

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

APPLICATION NO:	1-5870020871
APPLICATION FOR:	Small bar liquor licence
TRADING HOURS:	Monday to Sunday: 12:00 PM to 2:00 AM
APPLICANT:	Daniel John Noble
LICENCE NAME:	Old Mate's Place
PREMISES ADDRESS:	Level 4, 199 Clarence Street 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

OLD MATE'S PLACE

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 1-5870020871.

On 23 August 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	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. 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 premises that is not required to cease trading, continuously at all times),
 - b) recordings must be in digital format and at a minimum of 15 six 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) on the premises.
 2. The licensee must also:
 - a) keep all recordings made by the CCTV system for at least 30 days,
 - b) ensure that at least one member of staff is on the premises at all times the system is operating who is 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 a police officer or Liquor and Gaming NSW inspector to provide such recordings.
4. Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing injury to a person on the premises, the person must:
 1. take all practical steps to preserve and keep intact the area where the act of violence occurred,
 2. retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police,
 3. make direct and personal contact with the Local Area Commander of NSW Police 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.

STATEMENT OF REASONS

1. Material before the ILGA delegate

RM8 Ref: DF17/011488

- (1) Application for small bar liquor licence, received 4 July 2017
- (2) Plan of the proposed licensed premises
- (3) Application Notices

Liquor & Gaming

- (4) Certification of Advertising Application, signed and dated by the applicant on 10 August 2017
- (5) Copy of the applicant's National Police Certificate
- (6) ASIC business name registration for 'OLD MATES PLACE'
- (7) ASIC Certificate of Registration of a Company 'OLD MATES GROUP PTY. LTD.'
- (8) Plan of Management for the venue
- (9) Proposed food and drink menu for the venue
- (10) Statement of Environmental Effects
- (11) Submission from City of Sydney Council, received 12 July 2017, advising that development consent for use of the premises as a small bar has not yet been granted
- (12) Further submission from City of Sydney Council, received 19 July 2017, enclosing a copy of the development consent for the premises, granted on 17 July 2017
- (13) Submission from Sydney City licensing police, received 15 August 2017, raising no objection to the application and proposing 12 licence conditions
- (14) Submission from the Compliance branch of L&GNSW, received 28 August 2017, raising no objection to the application
- (15) Development Application No. D/2017/519 granted by City of Sydney Council on 17 July 2017 for the change of use of Level 4 and rooftop to licensed small bar, with approved hours that are in conformity with the applicant's proposed liquor trading hours
- (16) Email correspondence from Liquor & Gaming NSW to the applicant requesting additional information in support of the application, dated 10, 17 and 24 August 2017
- (17) Email correspondence from the applicant to Liquor & Gaming NSW in response to the request for further information, dated 14, 17 and 25 August 2017

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 Marrickville, and the “broader community” of the Inner West LGA.

5. Analysis of Submissions and other Materials

- (1) This application is for a new small bar with 100 patron capacity, located in the Sydney CBD Entertainment Precinct. The small bar will occupy level 4 and the rooftop of a commercial building.
- (2) I am satisfied that appropriate development consent is in place for the proposed use.
- (3) Council made a submission stating that development consent is not in place, however the applicant subsequently had their Development Application granted by Council.
- (4) Police made a submission noting that there is a high rate of alcohol related violence associated with licensed premises in the Sydney CBD, however did not object to the application. Police proposed 12 licence conditions, which were duly considered by the Authority.
- (5) No objections have been received in respect of this application.
- (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

There have been no objections to the granting of this licence. The Plan of Management provided by the applicant and 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: 28 August 2017



Joanne Zammit
Coordinator, 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.



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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>