

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

APPLICATION NO:	APP-0002710944
APPLICATION FOR:	On-premises liquor licence for a karaoke and “escape room” venue
TRADING HOURS:	Sunday to Wednesday: 10:00 AM to 10:00 PM Thursday to Saturday: 10:00 AM to 12:00 AM
APPLICANT:	Breakout Bar Pty Ltd
APPROVED MANAGER:	Seanne Yelana Baker
LICENCE NAME:	Breakout Escape Rooms
PREMISES ADDRESS:	238-244 Crown Street WOLLONGONG NSW 2500
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
BREAKOUT ESCAPE ROOMS**

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 an on-premises liquor licence, application number APP-0002710944.

On 9 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	12:00 noon - 10:00 PM
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 st	Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

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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. Liquor must only be sold and/or supplied to patrons that are an active participant of the activities provided by the venue being the escape rooms and/or karaoke.
4. No minors will be allowed within the venue after 20:00 on trading nights. The licensee will ensure that all patrons suspected as being under the age of 18 will have identification checked.
5. The licensee must maintain Closed-Circuit Television on the premises. The licensee must ensure at least one member of staff is on the premises at all times who is able to access and operate the system. The licensee must provide any recordings made to a police officer or inspector within 24 hours of any request. The licensee must keep all recordings for a minimum of 30 days.
6. There is to be no stockpiling of drinks commonly known as shots, shooters, slammers or bombs that are designed to be consumed rapidly, or any alcoholic drinks that are mixed with an energy drink. Not more than one of these types of drinks is to be served to a patron at the one time.
7. 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*.
8. 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.
9. 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.
10. 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.
11. The sale and supply of bottles of spirits is prohibited.
12. 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".
13. The licensee must notify the Local Area Commander, NSW Police Force or his/her representative, of all serious incidents.

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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.
 - d. 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.
14. 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.

STATEMENT OF REASONS

1. Material before the ILGA delegate

RM8 Ref: DF17/006199

- (1) On-premises application form, received on 2 April 2017
- (2) Certification of Advertising Application, signed and dated by the applicant on 20 June 2017
- (3) Appointment of Manager Notice, appointing Seanne Baker to manage the licence
- (4) Plan of the proposed licensed premises
- (5) Community Impact Statement
- (6) ASIC Current Company Extract for "Breakout Bar Pty Ltd"
- (7) Alcohol Management Plan, dated January 2017
- (8) Directors history and biographies of the directors of Breakout Bar Pty Ltd
- (9) Development Application No. DA-2017/155 granted by Wollongong City Council on 6 June 2017 for use of the premises as a bar/entertainment venue
- (10) Submission from Wollongong Licensing Unit, received on 19 April 2017
- (11) Submission from Wollongong Council, received on 16 June 2017
- (12) Submission from the Secretary's delegate, received on 19 July 2017
- (13) Email correspondence from L&GNSW to the applicant, requesting further information in support of the application, dated 19 and 21 June 2017
- (14) Email correspondence from the applicant to the Authority, in response to the request for additional information, dated 20 and 21 June 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 an on-premises liquor licence for a new entertainment venue located in the Wollongong CBD which features five ‘escape rooms’, two high end karaoke rooms and a café/bar. ‘Escape rooms’ are a new concept which involves groups of people solving puzzles in order to escape a ‘locked’ room.
- (2) The applicant seeks to target a mature clientele looking for a unique and sophisticated experience that entails more than just going out for a meal and/or a drink. There is a new and growing trend towards such interactive entertainment, with a number of similar venues appearing across NSW.
- (3) Appropriate development consent permitting the proposed activity is in place.
- (4) Police made a submission raising no objection to the application and proposing eight licence conditions, which were duly considered by the applicant and the Authority’s delegate.
- (5) Both Council and the Secretary’s delegate made submissions raising no objection to the application.
- (6) No other submissions were received in respect of this application.
- (7) The applicant has provided a comprehensive Plan of Management which details the responsible service of alcohol and security measures that will be in place at the venue.
- (8) I am satisfied that the statutory advertising requirements have been met.
- (9) Having reviewed all 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 harm in the local community.

6. Overall social impact

(1) Positive benefits

This venue is the first of its kind in the Wollongong CBD. The granting of the licence will enable the venue to supplement and enhance the services offered, thereby contributing to the development of the entertainment industry in NSW.

(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: 9 August 2017



Matt Weber
A/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>