

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

APPLICATION NO:	APP-0004778417
APPLICATION FOR:	On premises karaoke class.
TRADING HOURS:	Wednesday Saturday: 12:00 PM-12:00 AM Sunday : 12:00 PM-10:00PM
APPLICANT:	FRANK SCHOONATRA PTY LTD
LICENCE NAME:	Jam's Karaoke
PREMISES ADDRESS:	8 Union St, NEWCASTLE WEST, NSW 2302
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

Jam's Karaoke

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, karaoke class, application number APP-0004778417.

On 14 December 2018, 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 (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)

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December 31st 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 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 5:00 AM on Good Friday and Christmas Day.

3. 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.
 4. The licensee must ensure that containers of liquor are opened prior to serving.
 5. The sale and supply of bottles of spirits is prohibited.
 6. 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.
 7. The licensee must ensure that an incident register is kept on the premises; and that any incident involving any staff member and/or security personnel; the physical contact and/or physical restraint; the ejection of a member of the public from the premises; or when a patron, staff member or security personnel is injured as a result of an assault; is recorded in this register. The licensee must ensure to record the full names of the staff involved in the incident, and produce the register immediately upon request by members of the NSW Police Force, or authorised officers of Liquor and Gaming NSW.
 8. The licensee shall ensure, by adequate supervision methods throughout the premises, that no patron is stockpiling drinks. For this purpose, stockpiling shall mean that any one patron has more than two (2) unconsumed drinks at any one-time (a patron may purchase up to four (4) drinks at one time).
 9. Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:
 1. Take all practical steps to preserve and keep intact the area where the act of violence occurred,
 2. Retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,
 3. Make direct and personal contact with NSW Police to advise it of the incident, and
 4. Comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.
- In this condition, 'staff member' 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 security activities (eg. crowd controller or bouncer) on or about the premises.
10. 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

STATEMENT OF REASONS

1. Material before the ILGA delegate

(Reference DF18/016784)

- (1) Application form lodged 20 September 2018.
- (2) Plan of Management and Security Plan for the venue have been forwarded.
- (3) Plan of the proposed licensed premises.
- (4) Signed certificate of advertising, dated 5 October 2018
- (5) An ASIC company report for the proposed licensee, FRANK SCHOONATRA PTY LTD has been forwarded 24 September 2018.
- (6) Development consent DA2018/00883, issued by City of Newcastle Council, for change of use to Karaoke bar has been forwarded.
- (7) A submission has been forwarded by Newcastle Licensing Police, 26 September 2018, which has requested conditions to be imposed on the licence if granted.
- (8) One public submission has been received with concerns relating to noise levels generated by the venue.
- (9) Email correspondence from Liquor & Gaming NSW to the applicant's agent requesting additional information in support of the application
- (10) Email correspondence in response, from the applicant's agent to Liquor & Gaming NSW.

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.

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- (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) Local and Broader Community - for the purposes of this decision, the delegate is satisfied that the relevant "local community" is the community within the City of Newcastle.

5. Analysis of Submissions and other Materials

- (1) This application is for a new karaoke venue, located at 8-10 Union St within Newcastle CBD. The premises was previously a retail shop. The proposed patron capacity is 100.
- (2) A Plan of Management and Security Plan have been provided by the applicant. This plan details RSA guidelines that will be in place at the venue.
- (3) Appropriate development consent is now in place for use of the premises as a karaoke bar.
- (4) One public submission has been forwarded which has raised concerns regarding noise levels at the venue
- (5) Newcastle Licensing Police have also forwarded a submission which has requested conditions to be imposed should the application be granted.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The premises is located in the heart of the revitalised Newcastle CBD area and will be a Japanese inspired karaoke venue, providing a welcoming and safe environment for patrons to enjoy their evening.

(2) Negative impacts

The delegate has duly considered all submissions and has imposed a number of conditions on the licence which will ensure that the licence will be exercised in the appropriate manner.

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: 14 December 2018



Wendy Yeung Wye Kong
A Coordinator (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>