

NSW Department of Justice
Liquor & Gaming NSW

DOC16/101619

APPLICATION NO: APP-0001710956

APPLICATION FOR: On-premises licence for a restaurant with a primary service authorisation

PROPOSED TRADING HOURS: 10:00 AM to 12:00 AM Monday to Saturday
10:00 AM to 10:00 PM Sunday

APPLICANT: Bar No. 5 Pty Ltd

LICENSED PREMISES NAME: Bar No. 5 Pty Ltd

LICENSED PREMISES ADDRESS: 5 McCauley Street ALEXANDRIA 2015

APPROVED MANAGER TBA

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 licence for a restaurant and a primary service authorisation and impose conditions for that licence.

LEGISLATION Section 45 (1)

ILGA DELEGATED DECISION - APPLICATION FOR AN ON-PREMISES LICENCE FOR A RESTAURANT WITH A PRIMARY SERVICE AUTHORISATION – BAR NO. 5 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 with conditions the application APP-0001710956 for an on-premises liquor licence for a restaurant, with a primary service authorisation.

On 7 October 2016, 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 – restaurant class

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 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. The licence cannot be exercised unless and until the Independent Liquor & Gaming Authority has been provided with evidence that the premises is complete and ready to trade.
5. The premises must be operated at all times in accordance with the Plan of Management dated August 2016, as may be varied from time to time in consultation with the Local Area Commander.
6. The patron capacity is limited to 100 at any time.
7. Service of liquor must cease 30 minutes prior to the authorised closing time.

8. The premises is to operate with its principal business being that of a restaurant as defined by the Liquor Act and not as a bar. At all times when the restaurant is operating the licensee/manager is to ensure that a member of the kitchen staff dressed in kitchen attire and clearly identifiable as a chef or cook is present, on duty and that the kitchen is operational.
9. The licence cannot be exercised unless and until the Police and Independent Liquor and Gaming Authority has been notified of the appointment of a manager to the licence or the licence is transferred to a suitably qualified person.
10. All patrons are to have an allocated seat in accordance with the floor plan approved with this application.
11. The licensee or manager must ensure that all conditions of the development consent D/2015/1296 are adhered to at all times and a copy of the consent is available for inspection on the premises.
12. The licensee must maintain a closed circuit television system on the premises in accordance with the following;
 - 1) the system must record continuously from opening time until one hour after the premises are required to close.
 - 2) recordings must be in digital format and at a minimum of 15 frames per second.
 - 3) any recorded image must specify the time and date of the recorded image
 - 4) the system 's cameras must cover all entry and exit points, the footpath immediately outside and all publicly accessible areas of the premises.
 - 5) the licensee must keep all recordings made by the CCTV system for at least 30 days.
 - 6) the licensee must ensure that the system is accessible by at least one member of staff at all times it is in operation.
13. Whilst the restaurant is in operation and the premises contains more than 60 patrons, a RSA Marshal must be engaged at the venue from 9pm until close on every Friday and Saturday when selling or supplying liquor on the licensed premises. The RSA Marshal must be exclusively tasked with actively :
 - 1) Monitoring responsible service of alcohol practices by venue staff.
 - 2) Assisting in encouraging responsible attitudes and practices towards the promotion, sale, supply, service and consumption of alcohol ;

- 3) Monitoring patron alcohol consumption and behavior for signs of irresponsible, rapid or excessive consumption and
 - 4) Monitoring patrons for signs of intoxication
 - 5) The marshal must wear a uniform clearly distinguished from other staff with the letters RSA
14. 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:
- 1) Take all practical steps to preserve and keep intact the area where the act of violence occurred, retain all material and implements associated with the act of violence in accordance with the Crime scene preservation Guidelines issued by the NSW Police,
 - 2) Make direct and personal contact with the Local Area Commander or his delegate and advise the Commander or delegate of the incident,
 - 3) Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.
15. The licensee must not permit any person to enter the premises , or to remain on the premises, if the person is wearing or carrying any clothing, jewelry or accessory displaying:
- the name of any of the following motorcycle-related and similar organisations: Bandidos, Black Uhlans, Coffin Cheaters, Comanc Hero, Finks, Fourth Reich, Gladiators, Gypsy Jokers, Highway 61, Life & Death, Lone Wolf, Mobshitters , Nomads, Odins Warriors, Outcasts, Outlaws, Phoenix, Rebels, Hells Angels, Scorpions, Mongols, Notorious, Muslim Brotherhood Movement; or any "declared organisation" within the meaning of the Crimes (Criminal Organisation Control) Act 2009.
 - the colours, club patch, insignia or logo of any such organisation , or
 - the "1%" or "1%er" symbol , or
 - any image, symbol , abbreviation , acronym or other form of writing that indicates membership of, or an association with , any of the organisations specified above.

STATEMENT OF REASONS

1. Material before the ILGA delegate

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

- 1) Application form lodged 3 March 2016. (DOC16/016096)
- 2) Community Impact Statement (CIS) document dated 3 March 2016. (DOC16/016091)
- 3) The CIS includes the following contentions on the social impact of granting the Application:
 - 4) The proposal will benefit the local community given that there are limited similar establishments in the area.
 - 5) Negative impact unlikely given that the premises is not close to residential areas.
 - 6) Persons and organisations consulted with have responded to the proposal positively.
 - 7) Development Approval D/2015/1296 and issued by City of Sydney Council on 6 January 2016, approving the change of use of the proposed licensed premises from commercial warehouse to a licensed restaurant. (DOC16/016094)
 - 8) ASIC – Organisation Extract for Bar No. 5 Pty Ltd ACN 607 589 882. (DOC16/101179)
 - 9) Revised plan indicating boundary of proposed licensed area. (DOC16/101149)
 - 10) Plan of Management for the premises dated August 2016. (DOC16/101151)
 - 11) Director Compliance Submission (and EVAT) dated 14 June 2016, requesting that Police conditions be imposed on the licence. (DOC16/078337)
 - 12) Redfern LAC Submission dated 22 March 2016, advising of no objection and requesting the imposition of various conditions. (DOC16/078338)
 - 13) City of Sydney Council Submission dated 9 March 2016, advising that Council has “no matters of concern”. (DOC16/078336)
 - 14) Certificate of advertising the application in accordance with legislative requirements dated 29 August 2016. (DOC16/101150)
 - 15) Email from applicant in response to requests for further information dated 31 August 2016. (DOC16/095602)
 - 16) Excerpt from Bar No. 5 Facebook page dated 9 September 2016. (DOC16/101210)

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

3.1 In determining an application for a licence, under section 45(3) of the *Liquor Act 2007*, the delegate must also be satisfied that:

- 3.1.1 the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates,
- 3.1.2 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
- 3.1.3 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

4.1 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.

4.2 The test applying under section 48(5) relates to delegated decisions in relation to:

4.2.1 the grant or removal of a small bar licence (where required),

4.2.2 a packaged liquor licence (limited to telephone/internet sales),

4.2.3 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.

4.3 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.

4.4 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 Alexandria and the “broader community” comprises the Sydney LGA.

5. Analysis of Submissions and other Materials

5.1 Having reviewed all the material, I am satisfied that this application for an on-premises licence with a primary service authorisation is unlikely to result in a significant increase in alcohol related issues in the local community.

5.2 The proposed licensed premises will operate as a restaurant and not as a bar. The applicant has agreed to the imposition of a condition to that effect.

5.3 City of Sydney Council recently approved a DA in respect of the use of the proposed licensed premises as a licensed restaurant. A submission was received from Council advising that it does not have any concerns in respect of the proposal.

5.4 Redfern LAC also provided a submission which does not object to the proposal, but requests the imposition of an extensive list of conditions, all of which the applicant has consented to. Whilst Police did raise concerns regarding the possibility of the venue operating as a bar (due to the then contents of its Facebook page), the extensive list of conditions imposed on the licence should prevent that from occurring.

5.5 There were no objections to the Application.

6. Overall social impact

6.1 Positive benefits

6.1.1 The licence will provide further entertainment opportunities for the local community, particularly those frequenting Alexandria's industrial zone, within which the premises is located.

6.2 Negative impacts

6.2.1 There were no objections from any stakeholders. The only concern raised by Police can be managed by way of the impositions of a restrictive suite of conditions.

7. Conclusion

7.1 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. The interested parties are NSW Police, the Licensee and (other parties who may be affected).

7.2 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.

- 7.3 Having considered the Plan of Management, DA, conditions to be imposed and other 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.
- 7.4 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.
- 7.5 Having considered together the positive benefits and negative impacts that are likely to flow from granting the Application, I am satisfied that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.
- 7.6 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 with conditions the licence application.

Decision Date: 7 October 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>