

NSW Department of Justice
Liquor & Gaming NSW

APPLICATION NO: 1-4290389662

APPLICATION FOR: Liquor – on-premises liquor licence with catering service and sale on other premises authorisation.

TRADING HOURS: Restaurant - Indoor
Sunday to Thursday: 10:00 AM to 10:00 PM
Friday & Saturday: 10:00 AM to 12:00 AM
Restaurant - Outdoor
Monday to Sunday: 10:00 AM to 10:00 PM
Catering Service - Indoor
Sunday to Thursday: 10:00 AM to 10:00 PM
Friday & Saturday: 10:00 AM to 12:00 AM
Catering Service - Outdoor
Monday to Sunday: 10:00 AM to 10:00 PM
Sale on other premises authorisation:
Sunday to Thursday: 10:00 AM to 10:00 PM
Friday & Saturday: 10:00 AM to 12:00 AM

APPLICANT: Miss Domenica Barbaro

LICENCE NAME: Avenue on George

PREMISES ADDRESS: Tenancy T2, 200 George Street
SYDNEY NSW 2000

APPOINTED MANAGER: n/a

ISSUE: Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for on-premises liquor licence.

LEGISLATION Section 45(1) of the *Liquor Act 2007*

**ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES LIQUOR
LICENCE WITH CATERING SERVICE AND SALE ON OTHER PREMISES
AUTHORISATION**

AVENUE ON GEORGE

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

1-4290389662 – Application for an on-premises licence with catering service and sale on other premises authorisation under S45(1) Liquor Act 2007 – Amended 7 October 2016

decided to grant the application for an on-premises liquor licence with catering service and sale on other premises authorisation, 1-4290389662.

On 6 October 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 04:00 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. 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

4. The primary purpose of the premises is that of a restaurant with the kitchen to be open and substantial food service to be available to patrons at all times during the approved hours of operation.
5. A full copy of all current development consents for the operation of the licensed premises, and a Plan of Management must be kept on site and made available to Police, Council Officers and/or Liquor and Gaming NSW Officers upon request.
6. The premises are to be operated at all times in accordance with the Plan of Management dated 12 September 2016 as may be varied from time to time in consultation with the Local Area Commander.

7. The licence is authorised for the trading hours fixed by the Authority or such lesser hours as may be approved by the consent authority from time to time.
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.
9. The sale on other premises authorisation can only be utilised for functions, occasions or events, which are by invitation only.

10. Neighbourhood Amenity

a) The management of the premises:

- i. Shall ensure patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- ii. 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.
- iii. Shall record in a Register full details of any disturbance complaint/s made by a person to management or staff in respect to 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.
- iv. 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.

- b) An adequate queuing system for patrons must be implemented at the main entrance of the licensed restaurant so as to ensure that if patrons are queuing to gain entry they do not obstruct or impede pedestrian traffic flow.

11. The licensee must join and be an active participant in the local liquor accord.

12. Crime Scene Preservation

- a) Immediately after the person in charge of the Licensed Premises become aware of an incident involving an act of violence causing an injury to a person on the premises, the person must:

- i. Take all practical steps to preserve and keep intact the area where the act of violence occurred
- ii. Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police
- iii. Make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident and
- iv. Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

13. CCTV footage on premises:

The Licensee shall maintain a CCTV system that meets the following minimum requirements:

- 1) A camera must be located at the main entrance to the venue and positioned to record any person entering through this entrance. The CCTV recordings of this camera must be sufficient to enable an individual to be identified, beyond reasonable doubt, when:
 - a) the person represents not less than 100% of the screen height, and
 - b) there is an unobstructed view of the person's face.
- 2) In addition, CCTV cameras must be maintained throughout the premises with camera coverage to specifically record images of the following areas:
 - a) all other public entrances and exits, whether or not in use at the time,
 - b) staircases,
 - c) all portions of the floor area accessible to the public where entertainment is provided,
 - d) toilet external entrances,
 - e) all public accessible areas within the premise excluding toilets and accommodation rooms,
 - f) the footpath area directly adjacent to the premises, and
 - g) courtyard and smoking areas.
- 3) The CCTV recordings of the cameras referred to in sub condition (2) must be sufficient to enable the recognition of a person. A viewer must be able to say with a high degree of certainty whether or not an individual shown is the same as someone they have seen before, when:
 - a) the person represents not less than 50% of screen height, and

- b) there is an unobstructed view of the person's face.
- 4) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.
- 5) Camera recordings must meet the standards set in sub condition (1) and (3) at all times, either by way of camera positioning, camera shades or other environmental factors.
- 6) Recordings must:
 - a) be in digital format,
 - b) record at a minimum of ten (10) frames per second, and
 - c) commence one hour prior to opening, and operate continuously until at least one hour after closing.
- 7) The correct time, date and camera identification must be automatically embedded on all recordings and be able to be read when the image is played back on a different system without interfering with the view of the target area.
- 8) Recordings should be retained for a period of 30 days before being reused or destroyed. The licensee shall ensure that no person is able to delete or alter any recordings within the 30 day period.
- 9) When the venue is open and trading, at least one person shall be at the venue that is capable of accessing the CCTV system and is able to immediately review recordings and produce copies.
- 10) Immediate access to the CCTV system and the ability to review recordings is to be granted to NSW Police, OLGR Inspectors or other regulatory officers upon request.
- 11) The CCTV system shall be able to reproduce a copy of the recordings on Compact Disc, DVD or USB memory stick and must, upon request, be provided within one working day to NSW Police, OLGR Inspectors or other regulatory officers.
- 12) Prior to the commencement of trade each day, the CCTV system shall be checked to ensure the equipment is in full operating order. If, during the daily check or at any other time, it is discovered that the equipment is not in full operating order, the licensee is to notify the Local Area Commander or delegate within two hours. All reasonable steps must be undertaken to repair the system as soon as practicable.

14. Signage To Be Displayed

Signage (in lettering not less than 15 mm in height on a contrasting background) is to be erected near the main principle entry to the premises; in such manner that it would be

reasonable to expect that a person leaving the premises will be alerted to its contents.

The signage shall state:

Upon leaving please respect local residents by minimising noise

15. No drinks commonly referred to as shots, shooters, slammers, and/or bombs are to be sold or supplied at the premises after 10:00 PM.

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 11 April 2016 (DOC16/031815)
- (2) Plan of Management for the Premises dated 12 September 2016 (DOC16/107687)
- (3) EVAT report and a submission submitted by Director Compliance dated 10 May 2016 which raised no objection. (DOC16/049108)
- (4) Premises plan of the proposed licensed area (DOC16/031817)
- (5) NSW National Police Certificate dated 10 March 2016 (DOC16/031823)
- (6) Identification document and competency card dated 11 April 2016 (DOC16/031822)
- (7) Submissions from Sydney City Council received 13 April 2016 which raised an objection based on the proposed trading hours. Applicant has amended the trading hours (DOC16/035654)
- (8) Submission from Sydney City Local Area Command received 15 September 2016 which raised no objection to the application. (DOC16/108303)
- (9) Photographs and Occupation Certificate of the proposed licensed area showing that the premises is complete and ready to trade, received 15 September 2016. (DOC16/107690, DOC16/107694 & DOC16/107727)
- (10) Email correspondence from Mr Tony Schwartz on behalf of the applicant, received 15 September, 22 September and 29 September 2016 in response to Council and Police submissions and proposed licence conditions. (DOC16/107681, DOC16/111024, DOC16/115559)

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. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on-premises liquor licence has a low risk business model for premises situated in the Sydney CBD Entertainment Precinct.

- (2) The proposed licensed premises is a restaurant with catering and sale on other premises authorisation. A submission was received from Sydney City Council in part not supporting the application due to the hours approved by Development Consent D/2015/1176 being inconsistent with those applied for in the liquor licence application. In response to the Council's submission, the applicant has agreed to a condition limiting the liquor trading hours for the outdoor licensed area, consistent with the DA approval.
- (3) A submission was received from Sydney City Local Area Command. Whilst the submission does not constitute an objection, it does raise concerns based on crime data and the high levels of alcohol related violence within the area, and requested a number of conditions to be imposed on the licence for the purpose of public safety. The applicant's submissions in response to the Police submission have been duly considered.
- (4) The licence will be exercised in accordance with a detailed Plan of Management that details the location, hours of trade, signage requirements, storage of alcohol, responsible service of alcohol and delivery of alcohol.
- (5) I am satisfied that the statutory advertising requirements have been met.

5. Overall social impact

No public submissions have been received opposing the grant of the licence. A number of conditions have been imposed on the licence. The licence will be operated in accordance with harm minimisation measures outlined in the Plan of Management provided by the applicant.

6. 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 have considered the applicant's response to the conditions proposed by police.
- (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 packaged liquor licence application with conditions.

Decision Date: 6 October 2016



Olga Lenger

Manager, 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>