May 2017 as may be varied from time to time after consultation with the Local Area Commander of 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.

8. Crime scene preservation

Immediately after the person in charge of the licensed premises or a staff member becomes aware of an incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- (1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- (2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor & Gaming NSW website,
- (3) make direct and personal contact with the NSW Police Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
- (4) comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

In this condition, 'staff member' 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 security activities (eg. crowd controller or bouncer) on or about the premises.

9. Closed-circuit television system

- (1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
  - (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of premises that is not required to cease trading, continuously at all times),
  - (b) recordings must be in digital format and at a minimum of six (6) frames per second,
  - (c) any recorded image must specify the time and date of the recorded image,
  - (d) the system's cameras must cover the following areas:
    - (i) all entry and exit points on the premises,
    - (ii) the footpath immediately adjacent to the premises, and
    - (iii) all publicly accessible areas (other than toilets) on the premises.
- (2) The licensee must also:
  - (a) keep all recordings made by the CCTV system for at least 30 days,
  - (b) ensure that at least one member of staff is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
  - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by a police officer or Liquor and Gaming NSW inspector to provide such recordings.

10. Neighbourhood amenity

The management of the premises:

- (1) Shall ensure patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- (2) Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council, the management is to employ private security staff to ensure that this condition is complied with.

- (3) Shall record in a Register full details of any disturbance complaint/s made by a person to management or staff in respect of the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.
- (4) Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by management/staff to resolve such complaint/s shall be recorded in the Register.

**Appointment of an approved manager or transfer to an individual licensee**

Please be advised that the licence cannot be exercised unless and until either an approved manager has been appointed to the licence or the licence has been transferred to an individual licensee.

If you have any questions, please contact the case manager at [beatrice.pitpaiaac@justice.nsw.gov.au](mailto:beatrice.pitpaiaac@justice.nsw.gov.au).

Yours faithfully



David Armati  
Deputy Chairperson  
For and on behalf of the Independent Liquor and Gaming Authority

## Statement of reasons

### Decision

1. On 26 May 2017 the Independent Liquor and Gaming Authority (“the Authority”) received from The Arc Factory Pty Limited (“the Applicant”), through Liquor and Gaming NSW (“L&GNSW”), an application for a small bar liquor licence (“the Application”). The licence being sought is for the premises at Ground Floor, 58 Riley Street, Darlinghurst (“the Premises”).
2. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority has decided to grant the licence.
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 20A, 20B, 20C, 40, 45 and 48 of the Act, and relevant provisions of the *Liquor Act Regulation 2008*.

### Material considered by the Authority

4. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. In accordance with the Authority’s *Guideline 6*, the Authority has also had regard to relevant L&GNSW liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data and Australian Bureau of Statistics (“ABS”) socio-demographic data, sourced by L&GNSW from publicly available sources.
7. The list of material considered by the Authority is set out in the Schedule.

### Legislative framework

8. The Authority has considered the Application in the context of the following legislative provisions.

### Objects of the Act

9. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations and needs of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
10. In the pursuit of these objectives, section 3 requires the Authority to, in exercising its powers under the Act, have due regard to the need to minimise alcohol related harm, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

### Trading hours and 6-hour closure period

11. Section 12 of the Act sets out the standard trading period for different types of liquor licences. Additionally, section 11A imposes a condition on all licences prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

### Minimum procedural requirements

12. Section 40 of the Act prescribes the minimum procedural requirements for a liquor licence application to be validly made to the Authority.

### Fit and proper person, responsible service of alcohol, and development consent

13. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
- a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
  - b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
  - c) the applicable development consent (“DC”) required for use of the premises for the proposed business is in force.

### Community impact statement

14. Section 48 of the Act requires certain applications, including an application for a small bar liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
15. An application for a small bar liquor licence is exempt from the CIS requirement under sections 48(3A) and 48(3C) if:
- a) a DC is required to use the proposed premises as a small bar or to sell liquor during the proposed hours, and the applicant notifies the local police and the Secretary within two working days of applying for the DC, or
  - b) the proposed premises already has a general bar liquor licence and the relevant DC has been obtained.
16. Section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter before it.

### Provisions specific to a small bar liquor licence

17. Further legislative provisions specific to a small bar liquor licence are set out in sections 20A, 20B and 20C of the Act.
18. Section 20A permits a licensee to sell liquor by retail on the licensed premises for consumption on the licensed premises only.
19. Section 20B sets out provisions in respect of trading hours for the licence.
20. Section 20C sets out a number of miscellaneous conditions relating to the maximum number of patrons, public access, and the availability of food in the licensed premises.

### **Key findings**

21. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

### Restriction on licences in Sydney CBD Entertainment Precinct does not apply

22. The Premises is located in the Sydney CBD Entertainment precinct, to which a temporary freeze on granting new licences apply under division 1A of the Act.
23. Pursuant to section 47AA of the Act, the freeze does not apply to the Premises as a small bar.

### Validity, procedural and trading requirements

24. The Authority is satisfied that:
- a) the Application has been validly made and meets the procedural requirements under section 40 of the Act,
  - b) the proposed trading hours for the Premises meet the requirements under sections 11A, 12 and 20B of the Act in respect of trading and 6-hour closure periods, and

- c) the proposed use of the Premises as a café and small bar satisfies the requirements under sections 20A and 20C of the Act.

#### Fit and proper person, responsible service of alcohol, and development consent

25. Pursuant to section 45 of the Act, the Authority is also satisfied that:

- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- b) practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol and prevent intoxication, having regard to the Applicant's Plan of Management ("POM") and the conditions to be imposed on the licence, and
- c) the requisite DC is in force, based on the notice of determination issued by City of Sydney Council on 21 March 2017.

#### Community impact statement

26. The Applicant has not met the exemptions available under section 48 of the Act and is required to submit a CIS.

27. The Authority is satisfied that the CIS submitted has been prepared in accordance with the relevant requirements, and has taken into consideration the CIS and other available information in making the findings below about the social impact of the Premises on the local and broader communities.

28. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Darlinghurst, and the relevant "broader community" comprises Sydney Local Government Area ("the LGA").

#### Positive social impacts

29. The Authority accepts, on the available information, the Applicant's contention that the Premises will operate as a small café and bar, providing food and beverages from 7 am, and liquor services from midday with a food focus, to occupants in the building and consumers in the local area.

30. The Authority notes that the Applicant is also the owner and developer of the Premises, and has worked in the street on which the Premises is located for over 10 years. The Authority accepts that the Applicant is familiar with the local community and has undertaken to select an appropriate manager to operate the Premises responsibly and in line with the interests of the local community.

31. The Authority also notes that there was no opposition from NSW Police, City of Sydney Council, NSW Health, L&GNSW or any other relevant statutory bodies after they were notified of the Application.

32. On the basis of the above, the Authority is satisfied that the Premises will provide an additional choice of a small, food focused café bar in the local community, and contribute to the responsible and balanced development of the liquor industry and the related hospitality industry.

#### Negative social impacts

33. The Authority notes from the BOCSAR data that:

- a) for the year to March 2017, the Premises was located within high density hotspots for incidents of alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property, and

- b) the rate of alcohol related assault (domestic and non-domestic) and malicious damage to property in Darlinghurst and the LGA was considerably higher than the corresponding NSW rate for the two years to March 2017.
34. The Authority also notes from the HealthStats NSW data that for the period 2012-13, alcohol attributable deaths in the LGA were at the same level as the NSW state average, but alcohol attributable hospitalisations, reflected by a Smoothed Standardised Separation Ratio, were 30 percent higher than the corresponding NSW figure.
35. During its community consultation process, the Applicant received one submission from a local resident commenting on the history of problems associated with licensed venues in the area, including high noise levels and antisocial behaviour, and expressing concerns that the Premises may contribute to the disruption of the amenity of the local community.
36. Having regard to the above, the Authority acknowledges that over time there is a risk that liquor sold or supplied at the Premises will contribute to the prevailing levels of alcohol-related crime and health issues, and disturbance in the local and broader communities.
37. The Authority is nevertheless satisfied that the concerns arising from the statistical data and the risks identified are adequately mitigated by the following:
- a) A small bar liquor licence only permits the sale of liquor for consumption on the Premises and not, for example, for consumption away from the Premises.
  - b) The Premises is a small venue with a relatively low patron capacity of 60 people, and has a focus on providing a more intimate style of café and bar services.
  - c) The Premises will close by midnight on all trading days. The outdoor area of the Premises, which will accommodate a maximum of two patrons, will close by 10 pm on all trading days.
  - d) Apart from one public submission, no objection was received from other relevant stakeholders, such as NSW Police or NSW Health, in relation to the Application.
  - e) The Applicant has provided a response directly to the one submitter, explaining how the Premises differs from the other larger licensed venue in the area which gave rise to the issues of concern.
  - f) The Applicant has set out in the POM detailed procedures and practices about the management of patron behaviour and noise levels to minimise negative impacts to the community. These measures are reiterated and complemented by the conditions to be imposed on the licence.

#### Overall social impact

38. The Authority has had regard to the ABS data indicating that as at 2011, Darlinghurst was among the most advantaged in comparison with other suburbs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage.
39. Having considered the positive and negative impacts that are likely to flow from granting the licence, and the proposed measures and licence conditions, the Authority is satisfied that the overall social impact of granting the licence would not be detrimental to the well-being of the local and broader communities.
40. The Authority is also satisfied that a decision to grant the licence would be consistent with the objects of the Act to regulate liquor supply and facilitate responsible industry development in line with community expectations and needs.
41. Accordingly, the Authority has decided to grant the small bar liquor licence.



David Armati  
Deputy Chairperson

**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 and gaming website <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> 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 is at <http://www.ncat.nsw.gov.au/>.

## Schedule

### Material before the Authority

1. ABS SEIFA data based on the 2011 Census, ranking Darlinghurst and the LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol related deaths and hospitalisations in the LGA for the period 2012-13.
3. BOCSAR crime maps for the year to March 2017, indicating the location of the Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
4. NSW crime statistics for the two years to March 2017, published by BOCSAR, showing the rates of alcohol related domestic and non-domestic assault and malicious damage to property in Darlinghurst and the LGA.
5. Notice of determination issued by City of Sydney Council on 21 March 2017, approving the Applicant's development application D/2016/1607.
6. ASIC extracts dated 16 May 2017 showing the Applicant's company details.
7. Completed Category B CIS form, signed by the Applicant and dated 22 May 2017, and additional information provided by the Applicant in support of the CIS, including the Applicant's response to the submission from a member of the public.
8. Completed application form signed by the Applicant and dated 22 May 2017, with copies of notices of the Application attached.
9. Submission from City of Sydney Council, dated 7 June 2017, in relation to the Application.
10. Submission from L&GNSW Compliance Unit, dated 28 July 2017, in relation to the Application.
11. Emails from L&GNSW to NSW Police, dated 12 July 2017, inviting comments on the Application.
12. Certification of Advertising Application signed by the Applicant and dated 31 July 2017.
13. Plan of Management for the Premises dated May 2017.
14. Liquor licensing records from L&GNSW as at 1 August 2017:
  - a. setting out the liquor outlet density in Darlinghurst and the LGA, based on the 2016 Census, and
  - b. listing small bar liquor licences in Darlinghurst and in the LGA.
15. Google maps extracted from the Google website on 3 July, 1 August and 2 August 2017, showing the location of the Premises.
16. Correspondence between L&GNSW and the Applicant's representative between 26 July and 3 August 2017, in relation to the information required for the Application.
17. Floor plan indicating the Premises' proposed licensed area.
18. Proposed food and drinks menu for the Premises.