

LICENSE DETAILS

Application No. APP-0013944316

Application type Small bar liquor

Trading hours *Indoors*

Monday to Saturday 12:00 PM to 12:00 AM

Sunday 12:00 PM to 10:00 PM

Outdoors

Monday to Saturday 12:00 PM to 12:00 AM

Sunday 12:00 PM to 10:00 PM

Applicant Michael KIRBY

Licence name Three Olive Trees

Premises address SHOP 1 3 STOCKTON ST, NELSON BAY, NSW 2315

Matter Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for small bar liquor licence

Legislation Section 45(1) of the *Liquor Act 2007*

Decision details 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 Department of Creative Industries, Tourism, Hospitality and Sport, has decided to grant the application for a small bar liquor licence, subject to conditions set out at Schedule 1 imposed on the licence.

Decision date 23/01/2025

Delegate details



Kieran McSherry, Coordinator - Licensing
Liquor and Gaming NSW
Delegate of the Independent Liquor & Gaming Authority

STATEMENT OF REASONS

ANALYSIS OF SUBMISSIONS AND STATUTORY REQUIREMENTS

1. Development approval is in place for a small bar at the venue.
2. A Police submission was received and considered as summarised at **submission analysis** below.
3. No public submissions were received relating to any issues with the application.
4. I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions contained in the licence document.
5. I am satisfied that the statutory advertising requirements have been met.
6. Having reviewed all the material, I am satisfied that granting this application for a small bar liquor licence will not be detrimental to the local or broader community.

MATERIALS CONSIDERED BY THE ILGA DELEGATE

Information considered

1. Application form received: 07/11/2024
2. Plan of proposed licensed area: Compliant
3. Certification of Advertising: Compliant
4. Plan of management: Compliant
5. Documents
 - a. National Police Certificate: Compliant
 - b. ID: Compliant
 - c. RSA competency card: Compliant
6. Approved Manager: n/a
7. Licensee Training: Compliant
8. Development consent: Compliant
9. Correspondence between Liquor & Gaming NSW and the applicant
10. Correspondence from Police
11. Applicant's response to submissions received
12. Applicant's consent to conditions

Analysis of stakeholder submissions

1. NSW Police:

Police did request an updated plan of management to address initial concerns which has been updated by the licensee. Police have subsequently provided their support for the application.
2. Local consent authority

Not provided
3. Public

Not provided

OVERALL SOCIAL IMPACT

1. Positive benefits

The granting of the licence will enable the licensee to operate a small bar within Nelson Bay, which will provide more choice for patrons wishing to socialise within the town.

2. Mitigation of potential negative impacts

I am satisfied that the business model, conditions imposed, and any other information contained in the application will provide that the lawful operation of the premises will not be detrimental to the local or broader community.

CONCLUSION

1. I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether to grant the application. 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. The decision was made by the delegate having reviewed the application statement, business model and risk analysis, stakeholder submissions and other relevant material.
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 will be 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 from of the Authority, all statutory objects and considerations prescribed by section 3 of the Act were considered and accordingly, I have determined to grant the liquor licence application with conditions.

RELEVANT EXTRACTS FROM THE *LIQUOR ACT 2007*

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:

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.
- d) the need to support employment and other opportunities in the—
 - i. live music industry, and
 - ii. arts, tourism, community and cultural sectors.

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 4 Division 4.1 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.
 - d) the proposed approved manager/licensee has completed the relevant tiered industry training as per legislative requirements.

Community impact test

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.

The test applying under section 48(5) relates to delegated decisions in relation to:

- a) the grant or removal of a small bar licence (where required),
- b) a packaged liquor licence (limited to telephone/internet sales),
- c) an application for extended trading hours to permit the sale of liquor after midnight in relation to a small bar (where required), an on premises relating to a restaurant that includes an application for a primary service authorisation, an on-premises licence relating to a karaoke bar, a catering service or a vessel, and an application for a producer/wholesaler licence that includes an application for a drink on premises authorisation.

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.

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. In the case of the applicant, the fee payable is the fee applying to the original application. In all other cases, the fee is \$100.

Applications for review of ILGA delegated decisions, can be made via the [Liquor and Gaming Application Noticeboard](#). The Review Application form can be accessed online via the *make a submission* button.

Further information can be obtained from the [Reviews of liquor and gaming decisions](#) page on the Liquor & Gaming website.

SCHEDULE 1

Conditions considered by the ILGA delegate

All requests to impose conditions on the licence are reviewed on a case-by-case basis and a merit-based assessment is conducted.

In considering whether a proposed condition has merit, delegates consider:

- a) whether the need for the condition has been adequately established
- b) whether the benefits of imposing the condition are likely to outweigh the costs and
- c) whether the proposed condition is proportionate to the potential harm identified.

(Nelson Bay)

Licence conditions to be imposed	Licence condition details
Retail closure period	Section 11A of the <i>Liquor Act 2007</i> 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.
Restricted trading & NYE (std)	Consumption on Premises Good Friday 12:00 noon – 10:00 PM Christmas Day 12:00 noon – 10:00 PM December 31st Normal trading
Crime scene preservation conditions	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: <ol style="list-style-type: none">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 & Gaming NSW website,3) make direct and personal contact with NSW Police to advise it of the incident, and4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.5) 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 (e.g. crowd controller or bouncer) on or about the premises.

Licence conditions to be imposed	Licence condition details
Closed-circuit television system	<p>1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:</p> <ul style="list-style-type: none"> (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times), (b) recordings must be in digital format and at a minimum of ten (10) 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: <ul style="list-style-type: none"> 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) within the premises. <p>2) The licensee must also:</p> <ul style="list-style-type: none"> (a) keep all recordings made by the CCTV system for at least 30 days, (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person 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 & Gaming NSW inspector within 24 hours of any request by the police officer or Liquor & Gaming NSW inspector to provide such recordings
Plan of management condition	The premises is to be operated at all times in accordance with the Plan of Management dated January 2025 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor & Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)

List of reasons and codes for not imposing requested conditions

- A** Already covered by the *Liquor Act 2007*.
- B** Already a condition in the development consent.
- C** Not a relevant condition for this licence type. Condition sought is generally only imposed on high-risk licence type or in exceptional circumstances. Exceptional circumstances have not been proposed by the person putting forward the condition.
- D** Already covered in the plan of management. Plan of management condition has been imposed.
- E** Not aligned with the business type and would impose disproportionate unnecessary financial and operational burden.
- F** Being part of a liquor accord is on a voluntary basis only. Exceptional circumstances have not been proposed by the person putting forward the condition.
- G** ILGA/L&GNSW condition wording has been imposed.