



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

APPLICATION NO:	1-6752158156
APPLICATION FOR:	Small bar liquor licence
TRADING HOURS:	Monday to Sunday: 12:00 PM to 2:00 AM
APPLICANT:	Mr Russel Lee Jones
LICENCE NAME:	Blue Fig Café Bar
PREMISES ADDRESS:	Shop 1/112-116 Enmore Road NEWTOWN NSW 2042
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a small bar liquor licence.
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR
SMALL BAR LIQUOR LICENCE**

Blue Fig Café 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 Industry, has decided to grant the application for a small bar liquor licence, application number 1-6752158156.

On 04 June 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.

Liquor & Gaming

2. Consumption on premises

Good Friday	Not permitted
Christmas Day	Not permitted
December 31st	Normal trading

Note: Trading is 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. Closed-circuit television system

- 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
 - 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:
 - 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.
- 2) The licensee must also:
 - 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.

Liquor & Gaming

4. Crime scene preservation

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 & Gaming NSW website,
- 3) make direct and personal contact with the NSW Police Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
- 4) comply with any directions given by the Commander or delegate 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.

STATEMENT OF REASONS

1. Material before the ILGA delegate (DF18/006062)

The decision made by the delegate had the application and other relevant material:

- (1) Application form, lodged 10 April 2018
- (2) Application Notice
- (3) Notice of Development Application
- (4) Plan of proposed licensed premises
- (5) Copies of the applicant's National Police Certificate, dated 1 May 2018, identification, and RSA Competency Card
- (6) Certificate of Advertising Application, signed and dated 24 April 2018
- (7) Development Application No. 201700528, granted by Inner West Council on 20 March 2018, for use of the premises as a café and small bar
- (8) Premises plan stamped by Inner West Council
- (9) Plan of Management for the premises

Liquor & Gaming

- (10) ASIC Current Company Extracts for the premises owners, BETA ENTERPRIZES PTY. LTD. and ENMORE PROPERTIES PTY LTD
- (11) Submission from NSW Police Force, dated 21 May 2018
- (12) Compliance detail report for the current on-premises liquor licence for the premises LIQO660010757
- (13) Copy of the current on-premises liquor licence for the premises
- (14) Application to surrender liquor licence LIQO660010757
- (15) Email correspondence between Liquor & Gaming NSW and the applicant, dated 24 April 2018, 24 May 2018, and 30 May 2018

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.

Liquor & Gaming

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 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.

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:
 - 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.
- (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

Liquor & Gaming

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 Inner West LGA.

5. Analysis of Submissions and other Materials

- (1) This application is for a small bar liquor licence, to replace the existing on-premises liquor licence currently in place at the premises. The premises has been operating as a licensed restaurant since 25 March 2010.
- (2) The on-premises liquor licence will be surrendered concurrently with the grant of the small bar liquor licence.
- (3) Only one submission was received, from Police, who do not object to the application, subject to the imposition of certain licence conditions, which were duly considered by the applicant and the Authority delegate. Police did, however, note that in 2017, Police conducted an inspection of the premises and the applicant was breached by Police for failing to provide food that is consistent with the responsible service of alcohol.
- (4) The applicant subsequently sought development consent for a small bar, which has been granted, and has operated the premises in accordance with the conditions of the existing development consent and liquor licence since the breach.
- (5) A compliance detail report has been generated for the on-premises liquor licence, with nothing adverse recorded.
- (6) Development consent has been granted by Inner West Council for use of the premises as a small bar and café, with 42 patron capacity, and liquor trading hours between midday and midnight Monday to Saturday, and midday to 10:00 PM Sundays and public holidays. Whilst the liquor licence will be endorsed with the standard small bar liquor trading hours of midday to 2:00 AM, Monday to Sunday, the licence must only be exercised in accordance with the liquor trading hours fixed by the Authority or such lesser hours as may be approved by Council.
- (7) I am satisfied that the statutory advertising requirements have been met.

Liquor & Gaming

6. Overall social impact

(1) Positive benefits

The granting of the licence will enable the applicant to convert his established restaurant into a small bar, which will enable patrons to enjoy a drink with or without a meal in a safe and sophisticated setting.

(2) Negative impacts

A range of factors suggest that the small bar is unlikely to have any significant negative impact on the local or broader community, including, the small patron capacity, the limited trading hours, the venue's established trading history, and the applicant's experience as a licensee. Further, the Plan of Management and licence conditions will serve to mitigate any potential negative impacts.

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 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.



Department
of Industry

Liquor & Gaming

Decision Date: 04 June 2018

Wendy Yeung Wye Kong

A/Coordinator

Business 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.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.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>