



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

APPLICATION NO:	1-6439887161
APPLICATION FOR:	Small bar liquor licence
TRADING HOURS:	Monday to Sunday: 12:00 PM to 2:00 AM
APPLICANT:	Patrick Moroney
LICENCE NAME:	Mrs Robertson
PREMISES ADDRESS:	Shop 8, 29 Foamcrest Avenue NEWPORT NSW 2106
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
LEGISLATION:	Section 45(1) of the <i>Liquor Act 2007</i>

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

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 1-6439887161.

On 5 February 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.
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. Crime Scene Preservation

Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing injury to a person on the premises, the person must:

1. take all practical steps to preserve and keep intact the area where the act of violence occurred,
 2. retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police,
 3. make direct and personal contact with the Local Area Commander of NSW Police 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.
4. 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

CM9 Ref: DF17/019060

- (1) Application for small bar liquor licence, dated 9 November 2017
- (2) Receipt of lodgement of Development Application, dated 8 November 2017
- (3) Email from the applicant to NSW Police, enclosing Notice of Development Application, dated 9 November 2017
- (4) Email correspondence from the applicant to Liquor & Gaming NSW and NSW Police Force advising of an error in the proposed liquor trading hours, dated 22 November 2017
- (5) Email correspondence from the applicant to Liquor & Gaming NSW and NSW Police Force enclosing copies of the Acoustic Report and Plan of Management for the premises, and confirmation of registration of the Development Application, dated 23 November 2017
- (6) Signed Application Notices

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- (7) Plan of the proposed licensed premises
- (8) Certification of Advertising Application, signed by the applicant on 9 November 2017
- (9) Acoustic Report – Proposed Wine Bar, dated 28 September 2017
- (10) ASIC Certificate of Registration of a Company - MRS. ROBERTSON PTY LTD
- (11) National Police Certificate for the applicant, dated 3 November 2017
- (12) Plan of Management for the venue, dated November 2017
- (13) Four submissions received in respect of the previously withdrawn small bar application for the premises, from Police, Council, Compliance branch of Liquor & Gaming NSW, and a local resident
- (14) Email correspondence from NSW Police Force advising that the Development Application has not been determined by Council, and that Police intends to make a submission to Council in respect of the Development Application, dated 12 December 2017
- (15) Further email correspondence from NSW Police Force enclosing a copy of the submission made to Council in respect of the Development Application, with additional conditions that Police requested to be imposed on the liquor licence, if granted, dated 14 December 2017
- (16) Development Application No. N0536/17 granted by Northern Beaches Council on 24 January 2018, for use of the premises as a small bar with hours of operation of 12:00 PM to 9:30 PM Sunday to Thursday, and 12:00 PM to 10:30 PM Friday to Saturday
- (17) Email correspondence from the applicant to NSW Police Force in respect of the proposed licence conditions, dated 29 December 2017, 29 January 2018 and 31 January 2018
- (18) Email correspondence from Liquor & Gaming NSW to the applicant requesting additional information in support of the application, dated 13 November 2017, 13 December 2017, 22 December 2017 and 30 January 2018
- (19) Email correspondence from the applicant to Liquor & Gaming NSW in response to the request for further information, dated 27 November 2017, 29 December 2017, 30 January 2018 and 1 February 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,

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- 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.

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- (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 Newport, and the "broader community" of the Northern Beaches LGA.

5. Analysis of Submissions and other Materials

- (1) This application is for a new wine bar with 20 patron capacity, located in Newport. The venue will not be providing live entertainment, nor will it be utilising any outdoor area.
- (2) The small bar will offer a menu that includes pizzas, nachos, soups, sliders, quesadillas and gourmet shared platters.
- (3) A previous small bar application for the premises was withdrawn in September 2017 due to delays in obtaining appropriate development consent (application number: 1-6254795803).
- (4) Appropriate development consent is now in place for use of the premises as a small bar. The development consent restricts trading hours to 9.30 PM Sunday to Thursday, and 10:30 PM Friday to Saturday. Although the liquor licence will be endorsed with the standard small bar trading hours permitted by the *Liquor Act 2007*, the licence must be exercised in accordance with the lesser hours prescribed by the local consent authority.
- (5) Four submissions were received in respect of the previously withdrawn application.
- (6) The Compliance branch of L&GNSW raised no objection to the application.

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- (7) Northern Beaches Council objected to the original application on the grounds that development consent had not yet been granted for the premises. A Development Application was subsequently granted by Council.
- (8) A local resident objected to the application, submitting that the location was inappropriate and citing noise concerns due to the proximity of the premises to residential dwellings.
- (9) NSW Police Force submitted that the overall impact of the granting of the licence would be detrimental on the wellbeing of the local community. Police raised concerns regarding potential noise disturbances, insubstantial food offerings, and the proximity of the premises to residential dwellings and places of worship. Police proposed a number of licence conditions intended to reduce any negative impact on the local community, which were duly considered by the applicant and Authority delegate.
- (10) It is not expected that the venue will cause noise disturbances given the small patron capacity and limited trading hours. Further, the venue will not be utilising any outdoor area, nor will it be providing live entertainment.
- (11) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The granting of the licence will contribute to the diversity of small low risk venues in the Newport, 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, and the fact that that the venue will not be providing live entertainment nor utilising any outdoor area. 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

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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: 5 February 2018



Matt Weber
Manager, Licensing (Business Licensing)
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>