

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

APPLICATION NO: 1-5578198022
APPLICATION FOR: Small bar liquor licence
TRADING HOURS: Monday to Sunday: 12:00 PM to 12:00 AM
APPLICANT: ROMAN KRISTEK
LICENCE NAME: Gas Lane
PREMISES ADDRESS: Ground Level 36 Hickson Road, MILLERS
POINT, 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 *Liquor Act 2007*

ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

Gas Lane

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 a small bar liquor licence, application number 1-5578198022.

On 20 June 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

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. 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. Crimes Scene Preservation

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

(i) The manager/licensee and/or staff 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.

(ii) The manager/licensee and/or staff make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident; and

(iii) The manager/licensee and/or staff comply with any directions given by the Commander of delegate to preserve or keep intact the area where the violence occurred.

5. A CCTV surveillance system will be installed at the premises. Physical access to and copies of recordings from the CCTV system are to be made available upon request from NSW Police. There is to be a member of staff present when the premises is operating that can gain access to and operate the CCTV system to allow for immediate playback of footage to assist with identification and investigations. CCTV recordings should be retained for a period of 28 days before being reused or destroyed.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 24 February 2017 (DOC17/038793)
- (2) Certification of Advertising Application, signed and dated by the applicant on 29 March 2017 (DOC17/076979)
- (3) Plan of the proposed licensed premises (DOC17/105905)
- (4) ASIC extracts for GAS LANE PTY LTD (ACN 614 733 783) and DEXUS WHOLESALE MANAGEMENT LIMITED (ACN 159 301 907), (DOC17/038794).
- (5) ASIC certificate of registration of business name for Gas Lane (DOC17/038800)
- (6) Copies of ID, National Police Certificate (issued 22 December 2016 with no disclosures) and the applicant's competency card (with an expiry date 21 November 2017) have been forwarded 24 February 2017(DOC17/038799).
- (7) Development Application No. D/2016/1824 issued by the City of Sydney Council on 19 April 2017 for, "fit out and use of ground floor tenancy as a small bar and signage." (DOC17/105903)
- (8) Submission received on 15 March 2017 from, Sydney City Local Area Command, advising that Police do not object to the application, and proposing conditions to be imposed on the licence(DOC17/057556).
- (9) Plan of Management for the premises, dated 22 March 2017 (DOC17/105908)
- (10) A security Management plan has been forwarded 24 February 2017(DOC17/038798)
- (11) Email correspondence from the Authority dated 23 March 2017 (DOC17/062886), 12 April 2017 (DOC17/080105), and finally 6 June 2017 (DOC17/126263) to the applicant requesting additional information and the applicant's consent to a number of proposed licence conditions.
- (12) Email correspondence from the applicant dated 6 April 2017 (DOC17/076977), 13 April 2017 (DOC17/081603), 8 May 2017 (DOC17/105898) and finally 6 June 2017 (DOC17/126618) in response to the request for additional information, and responding to the proposed licence conditions.

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. Of note, section 9A of the Liquor Regulation 2008 (the Regulation) provides that small bar applications are exempted from requiring a Community Impact Statement if a) development consent is in place and b) local police and the secretary are notified by the applicant of the application within two working days of the development consent application being lodged. The applicant has lodged a declaration confirming these requirements of section 9A of the Regulation have been met. Therefore, a CIS was not prepared relative to this application.
- (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 Millers Point, and the "broader community" of the the City of Sydney LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for a small bar liquor licence is unlikely to result in any significant increase in alcohol-related harm in the local community.
- (2) Development consent is in place for the proposed use of a small bar.
- (3) Sydney City Local Area Command raised no objections to the grant of the licence, however recommend a number of conditions to be imposed on the licence.
- (4) The licence will be exercised in accordance with a number of licence conditions that provides measures to ensure that the operation of the premises does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (5) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The proposed small bar, located in Millers Point, and will have a, “sophisticated boutique character focussed on the service of high quality food and drinks.”

The small bar poses low risk to the local or broader community and has been supported by appropriate development consent.

(2) Negative impacts

There have been no objections to the granting of this licence. The conditions imposed on the licence 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: 20 June 2017



Mary Butterfield
A/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>