

**NSW Department of Justice  
Liquor & Gaming NSW**

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<b>APPLICATION NO:</b>	1-5332322595
<b>APPLICATION FOR:</b>	Small Bar liquor licence
<b>TRADING HOURS:</b>	Monday to Saturday: 5:00 PM to 12:00 AM Sunday: 5:00 PM to 11:00 AM
<b>APPLICANT:</b>	Mr Benjamin James Campbell
<b>LICENCE NAME:</b>	1989 Cafe & Bar
<b>PREMISES ADDRESS:</b>	22-24 King Street NEWTOWN, NSW 2042
<b>ISSUE:</b>	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
<b>LEGISLATION:</b>	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE**

**1989 Cafe and Bar**

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 Justice, has decided to **grant** the application for a small bar liquor licence, application number 1-5332322595.

On 22 April 2017, and after careful consideration of the application and other material, the delegate decided to **grant** 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	Not permitted
Christmas Day	Not permitted
December 31st	Normal trading

Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.
3. The licence is authorised for the trading hours fixed by the Authority or such lesser hours as may be approved by the consent authority from time to time.
4. A maximum number of sixty (60) patrons are permitted in the premises at any one time.

5. There is to be no stockpiling of drinks commonly known as shots, shooters, slammers or bombs that are designed to be consumed rapidly, or any alcoholic drinks that are mixed with an energy drink. Not more than one of these types of drinks is to be served to a patron at the one time.
6. 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.

\*For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises.

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.

7. The licensee or its representative must join and be an active participant in the local liquor Accord.

#### **8. Incident Register**

The manager/licensee must ensure that all incidents involving staff members (including security personnel) are recorded in the incident register maintained on site, including incidents involving physical contact between staff and patrons, physical restraint of patrons and/or the ejection of patrons from the premises.

#### **9. Crime Scene Preservation**

The manager/licensee must ensure that immediately after the licensee or a staff member becomes aware of any incident involving an act of violence causing an injury to a person on the premises, the following is adhered to:-

- a. The manager/licensee and/or staff take all practical steps to preserve and keep intact the area where the act of violence occurred, retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police.
- b. The manager/licensee and/or staff make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident; and
- c. The manager/licensee and/or staff comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

#### **10. Surveillance Cameras**

(a) CCTV surveillance cameras shall be strategically installed, operated and maintained throughout the premises with particular coverage to:

- (i) principal entrance/s and exits;
- (ii) all areas within the premise occupied by the public (excluding toilets);

- (iii) staircases in multilevel premises; and
- (iv) the area within a 10m radius external to the public entrance(s) to the premise.

(b) Suitable and clearly visible signage shall be displayed at the principal entrance(s) to the premise and in a prominent position on each floor accessible to the public, in lettering not less than 50mm in height with the words "Closed Circuit Television in use on these premises".

(c) All CCTV recording equipment and cameras shall be of high grade digital quality capable of establishing the population and identification of patrons, offenders and incidents within the depth of field view of the cameras. In this respect each surveillance camera shall be capable of recording a minimum rate of 10 frames per second and at high resolution.

(d) CCTV recording discs or hard drive recordings shall be retained for 28 days before being re-used, destroyed or deleted. Time and date shall be auto recorded on the disc or hard drive. The CCTV recording equipment shall be capable of reproducing a CD, DVD or other appropriate digital copy of recorded footage on demand of Council or Police Officers either immediately or within 12 hours of the request being made. Copy discs must be handed to Council, Police Officer or Special Inspectors as required.

(e) All CCTV recording devices and cameras shall be checked daily to ensure the equipment is operating correctly. The Licensee shall record this daily checking activity in the security/incident register book that meets the standards required by the Licensing Police and Council. If it is discovered at any time that the equipment is not in full operating order all reasonable steps must be taken to repair the system as soon as practicable. Where the system will not be functioning in full operating order for a period of longer than 24 hours the manager/licensee is to notify the relevant Local Area Commander of the NSW Police.

(f) All CCTV recording devices and cameras shall be operated at all times when the premises are open to the public and, where premises do not operate 24 hours a day, continuously for at least 1 hour prior to opening and closing times of the premises.

(g) The CCTV recording device shall be secured within the premises and only be accessible to senior management personnel so as to maintain the integrity of the recorded footage. When the premises is operating there must be at least one staff member present at the premises who is authorised to access the CCTV system and able to immediately review recordings and produce copies.

(h) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.

11. The licensed premises must always be operated and managed in accordance with the Plan of Management dated November 2016. A copy of the Plan of Management must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or L&GNSW Authority Officers.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate

- (1) Application form lodged 1 December 2016 (DOC17/057312)
- (2) Certificate of Advertising declaration by applicant on 22 March 2017 (DOC17/063079)
- (3) Plan of Management dated November 2016 (DOC17/057754)
- (4) Notice of Determination – Development Application D/2016/1182 dated 18 October 2016 (DOC17/057318)
- (5) Submission from Newtown Local Area Command 21 December 2016 with no objections that proposes a number of conditions (DOC16/177396)
- (6) Plan at grant of proposed premises lodged with application on 1 December 2016 (DOC17/057319)
- (7) Responsible Service of Alcohol Competency Card with an expiry of 1 March 2021 lodged with application (DOC17/057315)
- (8) National Police Certificate dated 29 September 2016 lodged with the application (DOC17/057316)
- (9) Email correspondence dated 20 March 2017 (DOC17/057598), from the Authority to the applicant requesting additional information, and subsequent requests on 23 March 2017 (DOC17/063061) and 24 March 2017 (DOC17/063308)
- (10) Email correspondence from the applicant dated 22 March 2017 (DOC17/061826), 23 March 2017 (DOC17/063228) and 24 March 2017 (DOC17/063344) in response to the requests for additional information and supporting documentation.

## 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 Newtown, and the “broader community” of the City of Sydney LGA.

## **5. Analysis of Submissions and other Materials**

- (1) Having reviewed all the material, I am satisfied that this application for a small bar liquor licence is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) Development consent is in place for the proposed use of a small bar.
- (3) Newtown Local Area Command raised no objections to the grant of the licence, however recommend a number of conditions to be imposed on the licence which the applicant has consented to.
- (4) The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol, and provides measures to ensure that the operation of the small bar does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (5) I am satisfied that the statutory advertising requirements have been met.

## **6. Overall social impact**

### **(1) Positive benefits**

The proposed pop culture inspired wine small bar with maximum patron capacity of 60 persons offers a cozy and nostalgic place for patrons to enjoy quality food and beverages in a relaxed atmosphere. The unique Cafe & Bar will be a place that brings people together to share an appreciation of pop culture in a regulated environment.

The small bar poses low risk to the local or broader community and has been supported by appropriate development consent.

**(2) Negative impacts**

There have been no objections to the granting of this licence. The Plan of Management provided by the applicant and conditions imposed on the licence mitigate any risks of increased alcohol related harm that may result from the introduction of a new small bar in an area with high instances of crime.

**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: 22 April 2017

Santina Causa  
A/Coordinator 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>