

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

APPLICATION NO:	APP-0003132295
APPLICATION FOR:	On-premises liquor licence for a restaurant and catering service, located within a tertiary institution
TRADING HOURS:	Monday to Saturday: 10:00 AM to 12:00 Midnight Sunday: 10:00 AM to 10:00 PM
APPLICANT:	One Café Randwick Pty Limited
APPROVED MANAGER:	Mr Peter Botros
LICENCE NAME:	Penny Lane Bar & Café
PREMISES ADDRESS:	G2 & G2A Ground Floor, Morven Brown Building UNSW Gate 8, High Street KENSINGTON NSW 2033
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
PENNY LANE BAR & CAFE**

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-0003132295.

On 8 September 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 - restaurant

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.

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. Consumption on premises – catering service

Good Friday	Normal trading
Christmas Day	Normal trading
December 31 st	Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

STATEMENT OF REASONS

1. Material before the ILGA delegate - DF17/014567

- (1) Application for on-premises liquor licence, lodged 17 August 2017
- (2) Application Notices
- (3) Appointment of Manager Notice, appointing Mr Peter Botros as manager of the licence
- (4) ASIC Current Company Extract for 'ONE CAFE RANDWICK PTY LIMITED'
- (5) Certification of Advertising Application, signed and dated by the applicant on 30 August 2017
- (6) Email correspondence from Randwick City Council to the applicant, dated 9 August 2017, advising that Council has no matters of concern with the application
- (7) SECTION 109R CROWN CERTIFICATE 17/0550/01 granted on 1 August 2017 for the fitout of the premises for use as Penny Lane Bar & Café
- (8) Email correspondence from the premises owner to the applicant, dated 23 May 2017, regarding the outdoor seating licence for the premises
- (9) Plan of the proposed licensed premises
- (10) Alcohol Management Plan for the venue
- (11) Submission from Randwick licensing police, received 7 September 2017, objecting to the use of the word 'bar' in the licence name as the primary purpose of the licence is that of a restaurant
- (12) Email from the applicant to Liquor & Gaming NSW, dated 31 August 2017, requesting a shortened submission period
- (13) Email correspondence from Liquor & Gaming NSW to the applicant requesting additional information in support of the application, dated 30 August 2017, 31 August 2017, and 8 September 2017

- (14) Email correspondence from the applicant to Liquor & Gaming NSW in response to the requests for additional information, dated 31 August 2017, 31 August 2017, and 8 September 2017

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

5. Analysis of Submissions and other Materials

- (1) This application is for a restaurant with 120 patron capacity situated within the University of New South Wales. The venue also proposes to cater for university functions on occasion.
- (2) Under s. 22(3)(b) of the *Liquor Act 2007*, the primary purpose test does not apply to a premises located on land occupied by a tertiary institution that caters for students of that institution. As the subject venue satisfies this criterion, it is considered exempt from the primary purpose test.

Liquor & Gaming

- (3) I am satisfied that appropriate development consent which permits the proposed activity is in place, and that the applicant has appropriate approval from the premises owner to occupy the outdoor dining area.
- (4) Police made a submission objecting to the word “bar” in the proposed licence name, on the basis that it is misleading as the primary purpose of the venue is the provision of food, however under 22(3)(b) of the *Liquor Act 2007* the venue is exempt from the primary purpose test.
- (5) The proposed manager, Mr Botros, was the manager of Penny Lane Brasserie in Ultimo for a period of two years without incident.
- (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 provide students and staff at the University of New South Wales with a modern venue at which to dine and socialise.

(2) Negative impacts

The venue is located wholly within the University of NSW Kensington campus, has a relatively small patron capacity, and is not late trading. Accordingly, the venue is not likely to result in any significant increase in alcohol-related harm in 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: 8 September 2017



Matt Weber
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>