



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

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<b>APPLICATION NO:</b>	APP-0003712711
<b>APPLICATION FOR:</b>	Liquor – on premises application, catering, tourist facility.
<b>TRADING HOURS:</b>	Catering liquor trading hours Monday to Saturday: 04:00 PM to 12:00 AM Sunday: 04:00 PM to 10:00 PM Tourist facility liquor trading hours Monday-Sunday: 10:00 AM to 04:00 PM
<b>APPLICANT:</b>	Allyson Wert
<b>LICENCE NAME:</b>	The Calyx
<b>PREMISES ADDRESS:</b>	Royal Botanic Garden Mrs Macquaries Road, SYDNEY, NSW 2000.
<b>ISSUE:</b>	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.
<b>LEGISLATION</b>	Section 45(1) of the <i>Liquor Act</i> 2007

**ILGA DELEGATED DECISION – APPLICATION FOR  
ON PREMISES: CATERING, TOURIST FACILITY**

**The Calyx**

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 an on premises liquor licence, application number APP-0003712711

On 136 April 2018 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 12:00 AM and 06:00 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-catering

Good Friday	Normal trading
Christmas Day	Normal trading
December 31 <sup>st</sup>	Normal opening time until normal closing or 2:00 AM New Year's Day whichever is later.
3. The venue is restricted to 150 private/corporate events being held per calendar year.
4. The licensee must employ a fully licensed security guard at a ratio of 1:100 whenever the patron capacity of any given function/event exceeds 200.
5. The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the CCTV coverage floorplan dated 6 April 2018.

The licensee must also:

- (i) Keep all recordings made by the CCTV system for at least 30 days,
  - (ii) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage.
  - (iii) Provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.
6. Immediately after the person in charge of the licensed premises or a staff member becomes aware of any 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:
    - (i) Take all practical steps to preserve and keep intact the area where the act of violence occurred,
    - (ii) 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,
    - (iii) 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
    - (iv) Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate (DF18/001979)

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

- (1) Application form lodged on 22 December 2017
- (2) Signed certificate of advertising, dated 20 February 2018 has been forwarded.
- (3) Plan of proposed licensed area within the Botanic Gardens
- (4) Plan of management for the proposed liquor licence has been forwarded.
- (5) Copies of the applicant's NPC, ID and RSA details have been provided.
- (6) Development consent D/2016/577 issued by City of Sydney Council, 7 October 2016 for the "Use of the 'The Calyx' (former Sydney Tropical Centre) within the Royal Botanic Gardens as an exhibition space; and for up to 150 licensed private/corporate events per year."
- (7) Submission from Sydney City Licensing Police, dated 16 February 2018 which requests conditions to be imposed on the license, if granted.
- (8) Email correspondence from the Authority to the applicant's legal representative requesting additional information in support of the application.
- (9) Email correspondence from the applicant's legal representative to the Authority in response to the requests for additional information.

### 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.

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- (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 4 Division 4.1 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),

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- 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 Royal Botanic Gardens, and the “broader community” of the Sydney CBD precinct.

### 5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on premises catering class with tourist facility, is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) Police have not objected to the application but have requested conditions which have been duly considered by the delegate.
- (3) The licence will be exercised in accordance with the Plan of Management provided to the Authority.
- (4) I am satisfied that I have duly considered the applicant’s response to imposing the conditions contained in the licence document
- (5) I am satisfied that development consent from council is in place and the statutory advertising requirements have been met.

### 6. Overall social impact

#### (1) Positive benefits

The Calyx venue is an iconic building situated within the Royal Botanic Gardens in Sydney. The premises will consist of a mix of both indoor/outdoor areas where exhibitions will take place throughout the year. This will therefore attract a large number of tourists to the venue. The licensee will also cater for a limited number of both private and corporate events/ functions during the year.

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### (2) Negative impacts

The nature of the licence sought means that there are unlikely to be any amenity impacts on the local community. No objections have been received.

## 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 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 liquor licence application with conditions.

Decision Date: 13 April 2018



**Joanne Zammit**  
**A/Manager (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.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.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>