

Liquor & Gaming NSW

NSW Department of Customer Service

Liquor & Gaming NSW

Application number:	APP-0008169413	
Application for:	On-premises liquor licence for a vessel	
Trading hours:	Monday to Saturday Sunday	10am to 12 midnight 10am to 10pm
Applicant:	Le Bleu Sydney Pty Ltd	
Licence name:	Le Bleu Sydney	
Premises address:	Berth 19, 1-3 Phoebe Street BALMAIN NSW 2046	
Issue:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for an on-premises (vessel) liquor licence.	
Legislation:	Section 45(1) of the <i>Liquor Act</i> 2007	

ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES LIQUOR LICENCE

Le Bleu Sydney

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 Customer Services, has decided to grant the application for an on-premises liquor licence for a vessel, application number APP-0008169413.

On 31 March 2021 and after careful consideration of the application and other material, the delegate decided to approve the application, subject to conditions listed in table 2.

Decision Date: 31 March 2021



Nicola Taylor

Manager, Licensing
Liquor, Gaming and Racing NSW
Delegate of the Independent Liquor & Gaming Authority

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STATEMENT OF REASONS

Analysis of Submissions and statutory requirements

- (1) A Police Submission was received and considered as summarised at Table [4]. In relation to the submission received, while there were concerns raised about the potential impact of granting the licence, I am satisfied that these can be addressed by the conditions which I have imposed on the licence.
- (2) A current certificate of survey from RMS is in place for the use of the premises as a vessel.
- (3) Police have proposed conditions which duplicates the conditions already imposed on the licence.
- (4) I am satisfied that the applicant has provided consent to imposing 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 an on premises (vessel) liquor licence will not be detrimental to the local or broader community.

Overall social impact

1. Risk profile of the premises

The risk profile of a business varies depending on its location and business model. Generally, a lower risk business model reduces the overall risk profile of a licensed premises even in an area with elevated crime statistics. Lower risk business models can contribute to the diversification of a 'hot spot' and help to balance local amenity in an area.

The inherent risk profile of a premises can be modified to reduce its potential impact through the imposition of appropriate conditions or reduced trading hours. The delegate has considered both the following inherent risk analysis and the proposed business model in determining whether to grant the licence with or without conditions.

TABLE 1: Inherent risk factor analysis		Low	Medium	High
Licence type	On premises (vessel)		x	
Authorisations	None	x		
Trading hours	Before midnight	x		
Plan of management	Comprehensive		x	
Patron capacity	Up to 120 ppl			
	120 – 200 ppl		x	

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	More than 300 ppl			X
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Balmain and Inner West LGA's crime rates are higher than NSW considered under delegation by the Authority; with the rate of alcohol-related domestic violence in the suburb (87.2) and LGA (63.6) slightly higher than the state average (93.4). Further, both the local and broader communities are socio-economically advantaged respectively (Top 4% and Top 10% of NSW households, in terms of household income and residents in skilled occupations).

The outlet saturation in Balmain (478.3 higher) and saturation density rate for the LGA (282.9) are higher compared with the NSW average (201.6). The suburb's liquor licence clustering rate (64.3) with the LGA (71.5) is lower in comparison to the state figure (93.7).

In order to help mitigate potential risks associated with the business model, the applicant has submitted a comprehensive plan of management and has consented to all conditions proposed by Police and the case manager. I have considered all requested conditions and have imposed specific conditions which will negate any potential adverse impact on the local community.

2. Proposed business model

The vessel is a 23.9 metre catamaran and spans across 2 levels. The main deck consists of fixed seating and sanitary facilities. The upper deck consists of the wheelhouse, bar behind the wheelhouse, a galley with combi oven, freezers and storerooms, and large rear deck.

Entertainment on-board ranges from pre-recorded background music through to DJ entertainment or other live performances. However, the DJ entertainment or other live performances will remain ancillary to the cruise's dedicated event or function.

The proposed licence will enable the Applicant to provide passengers the opportunity to enjoy an alcoholic beverage whilst taking in the sights of Sydney Harbour. The applicant does not intend to hold stag/bucks, hen's, under 18, alcohol only, adult entertainment related or dance party events.

(1) Positive benefits

The granting of the licence will provide patrons with increased choice to socialise, including to enjoy a meal and/or a social drink and other entertainment consistent with the licence within the suburb of Balmain and Sydney Harbour.

(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.

In particular, the Plan of Management and licence conditions will serve to mitigate any potential negative impacts.

Conditions considered by the ILGA delegate (DF21/000658)

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

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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.

Table 2 sets out the conditions which I have decided to impose on the licence, and the Table 3 sets out conditions put forwarded for consideration which I have decided not to impose, and the reasons for that decision.

TABLE 2 - Proposed conditions imposed on the licence:	
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.	Restricted trading days and NYE Consumption on premises Good Friday Normal trading Christmas Day Normal trading December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later
3.	Licensee/manager training must be completed no later than six months from the date of grant of the liquor licence.
4.	Plan of management The premises is to be operated at all times in accordance with the Plan of Management dated February 2021 as may be varied from time to time after consultation with the NSW Police Marine Area Commander. 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, or Liquor, Gaming and Racing inspector.
5.	Crime scene preservation Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing injury to a person on the premises, the person 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, and retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by NSW Police, and 2. make direct and personal contact with the NSW Marine Area Command Supervisor or his/her delegate, and advise the Supervisor or delegate of the incident, and comply with and directions given by the Supervisor or delegate to preserve or keep intact the area where the act of violence occurred.
6.	Staff not to consume liquor The licensee must not permit staff to consume liquor on the licensed premises while engaged in the sale or supply of liquor (including during any meal or other break).
7.	No dance parties

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	<p>The licensee must not permit dance party events to be conducted on the premises. For the purpose of this condition a dance party event means an event, whether a ticketed event or otherwise, which is open to the public and where the primary activity is entertainment provided by live DJ/DJ's and/or other live performance/s for the purpose of dancing. This includes the vessel being part of a group of vessels or part of a land-based activity which involves an event that could be described as a "Dance Party" or where amplified music is the main reason for the event or gathering.</p> <p>Note: The above condition is not intended to include wedding ceremonies/receptions, corporate events, and school formals at which DJ entertainment or other live performances/s of electronic dance music is provided ancillary to the event.</p>
8.	<p>Identification of bar staff</p> <p>The licensee must ensure that all staff will wear clothing that clearly identifies them as employees of the Licensee.</p>
9.	<p>Liquor accord (Sydney Harbour)</p> <p>The licensee or their representative is to join and be an active participant in the Vessels Liquor Accord.</p>
10.	<p>CCTV condition</p> <ol style="list-style-type: none"> 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements: <ol 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 six (6) 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: <ol style="list-style-type: none"> (i) all entry and exit points on the premises, (ii) areas of the vessel adjacent to the premises, and (iii) any liquor service area. 2) The licensee must also: <ol 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 and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings. <p>If CCTV is not serviceable the licensee must notify the NSW Police Marine Area Command in writing upon becoming aware of the issue.</p>
11.	<p>Liquor must be sold/supplied with another product or service</p>

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	Liquor may only be sold or supplied for consumption on the licensed premises with, or ancillary to, another product or service that is sold, supplied or provided to people on the licensed premises.
12.	Requirement to provide food on licensed premises Food of a nature and quantity consistent with the responsible sale, supply and service of alcohol must be available whenever liquor is sold or supplied.
13.	Drinking water to be available free of charge The licensee must ensure that free drinking water is available at all times at or near the bar areas.
14.	No liquor to be removed from the vessel The licensee must ensure liquor is not removed from the licensed premises.
15.	Sydney CBD entertainment precinct The licensee must not cause or permit any passengers to board from or disembark to any part of the Sydney CBD entertainment precinct (whether from the berthed vessel or by a tender or other means) during the general late trading period (after midnight). The restriction does not apply in relation to the period between midnight and 3am on 1 January in any year (New Year's Eve).
16.	Noise condition 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.

TABLE 3 – Proposed conditions not imposed on the licence:		Proposed by:	Reason code (see table 10)
1.	<p>CCTV</p> <p>1)The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:</p> <p>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, working continuously always),</p> <p>(b) recordings must be in digital format and at a minimum of six (6) frames per second,</p>	Police	A

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	<p>(c) any recorded image must specify the time and date of the recorded image,</p> <p>(d) the system's cameras must cover the following areas:</p> <p>(i) all entry and exit points on the premises,</p> <p>(ii) areas of the vessel adjacent to the premises, and</p> <p>(iii) any liquor service area.</p> <p>2) The licensee must also:</p> <p>(a) keep all recordings made by the CCTV system for at least 30 days,</p> <p>(b) ensure that the CCTV system is always accessible, and 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</p> <p>(c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.</p> <p>3) If CCTV is not serviceable the licensee must notify the NSW Police Marine Area Command in writing upon becoming aware of the issue.</p>		
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Materials considered by the ILGA delegate

TABLE 4: Submissions analysis	
Stakeholder submissions	
1.	<p>NSW Police</p> <ul style="list-style-type: none"> Based on the proposed business model, Police do not oppose the application allowing the applicant consented to the standard conditions as per the FM2037 form. Police also propose that it would be in the applicant's and Authorities best interests to include a requirement to have CCTV working and recording. NSW Police request that it is a license granted for a standard period of 12 months. At the end of this period, Police will assess any issues or incidents relating to this vessel for your consideration.
2.	<p>Local consent authority</p> <p>There was no Council Submission received on the application.</p>
3.	<p>Public</p> <p>There were no Public Submissions received on the application.</p>

TABLE 5: Document analysis

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Details		Dated received/comment
1.	Application form	24 December 2020
2.	Plan of proposed licensed area	Compliant
3.	Certification of Advertising	Compliant
4.	Plan of management	Compliant
5.	Approved Manager Approval	Compliant
6.	Certificate of Survey	Compliant
7.	Submission from NSW Marine Area Command	
8.	Correspondence from Liquor and Gaming NSW to the applicant	
9.	Correspondence from the applicant to Liquor and Gaming NSW	

Conclusion

- (1) I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether 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. 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 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 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.

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TABLE 6: 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:

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.

TABLE 7: 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.

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TABLE 8: 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:
 - 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.

TABLE 9: 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.nsw.gov.au/Pages/public-consultation/online-application-noticeboard/online-application-noticeboard.aspx>. The Review Application form can be accessed online via the Application Number hyperlink.

Further information can be obtained from the Reviews page on the Liquor & Gaming website at: <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>

TABLE 10: Reasons for not imposing requested conditions.

A	Do not impose. Already covered by the Liquor Act.
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B	Do not impose. Already covered/already a condition in the DA.
C	Do not impose. 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 sufficiently made out by the person putting forward the condition.
D	Do not impose. This condition would be more restrictive than similar venues in Kings Cross which remains subject to the lockout laws in 2020.
E	Do not impose. Small Bars are considered low risk. 2016 Review of Small Bars found Venues with a small bar licence have a lower incidence of alcohol-related violence than venues operating as a small bar under another type of liquor licence. Smaller bars have a lower incidence of alcohol-related violence than other types of licensed venue.
F	Do not impose. Already covered in the Plan of Management. Plan of management condition has been imposed.
G	Do not impose. Not in alignment with the business type, risk associated and would impose disproportionate financial and operational burden (small business).
H	Do Not Impose. Being part of a liquor accord is not compulsory / on a voluntary basis only. Exceptional circumstances for imposing condition have been sufficiently made out by the person putting forward to the condition.
I	Do not impose – wording not consistent with ILGA/L&GNSW standard conditions – ILGA/L&GNSW standard condition wording has been imposed instead.