

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

APPLICATION NO:	APP-0002903334
APPLICATION FOR:	On-premises liquor licence restaurant with catering service, and Primary Service Authorisation
TRADING HOURS:	Monday to Saturday: 10:00 AM to 12:00 AM Sunday: 10:00 AM to 10:00 PM
APPLICANT:	KPX 119 Pty Limited
APPROVED MANAGER:	TBC
LICENCE NAME:	KPX 119 Pty Limited
PREMISES ADDRESS:	Tenancy 4, 119-121 Kippax St, SURRY HILLS, NSW 2010
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
KPX 119 PTY LTD**

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 for a restaurant with catering service, and Primary Service Authorisation, application number APP-0002903334.

On 10 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 04:00 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 – catering service

Good Friday	Normal trading
Christmas Day	Normal trading

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December 31st Normal opening time until normal closing time or 02:00 AM on New Year's Day, whichever is the later

3. Consumption on-premises – Restaurant

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 31st Normal opening time until normal closing time or 02:00 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 05:00 AM on Good Friday and Christmas Day.

4. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 5 May 2017 (DOC17/100341)
- (2) Certification of Advertising Application, signed and dated by the applicant on 8 June 2017 (DOC17/162324)
- (3) Category A Community Impact Statement (CIS) document lodged with the application (DOC17/100342)
- (4) Development Consent document D/2016/1591/A for the premises dated 03/02/2017. (DOC17/100343)
- (5) Plan of the proposed licensed premises (DOC17/100344)
- (6) Plan of Management for the premises dated 11 April 2017. (DOC17/100349)
- (7) ASIC extract dated 13 February 2017 for KPX 119 PTY LTD. (DOC17/100347)
- (8) Submission from The Acoustic Group following running a report on the premises, dated 16 June 2017. (DOC17/133755)
- (9) Submission from the City of Sydney Council, stating no objections subject to compliance of trading hours, dated 23 March 2017 (DOC17/100346)
- (10) Submissions from members of the public in objection to the application, received between 14 & 31 May 2017 (DOC17/106070, DOC17/107326, DOC17/107326, DOC17/115880, DOC17/121095)
- (11) Email correspondence from the Authority to the applicant's legal representative requesting additional information in support of the application, dated 8 and 14 June 2017 (DOC17/128839, DOC17/131081)

- (12) Email correspondence from the applicant's legal representative to the Authority in response to the requests for additional information, dated 26 July 2017 (DOC17/162312)

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 Surry Hills, and the "broader community" of the City of Sydney Council LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on-premises liquor licence for a restaurant with catering service and PSA is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) Police were consulted on the application however no submission was ever received by the authority.
- (3) A submission was received from the City of Sydney Council, which hasn't raised any objections to the granting of the licence.
- (4) I am satisfied that appropriate development consent which permits the proposed activity is in place.

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- (5) The licence will be exercised in accordance with any licence conditions that address the responsible service of alcohol, and provides measures to ensure that the operation of the premises does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

This application is for a restaurant with catering service with a primary service authorisation, based in Surry Hills. The granting of the licence will complement and enhance the services offered by the business.

(2) Negative impacts

A number of submissions were received from members of the public raising concerns that the granting of the licence may adversely affect the local community in terms of noise, lack of parking, rubbish, traffic and trading hours that are incongruent with the suburban nature of the local area, however, I am satisfied that the information provided by the applicant adequately addresses measures that will be put in place to minimise harm and ensure that the operation of the venue does not detract from the amenity of community life.

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.



Department
of Industry

Liquor & Gaming

Decision Date: 10 August 2017

A handwritten signature in black ink, appearing to read "M. Weber".

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>