



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

APPLICATION NO:	1-6857915250
APPLICATION FOR:	Small bar liquor licence
TRADING HOURS:	Monday to Sunday: 12:00 PM to 2:00 AM
APPLICANT:	Mr Brandon Martignago
LICENCE NAME:	Dulcie's Kings Cross
PREMISES ADDRESS:	44B Darlinghurst Road POTTS POINT NSW 2011
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a small bar liquor licence
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR
SMALL BAR LIQUOR LICENCE**

Dulcie's Kings Cross

Under delegation issued by the Independent Liquor and Gaming Authority (the Authority) under section 13 of the *Gaming and Liquor Administration Act 2007* (the Act), a designated Public Service employee or other Public Service employee of Liquor & Gaming NSW in the Department of Industry may determine the application for the grant of a small bar liquor licence. This includes the current application (number 1-6857915250).

On 06 September 2018, after careful consideration of the above application and other relevant 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	Not permitted
Christmas Day	Not permitted
December 31st	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. 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 a 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) within the premises.
- 2) The licensee must also:
 - a) keep all recordings made by the CCTV system for at least 30 days,
 - b) 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, 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 the police officer or Liquor and Gaming NSW inspector to provide such recordings.

4. **Crime scene preservation**

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:

- 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 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.

5. Licence conditions imposed by Part 5A of the Liquor Regulation 2008 (relating to the Kings Cross Precinct) apply to this licence.
6. No persons are to be permitted to drink or queue outside the premises at any time.
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 LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

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Interior noise levels which, although restricted in accordance with the above condition, still exceed safe hearing levels, are in no way supported or condoned by the Authority.

STATEMENT OF REASONS

1. Material before the ILGA delegate (DF18/012542)

The decision made by the delegate had the application and other relevant material:

- (1) Application form, lodged 19 June 2018
- (2) Application Notices
- (3) Development Application No. D2018/390, granted by the City of Sydney Council on 8 June 2018, for use of the premises as a small bar, including stamped plans
- (4) Copies of letters from the applicant to NSW Police Force & L&GNSW, dated 19 April 2018, providing notice of Development Application
- (5) Plan of proposed licensed premises
- (6) Plan of Management for the operation of the venue, including House Policy
- (7) Copy of the applicant's National Police Certificate, dated 17 August 2018
- (8) Certificate of Advertising Application, signed and dated 10 August 2018
- (9) Submission from a local business owner, dated 10 August 2018
- (10) ASIC Current Company Extract for the premises owner, FORTE-SENES HOTELS PTY. LIMITED
- (11) Email correspondence between Liquor & Gaming NSW and the applicant, dated 9 August 2018, 10 August 2018, 13 August 2018, 16 August 2018, 17 August 2018, 23 August 2018

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,

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- (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 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

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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 suburb of Kings Cross, and the "broader community" of Sydney LGA.

5. Analysis of Submissions and other Materials

- (1) This application is for a small bar liquor licence for the venue to be known as Dulcie's Kings Cross, located in the Kings Cross Precinct. The venue has a patron capacity of 60 persons.
- (2) The venue has a stage on which entertainment will be hosted from time to time. The entertainment will be supplementary to the focus of the bar and will reflect the identity of the bar as a 1930s 'bar of bohemia'. Acts may include performances from burlesque artists, tarot readers, comedy/monologue performers, and period relevant live music.
- (3) Development consent has been granted by City of Sydney Council for use of the premises as a small bar with 60 patron capacity, with approved trading hours of 4:00 PM to 2:00 AM Monday to Saturday, and 4:00 PM to midnight on Sunday (by way of a one-year trial period).
- (4) The Development Application requires one licensed security guard to be employed from 10:00 PM to close on Friday and Saturday nights and be

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positioned at the entry point to the premises. However, the premises may operate without a licensed security officer for a trial period of 12 months from the date of consent.

- (5) The applicant has prepared Plan of Management which includes a House Policy.
- (6) I am satisfied that the statutory advertising requirements have been met.
- (7) A submission was requested from Police but was not received.
- (8) A single objection was received in relation to the application, from a local business owner who raised concerns that the venue may morph into an “adult entertainment” venue; that the small bar’s exemption from 1:30 AM lockout laws will result in patrons that are unable to get into other venues at that time rushing to the subject premises, causing pedestrian hazards on Darlinghurst Road; that the potential for smoke drift and penetration to nearby premises has not been specifically addressed in the Plan of Management; and that the applicant has not addressed measures to ensure that the maximum patron capacity is not exceeded.
- (9) The submitter suggested that the applicant employ both a security guard and RSA Marshal to help reduce disturbances caused by intoxicated persons, and proposed a number of licence conditions, which were duly considered by the applicant and Authority delegate.
- (10) The applicant prepared a submission in response, noting the intention to create a venue that is inspired by the sophisticated bohemian drinking parlours of the 1930s. The applicant wishes to distance the venue from the adult entertainment model that currently exists in the area, and instead operate an upmarket cocktail bar featuring a menu of 100% Australian produced spirits, wines and beers. The applicant hopes to inspire a cultural change in future venue offerings of Darlinghurst Road.
- (11) The applicant submits that the current state of patronage and foot traffic in the Kings Cross precinct would not result in the scenario where there would be a rush to enter the premises at the commencement of lock out; that those frequenting other venues in the area do not match the target demographic that will be attracted to Dulcie’s; and that, as such, the small bar is less likely to be affected by the lock out rush. The applicant is, however, prepared for any scenario via the employment of a security officer if necessary.
- (12) The applicant notes that the venue will have up to 60 patrons and 5 staff, which equates to one staff member per 12 patrons. All staff will have a current RSA Competency Card. In addition, 60% of the venue is table service. The applicant

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submits that this high level of service and staff contact with patrons will ensure the responsible service of alcohol and negate the need of an RSA Marshal.

- (13) No other submissions or objections were received in respect of this application.

6. Overall social impact

(1) Positive benefits

The granting of the licence will contribute to the diversity of small, low-risk venues in the Kings Cross Precinct, which will enable patrons to enjoy a drink with or without a meal in a safe and sophisticated setting.

(2) Negative impacts

The small size of the proposed licensed premises, the proposed business model of a 1930s drinking parlour, together with the comprehensive Plan of Management and House Policy to be implemented at the venue serves to mitigate any potential negative impacts.

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. All persons required to be notified of the application were provided with the opportunity to make written submissions. All such submissions received were considered and used to 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. I note that this development consent restricts the liquor trading hours of operation for the premises.
- (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.



Department
of Industry

Liquor & Gaming

Decision Date: 7 September 2018

A handwritten signature in black ink, appearing to read 'Andrew Whitehead'.

Andrew Whitehead

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>