

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

APPLICATION NO:	1-6289692978
APPLICATION FOR:	Small bar liquor licence
TRADING HOURS:	Monday to Sunday: 12:00 PM to 2:00 AM
APPLICANT:	Guccione's Pty Ltd
APPROVED MANAGER:	Joshua Nicholson
LICENCE NAME:	Guccione's
PREMISES ADDRESS:	Ground Level, 210 Crown Street DARLINGHURST NSW 2010
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
LEGISLATION:	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE
GUCCIONE'S**

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 a small bar liquor licence, application number 1-6289692978.

On 9 January 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 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

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Note: Trading is also 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. 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:
 - a. take all practical steps to preserve and keep intact the area where the act of violence occurred,
 - b. 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,
 - c. 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
 - d. 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' 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.

4. The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) by more than 5 dB between 7:00 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 (31.5 Hz- 8 kHz inclusive) between 12:00 midnight and 7:00 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 7:00 AM.

For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises.

STATEMENT OF REASONS

1. Material before the ILGA delegate

CM9 Ref: DF17/014909

- (1) Application for small bar liquor licence, dated 7 August 2017
- (2) Signed Application Notices
- (3) Evidence of service of Notice of Development Application on Police and L&GNSW on 7 August 2017
- (4) City of Sydney Council receipt for lodgement and payment of development application, dated 7 August 2017

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- (5) Plan of the proposed licensed premises
- (6) ASIC Record of Registration for Business Name 'GUCCIONE'S'
- (7) ASIC organisation extract for 'GUCCIONE'S PTY. LTD.'
- (8) ASIC organisation extract for 'XU & ZHOU GROUP PTY LTD'
- (9) Plan of Management for the venue, dated 14 July 2017
- (10) Certification of Advertising Application, dated 31 August 2017
- (11) Appointment of Manager Notice, appointing Joshua Nicholson to the liquor licence, and a copy of Mr Nicholson's Approved Manager Approval
- (12) Development Application No. D/2017/1059 granted by City of Sydney Council on 12 December 2017 for the use of the ground floor premises for a new licensed small bar with 50 patron capacity
- (13) Submission from a member of the public, received 18 September 2017, objecting to the application
- (14) Submission from the Compliance branch of L&GNSW, received 3 October 2017, raising no objection to the application
- (15) Email correspondence from Liquor & Gaming NSW to the applicant requesting additional information in support of the application, dated 21 September 2017
- (16) Email correspondence from the applicant to Liquor & Gaming NSW in response to the request for further information, dated 20 December 2017 and 9 January 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,
 - 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. 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 the granting or removal of:
 - a. a small bar licence,
 - b. a packaged liquor licence (limited to telephone/internet sales),
 - c. an on-premises licence relating to a restaurant that, in the case of a new licence, includes an application for a primary service authorisation,
 - d. an on-premises licence relating to a karaoke bar, a catering service or a vessel,
 - e. an application for a producer/wholesaler licence that, in the case of a new licence, includes an application for a drink on-premises authorisation

- f. an application for ongoing extended trading hours to permit the sale of liquor after midnight in relation to any of the above licence types.
- (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 Darlinghurst, and the “broader community” of the City of Sydney Local Government Area.

5. Analysis of Submissions and other Materials

- (1) This application is for a new small bar with 50 patron capacity, located in Darlinghurst, in the Sydney CBD Entertainment Precinct.
- (2) I am satisfied that appropriate development consent is in place for the proposed use.
- (3) A submission was received from the Compliance branch of L&GNSW, who raised no objection to the application.
- (4) A further submission was received from a member of the public who raised concerns that the premises will be operated as a nightclub and cause noise disturbances on the quiet residential street. It is noted that these concerns were considered by the City of Sydney Council when deciding to grant the development application. I am satisfied that the development consent conditions and Plan of Management for the venue adequately address measures to ensure that the operation of the venue does not detract from the amenity of the neighbourhood.
- (5) It is noted the development consent only permits trading hours of 12:00 PM to 10:00 PM Monday to Sunday, with a one year trial period from 10:00 PM to 12:00 AM Monday to Saturday. As such, the venue is not considered to be late trading. Whilst the liquor licence will be endorsed with standard small bar trading hours of 12:00 PM to 2:00 AM seven days a week, the applicant is bound by the lesser hours specified in the development consent for the premises.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

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

(2) Negative impacts

The Plan of Management provided by the applicant and conditions imposed on the licence and in the development consent provide a level of certainty that there are unlikely to be any major impacts on the local community.

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 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: 9 January 2018



Matt Weber
Manager Licensing (Business Licensing)
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>