

**NSW Department of Justice
Liquor & Gaming NSW**

APPLICATION NO:	APP-0002158182
APPLICATION FOR:	On-premises liquor licence for a catering service
TRADING HOURS:	Monday to Sunday: 10:00 AM to 10:00 PM
APPLICANT:	Clifton Operations Pty Limited
LICENCE NAME:	Clifton Operations Pty Limited
APPROVED MANAGER:	Mr Wolfgang Klein
PREMISES ADDRESS:	L13, 60 Margaret St SYDNEY NSW 2000
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
CLIFTON OPERATIONS PTY LIMITED**

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 the application for an on-premise liquor licence for a catering service, application number APP-0002158182.

On 10 April 2017, 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	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

3. The premises are to be operated at all times in accordance with the Plan of Management dated 12 January 2017 as may be varied from time to time after consultation with the Local Area Commander.

4. The licensee or its representative must join and be an active participant in the local liquor accord.

5. 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.

6. No drinks commonly referred to as shots, shooters, slammers and/or bombs are to be sold or supplied.

7. CCTV footage on premises:

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

(i) 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 screen height, and
- b. there is an unobstructed view of the person's face.

(ii) In addition, CCTV cameras must be maintained throughout the premises with camera coverage to specifically record images of the following areas:

- a. staircases,
- b. all portions of the floor area accessible to the public where entertainment is provided,
- c. toilet external entrances, and
- d. all public accessible areas within the premise excluding toilets and accommodation rooms.

(iii) 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.

(iv) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.

(v) 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.

(vi) 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 closure.

(vii) 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.

(viii) 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.

(ix) When the venue is open and trading, at least one person shall be at the venue who is capable of accessing the CCTV system and is able to immediately review recordings and produce copies.

(x) Immediate access to the CCTV system and the ability to review recordings on the system is to be granted to NSW Police, OLGR Inspectors or other regulatory officers upon request.

(xi) 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.

(xii) 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. The Licensee shall record this daily checking activity in the incident register book that meets the standards required by the Licensing police and Council.

8. Maximum Patron Capacity

a. Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the main principle entry to the premises. The signage shall state:

Approved patron capacity is limited to: 265

b. Management are responsible for ensuring the number of patrons in the premises does not exceed the approved capacity specified in sub clause (a).

9. Signage to be displayed

a. Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the main principle entry to the premises. The signage shall state:

Approved hours of operation
Monday to Saturday: XXXX to XXXX,
Sunday: XXXX to XXXX.

b. Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected near the main principle entry to the premises, in such a 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

c. Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the main principle entry to the premises. The signage shall state:

Approved patron capacity is limited to: 265

d. Signage specified in sub clause (a) and (b) is to be erected prior to the commencement of operations.

10. Neighbourhood Amenity

a. The management of the premises:

i. Must ensure patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.

ii. Must 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. Must 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. Must respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by management I staff to resolve such complaint/s shall be recorded in the Register.

11. 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.
- 12. The Licensed Premises are not to be themed or operated as a Nightclub. No DJ styled booth, no disco lighting systems and no dance floor area are to be utilised at any time in the premises.
- 13. A full copy of all current development consents (including approved plans) for the operation of the premises, any Registers required and any required Plan of Managements must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or OLGR Authorized Officers.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form for an on-premises liquor licence, lodged 6 September 2016 (DOC16/099211)
- (2) Certification of Advertising Application, signed and dated by the applicant on 6 December 2016 (DOC16/170497)
- (3) Appointment of Manager Notice, signed and dated by the applicant on 9 December 2016 (DOC16/170500)
- (4) Approved Manager Approval application form and accompanying National Police Certificate, identification and RSA Interim Certificate for the nominated manager (DOC16/170501, DOC16/170495, DOC16/170496, DOC16/170498)
- (5) Complying Development Certificate No. 12202cdc01 issued by Metro Building Consultancy on 1 November 2012, for the fitout of existing office floors (DOC16/099212)
- (6) Letter from Metro Building Consultancy to the applicant, dated 3 June 2016, advising that the fit out for the premises was approved under a Complying Development Certificate and that Development Approval from Council was not required (DOC16/100258)
- (7) Submission by the City of Sydney Council, dated 16 September 2016, stating that Council had insufficient information to determine whether the proposed use of the premises is in conformity with the development consent for the premises (DOC16/106950)
- (8) Further submission by the City of Sydney Council, dated 22 September 2016, stating that the application is supported by Council provided that the liquor trading hours are modified so the conform with the hours specified in the CDC (DOC16/120775)
- (9) Submission by NSW Police Force, dated 27 September 2016, advising that Police do not object to the application, and proposing a number of licence conditions (DOC16/123539)
- (10) Plan of the proposed licensed premises (DOC16/099221)
- (11) Liquor Plan of Management, dated 12 January 2017 (DOC17/067711)
- (12) Copies of the menu for the catering service (DOC17/067712, DOC17/067713)
- (13) ASIC current company extract for the applicant and business owner CLIFTON OPERATIONS PTY LIMITED ACN: 109 332 925 (DOC16/099222)

- (14) ASIC current company extract for the premises owner MIRVAC FUNDS LIMITED ACN: 002 561 640 (DOC16/099224)
- (15) ASIC current company extract for the second premises owner ONE MANAGED INVESTMENT FUNDS LIMITED ACN: 117 400 987 (DOC16/099225)
- (16) Environment and Venue Assessment Tool (EVAT) Assessment Report prepared by the compliance branch of Liquor & Gaming NSW on 7 October 2016 (DOC16/119972)
- (17) Email correspondence from the Authority to the applicant requesting further information and the applicant's consent to proposed licence conditions, dated 7 and 8 September 2016, and 20 December 2016 (DOC16/099228, DOC16/100262, DOC16/100264, DOC16/176119)
- (18) Email correspondence from the applicant to the Authority in response to the request for further information, dated 7 September 2016, 9 December 2016 and 20 February 2017 (DOC16/100246, DOC16/100263, DOC16/170490, DOC17/033843)

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 Sydney, and the “broader community” of the City of Sydney Council LGA.

5. 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 is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The proposed licensed premises comprises a function space in an office building in the Sydney CBD. The business caters for corporate events such as meetings, corporate training days and product launches. All events are prebooked and are not open to the general public.
- (3) A Complying Development Certificate has been issued for the fitout of the premises. The City of Sydney Council made a submission supporting the application, provided that the liquor trading hours are modified so they conform with the hours specified in the CDC. The applicant has accordingly modified the proposed liquor trading hours so that they are in line with the CDC.
- (4) Police raised no objections to the grant of the licence for the premises, however proposed a number of conditions to be imposed on the licence, most of which the applicant consented to. Some conditions were deemed not to be suitable to the premises/business type and so were amended accordingly.
- (5) The licence will be exercised in accordance with a Plan of Management and licence conditions that addresses the responsible service of alcohol, and provides measures to ensure that the operation of the premises does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

This application is for a catering business that operates in an office building in the Sydney CBD, with 265 patron capacity. The business provides catering for prebooked corporate functions. The granting of the liquor licence would enable the business to offer alcoholic beverages in conjunction with food at corporate functions, which would supplement and enhance the function facilities offered.

(2) Negative impacts

As the venue caters solely to a corporate clientele and has a detailed liquor Plan of Management in place there are unlikely to be any negative social impacts as a result of the granting of this licence.

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: 10 April 2017



Joanne Zammit
Coordinator, 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>