



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

APPLICATION NO: APP-0004703503

APPLICATION FOR: Liquor – On-premises Liquor Licence –
Restaurant with Primary Service Authorisation

TRADING HOURS: Indoor Dining:
Monday to Thursday: 12:00 PM to 10:00 PM
Friday and Saturday: 12:00 PM to 12:00 AM
Sunday: 12:00 PM to 10:00 PM
Outdoor Dining:
Monday to Thursday: 12:00 PM to 10:00 PM
Friday and Saturday: 12:00 PM to 12:00 AM
Sunday: 12:00 PM to 10:00 PM
Primary Service Authorisation
Monday to Thursday: 12:00 PM to 10:00 PM
Friday and Saturday: 12:00 PM to 12:00 AM
Sunday: 12:00 PM to 10:00 PM

APPLICANT: Nicholas Cochrane

LICENCE NAME: **Blackheath Bar and Bistro**

PREMISES ADDRESS: Shop 1 35-41 Govetts Leap Road,
BLACKHEATH, NSW 2785 AUSTRALIA

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 restaurant liquor
licence with primary service authorisation.

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

**ILGA DELEGATED DECISION – APPLICATION FOR
ON-PREMISES LIQUOR LICENCE – RESTAURANT WITH PRIMARY SERVICE
AUTHORISATION**

Blackheath Bar and Bistro



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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 an on-premises liquor licence for a restaurant with primary service authorisation, application number APP-0004703503.

On 24 October 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. Retail closure period

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. Restricted trading & NYE (except airport, catering, other public entertainment venue, vessel - std)

Consumption on premises

Good Friday	12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
Christmas Day	12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
December 31st	Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day.

3. The premise is to operate with its principal business being that of a restaurant as defined by the Liquor Act and not as a bar, with the kitchen to be open and substantial food service to be available to patrons at all times during the approved hours of operation.

4. Crime Scene Preservation

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

- a. The 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 but the NSW Police;
- b. The licensee and/or staff make direct and personal contact with the local Area Commander or his/her delegate and advise the Commander or delegate of the incident; and
- c. The 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.

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In this condition: “staff”, in relation to subject premises, 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 activities as a crowd controller or bouncer on or about the premises.

5. Maintain “Round the clock” Incident Register
 1. The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:
 - a. Any incident involving violence or anti-social behaviour occurring on the premises;
 - b. Any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises;
 - c. Any incident that results in a person being turned out of the premises under section 77 of the Act;
 - d. Any incident that results in a patron of the premises requiring medical assistance.
 2. The licensee must, if requested to do so by a police officer or inspector:
 - a. Make any such incident register immediately available for inspection by a police officer or inspector; and
 - b. Allow a police officer or inspector to take copies of the register or to remove the register from the premises.
 3. The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

STATEMENT OF REASONS

1. Material before the ILGA delegate (DF18/015497)

The decision made by the delegate had the application, the accompanying community impact statement (CIS-Category A) and other relevant material:

- (1) Application form lodged on 04 September 2018
- (2) Plan of proposed licensed area
- (3) Certification of Advertising signed 16/10/2018
- (4) DA X/385/2018 from Blue Mountains City Council issued on 20 August, 2018 to convert existing retail shop to food and drink premise, including fitout, new sanitary facilities and signage.
- (5) Plan of management
- (6) Category A Community Impact Statement (CIS)
- (7) Police submission with conditions.
- (8) Public submission opposing application.
- (9) Correspondence from Liquor and Gaming NSW to the agent acting for the applicant.



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- (10) Responses from the agent acting for the applicant and consent to conditions imposed by Liquor and Gaming NSW

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

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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 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 town of Blackheath, and the “broader community” of Blue Mountains City Council LGA.

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5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on-premises licence for a restaurant with primary service authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) Police made a submission raising no objections to the on-premises liquor licence and primary service authorisation, and requested 9 conditions be imposed. I have considered the Police submission, the applicant's response to the proposed conditions, and all other material provided with this application.
- (3) A public submission was received from a member of the community, objecting to the application. The applicant provided a detailed response to the issues raised. I have considered the submission and the applicant's response and all other material provided with this application.
- (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. Overall social impact

(1) Positive benefits

The granting of the licence together with the PSA will result in various positive public benefits, including but not limited to, the following:

Provide a restaurant facility selling liquor with and without meals during the hours sought, to meet the needs of residents in Blackheath, the surrounding area and tourists to the town.

Ensure that the Proposed Restaurant has the flexibility to trade in the manner required to best meet the needs and demands of patrons throughout all trading hours.

Provide additional revenue streams to assist in ensuring the financial viability of the business.

(2) Negative impacts

A submission was received objecting to the application, which has been duly considered.



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.

Decision 24 October 2018

A handwritten signature in black ink, appearing to read 'W. Yeung'.

Wendy Yeung Wye Kong

A/Coordinator Business Licensing

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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.



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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>