



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

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<b>APPLICATION NO:</b>	1-6838498359
<b>APPLICATION FOR:</b>	Small bar liquor licence
<b>TRADING HOURS:</b>	Monday to Sunday: 12:00 PM to 2:00 AM
<b>APPLICANT:</b>	Mr Adrian Sykes
<b>LICENCE NAME:</b>	Cafe on Queen Binalong
<b>PREMISES ADDRESS:</b>	13 - 15 Queen Street BINALONG NSW 2584
<b>ISSUE:</b>	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
<b>LEGISLATION</b>	Section 45(1) of the <i>Liquor Act 2007</i>

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

**Café on Queen Binalong**

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 1-6838498359.

On 16 August 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.

5. The use/operation of the bar is limited to a maximum of 150 days in any 12 month period. The bar licensee shall maintain a register in relation to hours and days of bar operation.
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.

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.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate (DF18/011055)

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

- (1) Application form, lodged 12 June 2018
- (2) Application Notices, including photographs of the Site Notice on display at the premises
- (3) Email correspondence from the applicant to NSW Police Force & L&GNSW enclosing Notice of Development Application, dated 14 February 2018
- (4) Copies of the applicant's NSW National Police Certificate, dated 31 May 2018
- (5) Photograph of the physical definition of the outdoor dining area
- (6) Development Application No. 5.2018.31.1 granted by Yass Valley Council on 23 May 2018 for the addition of a small bar liquor licence to the premises
- (7) Submission from NSW Police Force, received 29 June 2018
- (8) Submission from L&GNSW Compliance, received 19 July 2018
- (9) Plan of proposed licensed premises
- (10) Certificate of Advertising Application, signed and dated 6 August 2018
- (11) Liquor House Policy for the small bar
- (12) Email correspondence between Liquor & Gaming NSW and the applicant, dated 4 July 2018, 20 July 2018, 8 August 2018, and 9 August 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,

### Liquor & Gaming

- (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 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.

## Liquor & Gaming

- (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 suburb of Binalong, and the "broader community" of Yass Valley LGA.

## 5. Analysis of Submissions and other Materials

- (1) This application is for a small bar liquor licence for Café on Queen Binalong.
- (2) The small bar will have a patron capacity of 50 persons.
- (3) Appropriate development consent for use of the premises as a small bar is in place. The development consent states that the use/operation of the bar is limited to a maximum of 150 days in any 12 month period, with the bar licensee to maintain a register in relation to hours and days of bar operation.
- (4) The development consent approves the following trading hours for the premises:

### **Trading hours outside of daylight saving:**

Sunday to Thursday: 5:00 PM to 8:30 PM

Friday and Saturday: 5:00 PM to 10:00 PM

### **Trading hours during daylight saving:**

Sunday to Thursday: 5:00 PM to 9:30 PM

Friday and Saturday: 5:00 PM to 11:00 PM

### Liquor & Gaming

- (5) Although the liquor licence will be endorsed with the full liquor trading hours permitted by legislation, the licence must only be exercised in accordance with such lesser hours as approved by Council.
- (6) The applicant has prepared a liquor House Policy for the venue.
- (7) Two submissions were received, from NSW Police Force and L&GNSW Compliance.
- (8) Police do not oppose the application, however, have concerns regarding the effect of the small bar on the quiet and good order of the local community. Police note the proposed licensed premises is surrounded by residential premises, and that the operation of the small bar and the provision of entertainment would cause disruption to the area. Police also submit that the proposed licensed premises poses road safety issues, namely the lack of footpaths in the surrounding streets which would lead to intoxicated persons walking on the roadway, causing risk of collision with other road users. Further, there is a lack of suitable off-street parking, and a lack of public transport servicing the area, which may lead to drink driving. Accordingly, Police proposed six licence conditions designed to mitigate the risks associated with the liquor licence.
- (9) L&GNSW Compliance did not raise any objections, however did suggest that consideration be given to the imposition of the conditions sought by NSW Police Force.

## 6. Overall social impact

### (1) Positive benefits

The granting of the licence will contribute to the diversity of small low risk venues in the Yass LGA, which will enable patrons to enjoy a drink with or without a meal in a safe and sophisticated setting.

### (2) Negative impacts

No objections were received in respect of this application. The small size of the proposed licensed premises, together with the limited trading days and hours imposed by the development consent suggest that the operation of the small bar is unlikely to have any significant negative impact on the local or broader community.

## 7. Conclusion

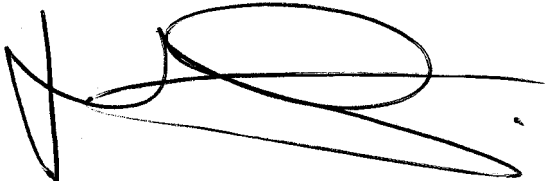
- (1) I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether or not to grant the application, as all of those required to be notified of the application were provided with the

### Liquor & Gaming

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 Date: 16 August 2018



Helen Jacques

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.





## Liquor & Gaming

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>