

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

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**APPLICATION NO:** 1-4436556658

**APPLICATION FOR:** On-premises liquor licence for a restaurant,  
karaoke class

**TRADING HOURS:**  
Restaurant  
Monday to Thursday: 5:00 PM to 11:00 PM  
Friday to Saturday: 5:00 PM to 12:00 AM  
Sunday: 5:00 PM to 10:00 PM  
Karaoke  
Monday to Thursday 12:00 PM to 11:00 PM  
Friday to Saturday 12:00 PM to 12:00 AM  
Sunday 12:00 PM to 10:00 PM

**APPLICANT** Chris Chen

**LICENCE NAME:** Ginza Yakiniku & New Star Karaoke

**PREMISES ADDRESS:** Shop 19-27, 27-31 Belmore St  
BURWOOD NSW 2134

**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 *Liquor Act 2007*

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE  
GINZA YAKINIKU & NEW STAR KARAOKE**

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 restaurant, with a karaoke class, application number 1-4436556658.

On 31 March 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  
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 31<sup>st</sup>

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

### **Plan of Management**

5. The premises must be operated at all times in accordance with the Plan of Management dated October 2016, as may be varied from time to time after consultation with the Local Area Commander, NSW Police Force.

A copy or extract of the Plan of Management relating to RSA principles and responsibilities must be placed within the licensed premises so that it is visible to staff.

All staff must be provided with a copy of the Plan of Management.

### **Sale and Supply of Alcohol**

6. Only liquor sold or supplied under the authority of the licence is permitted on the licensed premises. The licensee must not permit patrons to bring liquor onto the premises.
7. No liquor is permitted in karaoke rooms outside the liquor trading hours.
8. The licensee must ensure that containers of liquor are opened prior to serving.
9. No shots, shooters, slammers, bombs, or any alcoholic drinks mixed with an energy drink, that are designed to be consumed rapidly, are to be sold or supplied.
10. The sale and supply of bottles of spirits is prohibited.

### **Karaoke**

11. The licensee must ensure signs are permanently displayed in each karaoke room stating "Liquor must not be sold or supplied to persons under the age of eighteen (18) years".
12. Liquor must not be sold, supplied or consumed in any karaoke room in which a minor is present, unless the minor is accompanied and in the presence of a responsible adult as defined under the *Liquor Act 2007*.
13. The door to each individual karaoke room must have a glass insert placed in it and kept clear at all times for the purposes of supervision of persons using the room.

14. The licensee must ensure that records are kept relating to hiring of the karaoke rooms, including liquor sold into each room, the hours during which the rooms are hired and the numbers of customers attending.

### **Staff Identification**

15. The licensee must ensure that staff wear name tags and/or uniforms identifying themselves to patrons and authorities that they are working at the premises.
16. The licensee must ensure that there is a public display in the reception area clearly identifying the manager on duty, with the name and the photograph of the person in charge of the venue at any given time.

### **Security**

17. The licensee must ensure that from 8:00 PM, on each day of a week: at least one (1) uniformed licensed security officer is employed at the premises.

Uniformed licensed security officers are to be employed at a ratio of not less than one per one hundred (1:100) patrons or part thereof.

When more than two (2) security officers are employed at the premises, the security officer(s) not stationed at the entrance are to continually patrol the premises and the area in the vicinity of the premises to ensure that patrons do not loiter or linger in the area or cause nuisance or annoyance to the neighbourhood.

Uniformed licensed security officers must have direct contact with the duty manager via portable radio or mobile phone.

Uniformed licensed security officers are to remain at the entry/exit point until (30) thirty minutes after closing or until the last patron has left the premises.

18. The licensee must ensure whenever security personnel are engaged; a register stating the security officer's full name, security licence number, start date and time, finish date and time and signature is kept and produced to police upon request.

### **CCTV**

19. 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 are required to close (or, in the case of premises that are not required to cease trading, continuously at all times).
  - b. Recordings must be in digital format and at a minimum of 15 frames per second.
  - c. Any recorded image must specify the correct 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,
    - iii. All publicly accessible areas (other than toilets) on the premises.

- e. All recordings made by the CCTV system must be kept for at least 30 days before being re-used, destroyed or deleted.
- f. The CCTV recording device must be secured within the premises and only be accessible to senior management personnel. At least one staff member must be present on the licensed premises when it is operating, who is authorised to access the CCTV system and able to immediately review recordings.
- g. Provide any recordings made by the CCTV system to members of NSW Police Force or authorised officers of Liquor and Gaming NSW, within 24 hours of any request to provide such recordings.

### **Neighbourhood Amenity**

20. The licensee must ensure that:

- a) Patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- b) The manner in which the business of the premises is conducted, and the behaviour of persons entering and leaving the premises, do not cause undue disturbance to the amenity of the neighbourhood. In this regard, the licensee is responsible for the control of noise and litter generated by persons, and by the operation of the premises. If so directed by Council, the licensee must employ private security staff to ensure that this condition is complied with.
- c) The licensee must record in a register full details of any disturbance complaints made by a person to the licensee, management or staff in respect to the manner in which the business of the premises is conducted, or the behaviour of persons entering or leaving the premises. Such recording must include time, date, nature of the complaint and, if provided, any details of the complainant.
- d) The licensee must respond to any disturbance complaints in a timely and effective manner. All actions undertaken by the licensee, management and staff to resolve such complaints must be recorded in the register.

21. An adequate queuing system for patrons must be implemented at the main entrance of the licensed premises so as to ensure that if patrons are queuing to gain entry they do not obstruct or impede pedestrian traffic flow.

### **LA10 Noise Management**

22. 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.

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.

### **Crime Scene Preservation**

23. The licensee must notify the Local Area Commander, NSW Police Force or his/her representative, of all serious incidents.

Serious incidents include any incidents involving an act of violence causing an injury to a person on the premises, including, but not limited to, any injury sustained by a patron that requires medical treatment.

The licensee must ensure that, immediately after the licensee or a staff member becomes aware of an incident on the licensed premises involving an act of violence against any person or property, the following is adhered to:

- a. The licensee or a staff member must take all practical steps to preserve and keep intact the area where the act of violence occurred, in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police Force.
- b. The licensee or a staff member must make direct and personal contact with the Local Area Commander, NSW Police Force or his/her delegate and advise the Commander or delegate of the incident.
- c. The licensee or the staff member must comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

For the purpose of this condition, “staff member” in relation to subject premises 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 activities as a crowd controller or bouncer on or about the premises.

### **Incident Register**

24. The licensee must ensure that an incident register is kept on the premises; and that any incident involving any staff member and/or security personnel; the physical contact and/or physical restraint; the ejection of a member of the public from the premises; or when a patron, staff member or security personnel is injured as a result of an assault; is recorded in this register. The licensee must ensure to record the full names of the staff involved in the incident, and produce the register immediately upon request by members of the NSW Police Force, or authorised officers of Liquor and Gaming NSW.

25. A full copy of all current development consents (including approved plans) for the operation of the premises, any registers required and the current Plan of Management, must be kept on the premises and made available for inspection immediately upon request by members of the NSW Police Force or authorised officers of Liquor & Gaming NSW.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate

- (1) Application form lodged 12 May 2016 (DOC16/048976)
- (2) Application notices signed and dated 11 May 2016 (DOC16/048981)
- (3) Certificate of Advertising declaration signed 20 May 2016 (DOC16/051462)
- (4) Plan of Management dated October 2016 (DOC16/148470)
- (5) Notice of Determination – 194/2015 issued by Burwood Council dated 21 April 2016 for, “fit out and new use as Japanese BBQ Restaurant and Karaoke Rooms.”(DOC16/048980)
- (6) Plan at grant of proposed licensed premises submitted 18 May 2016 (DOC16/048982)
- (7) Competency card details for the applicant, Mr Chris Chen, issued 15 June 2014 (DOC16/048977)
- (8) National Police Certificate for the applicant, issued 9 May 2016 (DOC16/051047)
- (9) ID for the applicant provided on 18 May 2016 (DOC16/048978)
- (10) ASIC company report for the proposed business owner, Indeeep Planning Pty Ltd, provided on 18 May 2016 (DOC16/048979)
- (11) B1 Square Japanese BBQ Restaurant and Karaoke, Restaurant and Karaoke Noise Impact Assessment by Acoustic Logic, and Interim Occupation Certificate from Kudos Building Certification, provided on 10 January 2017 (DOC17/007021, DOC17/007048, DOC17/007049)
- (12) Five public submissions objecting to the grant of the application (DOC16/051658, DOC16/056091, DOC16/060180, DOC16/063464 and DOC16/068095)
- (13) Submissions from Burwood LAC dated 14 June 2016 (DOC16/063392) and 26 October 2016 (DOC16/148434), requesting conditions to be imposed on the licence.
- (14) Email correspondence from Burwood LAC dated 30 January 2017, advising that Police are more inclined for the premises to remain a BYO venue. (DOC17/044375)
- (15) Submission from the Delegate of the Secretary, Liquor and Gaming NSW dated 13 December 2016, objecting to the approval of the application, however requesting a number of conditions to be imposed on the licence, should the licence be granted. (DOC17/044377)
- (16) A letter from a Member of the NSW Legislative Council, dated 21 December 2016, in support of the application. (DOC17/007586)
- (17) Correspondence from the Authority to the applicant requesting additional information and response to submissions and proposed licence conditions, emails dated 26 October 2016, (DOC16/134671), 13 December 2016 (DOC16/172104), 10 January 2017 (DOC17/006764), 6 March 2017 (DOC17/044815), 27 March 2017 (DOC17/064939) and 31 March 2017 (DOC17/070286).
- (18) Correspondence from the applicant in response to the Authority requests for additional information, response to submissions and proposed licence conditions, emails dated 3 November 2016 (DOC16/142641, DOC16/142642), 21 December 2016 (DOC16/177224), 10 January 2017 (DOC17/007021), 6 March 2017 (DOC17/045251), 27 March 2017 (DOC17/065019) and 31 March 2017 (DOC17/070290).



## 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 Burwood, and the "broader community" is the Burwood LGA.

## **5. Analysis of Submissions and other Materials**

- (1) Having reviewed all the material, I am satisfied that this application for an on-premises restaurant with karaoke class has appropriate development consent in place.
- (2) Police submissions did not object to the licence application, however requested a number of conditions to be imposed on the licence. Police indicated they were more inclined for the venue to remain a BYO premises, to demonstrate the premises operations without incidents and complaints.
- (3) The Delegate of the Secretary objected to the application being granted due to a high risk profile of karaoke venues, recent compliance activities at the premises, proximity of the premises to residential dwellings, and risks of undue disturbance and detracting from the amenity of the neighbourhood.
- (4) Five submissions from local residents have been received, each one objecting to the application due to potential noise concerns, patrons loitering in and around the venue, and safety concerns for the residents and the community.
- (5) The application was supported by a Member of the NSW Legislative Council.
- (6) I am satisfied that the statutory advertising requirements have been met.
- (7) The applicant's response to the proposed licence conditions was duly considered.



## 6. Overall social impact

### Positive benefits

The proposed licensed venue is located within the Burwood Square development which combines high density apartments with retail outlets. The venue will provide casual dining experience, as well as karaoke facilities to residents and visitors of the local community.

### Negative impacts

All objections and submissions provided in respect of this application, and the applicant's response to issues and concerns raised, were carefully considered.

The licence will be exercised in accordance with the Plan of Management and a comprehensive list of licence conditions, that define practices for responsible service of alcohol and provide measures to ensure that the operation of the premises contributes to, and does not detract from the amenity of the local community.

Specific conditions have been imposed on the licence to minimise any potential harm from consumption of alcohol in karaoke rooms, including restriction on BYO liquor on the licensed premises and no liquor permitted in karaoke rooms after liquor trading hours.

Specific conditions have also been imposed on the licence to address noise concerns, security within and around the premises, and the neighbourhood amenity.

## 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: 31 March 2017



Olgica 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>