

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

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| APPLICATION NO: | APP-0002207969 |
| APPLICATION FOR: | On-premises liquor licence for a restaurant with catering service |
| TRADING HOURS: | Monday to Sunday: 10AM – 10PM |
| APPLICANT: | Tsin Thoung Yannick Kee Mew |
| LICENCE NAME: | Coco Noir Bella Vista |
| PREMISES ADDRESS: | Tenancy 2, 24 Norbrik Drive, BELLA VISTA NSW 2153 |
| 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

COCO NOIR BELLA VISTA

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 an on-premise liquor licence for a restaurant with catering service, application number APP-0002207969.

On 31 March 2017, 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. Restaurant:
Consumption on premises
Good Friday 12:00 noon - 10:00 PM
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 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. Catering:
Consumption on premises
Good Friday Normal trading
Christmas Day Normal trading
December 31st Normal opening time until normal closing time or 2:00 AM on
New Year's Day, whichever is the later
4. The premises are to be operated at all times in accordance with the Plan of Management dated 16 March 2017 as may be varied from time to time after consultation with the Local Area Commander NSW Police.
5. The Licensee is to ensure that no drinks commonly referred to as shots, shooters or slammers etc are to be sold or supplied at the premises, this includes all drinks that are prepared to be consumed rapidly.
6. The licensee must ensure that all patrons must have an allocated seat when served or supplied alcohol, or while consuming alcohol.
7. The business of providing the Catering Service must be for fee, gain or reward. Functions held pursuant to the Catering Service must be pre-booked. A Catering Service booking register must be maintained.
8. Any noise emitted from the premises must not be audible within any habitable room or residence. No live bands or DJs.
9. CCTV cameras must be installed in the restaurant that cover all sales points and entrance and exit points of the restaurant. The cameras are to be of a type and in a position that will enable identification of offenders committing offences within the restaurant. The cameras are to be operating at all times whilst the restaurant is trading. All recordings to be kept for a period of 3 months in a format able to be accessed and viewed by investigating authorities.
10. When providing catering services the sale or supply of liquor must be ancillary to and in conjunction with the supply or service of food by the licence holder only – liquor is not to be provided primarily on its own for sale by this business if food is to be provided by another party.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 11 October 2016 (DOC16/127119)
- (2) Certification of Advertising Application, signed by the applicant (DOC16/170755)
- (3) Plan of the licensed premises (DOC17/055462)
- (4) Copy of the applicant's RSA Competency Card (DOC16/127124)
- (5) Copy of the applicant's identification (DOC16/170753, DOC17/055464)
- (6) National Police Certificate for the applicant, dated 3 January 2017 (DOC17/055463)
- (7) Local Consent Authority Notice, signed and dated by The Hills Shire Council on 11 October 2016, indicating that development consent is required and not in place (DOC16/127581)

- (8) Complying Development Certificate CDC-16119 for the construction of a food premises (DOC17/055461)
- (9) Final Occupation Certificate for the premises, dated 21 December 2016 (DOC17/055460)
- (10) Submission from the licensing officer, The Hills Local Command, dated 4 November 2016 advising that Police do not object to the application, and proposing four conditions to be imposed on the licence, which the applicant consented to (DOC16/151040)
- (11) Liquor Plan of Management, dated 16 March 2017 (DOC17/056241)
- (12) Email correspondence from the Authority to the applicant requesting additional information and the applicant's consent to the proposed licence conditions, dated 18 October 2016, 10 February 2017 and 16 March 2017 (DOC16/127170, DOC17/027977, DOC17/055467)
- (13) Email correspondence from the applicant to the Authority responding to the requests for additional information and consenting to the proposed licence conditions, dated 12 and 13 December 2016, 3 March 2017 and 16 March 2017 (DOC16/170750, DOC16/171698, DOC17/045790, DOC17/056240)

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 Bella Vista, and the “broader community” of the Hills Shire Council LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on-premises liquor licence is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The proposed licensed premises is a newly opened restaurant and catering service with 50 patron capacity located in Bella Vista.
- (3) A submission was received from the Hills Shire Council advising that development consent is required and not in place, however the applicant subsequently provided a copy of the Complying Development Certificate for the premises.
- (4) A submission was received from Police advising that Police have no objections to the application, and proposing four conditions to be imposed on the licence, all of which the applicant has consented to.
- (5) No other submissions were received.
- (6) The licence will be exercised in accordance with a Plan of Management that details measures to be employed to ensure the responsible service of alcohol.
- (7) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The premises is a newly constructed restaurant with 50 patron capacity located on the ground floor of the Quest Hotel in Bella Vista. Coco Noir is an existing business that operates at other locations throughout Sydney. Coco Noir offers a café menu featuring coffee, meals and desserts.

The Restaurant 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 provide a level of certainty that there are unlikely to be any negative impacts on the local 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 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: 31 March 2017



Joanne Zammit
Coordinator, Licensing (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.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>