

## LICENSE DETAILS

Application No.	APP-0009270599
Application type	Small bar liquor licence application
Trading hours	Monday to Sunday: 12:00 PM to 02:00 AM
Applicant	Kia Siang Maxwell Lim
Licence name	Basement Seven Whisky bar
Premises address	Shop 7, 405-411 Sussex St, HAYMARKET, NSW 2000.
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 <i>Liquor Act 2007</i>
Decision details	Under delegation issued by the Independent Liquor and Gaming Authority under section 13 of the <i>Gaming and Liquor Administration Act 2007</i> , a designated Public Service employee or other Public Service employee of Liquor & Gaming NSW in the Department of Enterprise Investment and Trade, has decided to <b>refuse</b> the application for a small bar liquor licence, subject to conditions set out at Schedule 1 imposed on the licence.
Decision date	<b>19/09/2022</b>
Delegate details	



Anthony Vescio  
A/Manager - 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 to operate 12 noon-2am, seven days a week.
2. Council have forwarded a submission which raises no matters of concern.
3. Police have objected to the grant of this licence and have forwarded a number of supplementary documents relating to fit and proper concerns for both proposed licensee, proposed organisational business owner and an individual who has a financial interest in the business. (Please refer to the analysis of stakeholder submissions below)
4. Liquor and Gaming Compliance have also identified adverse holdings on both the proposed licensee, business owner and interested individuals and have also objected to the grant of this small bar licence.
5. The applicant has been provided with an opportunity to consider and comment upon the above submissions by the key stakeholders but has decided not to respond.
6. Having reviewed all the material, I am **refusing** this application as fit and proper concerns have been raised by both police and L&GNSW Compliance. These concerns have not been addressed by the applicant.

### MATERIALS CONSIDERED BY THE ILGA DELEGATE

#### Information considered

1. Application form received: 14 July 2021
2. Plan of proposed licensed area: Compliant
3. Certification of Advertising: Compliant
4. Plan of management
5. Documents
  - a. National Police Certificate: N/A
  - b. ID: N/A
  - c. RSA competency card: N/A
6. Approved Manager: Compliant
7. Licensee Training: Compliant
8. Development consent: Compliant
9. Correspondence between Liquor & Gaming NSW and the applicant
10. Correspondence from Police.
11. Correspondence from Council.
12. Applicant's lack of response to submissions received
13. Applicant's consent to conditions

#### Analysis of stakeholder submissions

##### 1. NSW Police:

Police have objected to the grant of this application on fit and proper grounds. A comprehensive report has been forwarded which details acts of violence and breaches relating to a liquor licence being exercised by the organisational licensee which lists the current proposed licensee as director. Police have also indicated that

an individual who has a financial interest in the proposed small bar application, has a history of being involved in violent incidents and associations with criminal gangs. In summary, police contend that the proposed individual licensee is not competent to exercise a small bar licence and police have strongly objected to the association of the other individual in this application.

## 2. Local consent authority

Council have confirmed development approval is in place for the venue and have no matters of concern.

## 3. Liquor and Gaming NSW-Compliance

L&GNSW Compliance has also objected to the grant of this small bar licence and calls into question the character of the proposed licensee who has been involved in a previous licence which incurred two strikes under the previous three strikes scheme. Compliance have no adverse information of the individual who has a financial interest in the proposed business however noted that police intelligence records are concerning.

## OVERALL SOCIAL IMPACT

I am not satisfied that the proposed business model, and character of the proposed licensee and associated individuals will ensure 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 **not 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 **not** 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 steps will be taken to prevent intoxication on the premises, and that those practices will remain in place.
4. 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 **refuse** the liquor licence application.

## 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.