

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

APPLICATION NO:	APP-0001928698
APPLICATION FOR:	On-premises liquor licence with Primary Service Authorisation for a restaurant
TRADING HOURS:	Monday to Saturday: 10:00 AM to 12:00 AM Sunday: 10:00 AM to 10:00 PM
APPLICANT:	Mr Joshua Beau Curtis
LICENCE NAME:	Skinnys Café Bar and Grill
PREMISES ADDRESS:	Suite G 62-72 Batt Street JAMISONTOWN NSW 2750
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
SKINNYS CAFÉ BAR AND GRILL**

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 and refuse the application for a Primary Service Authorisation, application number APP-0001928698.

On 5 July 2017, and after careful consideration of the application and other material, the delegate decided to refuse the application.

STATEMENT OF REASONS

1. Material before the ILGA delegate [RM8 Ref: DF16/015470]

- (1) Application for on-premises liquor licence with Primary Service Authorisation, lodged 10 November 2016
- (2) Email from the applicant advising of a change in the proposed licensee, dated 6 June 2017
- (3) Copies of the applicant's identification, RSA Competency Card, and National Police Certificate
- (4) Certification of Advertising Application, signed and dated on 1 May 2017

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- (5) ASIC Company Extract for SKINNY CAFE BAR AND GRILL PTY LTD
- (6) Plan of the proposed licensed premises
- (7) Development Application No. DA13/0853.01 granted by Penrith City Council on 13 September 2013 for use of the premises as a café from 6:00 AM to 12:00 AM, daily
- (8) Category A Community Impact Statement, signed and dated by the applicant on 30 June 2016
- (9) Letter from the land owner of the premises, granting the applicant permission to apply for a liquor licence (undated)
- (10) Submission from Penrith City Council, received on 25 November 2016, raising no objection to the granting of the licence
- (11) Submission from the licensing officer, Penrith Local Area Command, received on 6 December 2016, raising no objection to the application
- (12) Liquor Plan of Management for the venue
- (13) Email correspondence from Liquor & Gaming NSW to the applicant requesting further information in support of the application, dated 11 November 2016, 24 March 2017, 10 May 2017, 16 May 2017, and 5 June 2017
- (14) Email correspondence from the applicant to Liquor & Gaming NSW in response to the request for additional information, dated 14 November 2016, 2 May 2017, 10 May 2017, 11 May 2017, 6 June 2017, 16 June 2017, and 21 June 2017

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 Jamisontown, and the “broader community” of the Penrith Local Government Area.

5. Analysis of Submissions and other Materials

- (1) This application is for an on-premises liquor licence with Primary Service Authorisation for a restaurant with 50 patron capacity located in Jamisontown (Penrith)
- (2) Liquor & Gaming NSW were notified of a change in applicant from Dylan Gerardo Apicella to Joshua Beau Curtis. The applicant failed to notify NSW Police of the change in applicant.
- (3) In accordance with s. 48 of the *Liquor Act 2007*, applications for a Primary Service Authorisation must be accompanied by a Category A Community Impact Statement, which involves issuing relevant stakeholders with a Notice of Intention at least 30 days prior to lodging the liquor licence application with Liquor & Gaming NSW.
- (4) From the information provided by the applicant on the Category A Community Impact Statement and in follow up correspondence, I am not satisfied that community consultation was undertaken in accordance with the Act and Regulation.
- (5) I am satisfied that appropriate development consent permitting the proposed activity is in place.
- (6) A submission was received from Police noting that probity checks in relation to an interested party disclosed adverse findings, however Police ultimately raised no objection to the application.
- (7) A submission was received from Penrith Council, raising no objections to the application.
- (8) No other submissions have been received in respect of this application.
- (9) Having reviewed all of the material, It is evident through email correspondence and the assessment checklist that not all mandatory documents have not been provided, despite numerous requests over the past few months.

Conclusion

- (1) I am satisfied that procedural fairness was afforded to the applicant 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 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 refuse the licence application on the basis that they did not respond to emails in its overdue position, CIS was not completed correctly in which they were given the opportunity to fix but did not complete. Further, a change of licensee was not notified to police by the applicant, and the word 'bar' was not removed in the proposed licensed name.

Decision Date: 5 July 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>