

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

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<b>APPLICATION NO:</b>	1-5607508306
<b>APPLICATION FOR:</b>	Small bar liquor licence
<b>TRADING HOURS:</b>	Monday to Saturday: 12:00 PM to 12:00 AM Sunday: 12:00 PM to 10:00 PM
<b>APPLICANT:</b>	Rosekelly Property Holdings Pty Ltd
<b>LICENCE NAME:</b>	Big Poppys
<b>PREMISES ADDRESS:</b>	Level 1, 6/23 Watt Street NEWCASTLE NSW 2300
<b>ISSUE:</b>	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
<b>LEGISLATION:</b>	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE  
BIG POPPYS**

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 1-5607508306.

On 7 August 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. 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. CCTV

- 1) The licensee must maintain a closed-circuit television 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 are required to close (or, in the case of premises that are not required to cease trading, continuously at all times),
  - b. recordings must be in digital format and at a minimum of 15 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,
    - iii. all publicly accessible areas (other than toilets) on the premises.
- 2) The licensee must also:
  - a. keep all recordings made by the CCTV system for at least 30 days, and
  - b. ensure that the system is accessible by at least one member of staff at all times it is in operation, and
  - c. provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings.
  - d. Prior to the commencement of trade each day of the CCTV system shall be checked to ensure the equipment is in full operating order. If during the check or at any other time, it is discovered that the equipment is not in full operating order the licensee or his delegate is to notify the Local Area Commander or his delegate within two hours. All reasonable steps must be undertaken to repair the system as soon as practicable.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate

RM8 Ref: DF17/004894

- (1) Application for small bar liquor licence, dated 22 February 2017
- (2) Signed copies of the Application Notices and Notices of Development Application
- (3) Signed Certification of Advertising Application
- (4) Development Application No. DA2015/10296, granted by the City of Newcastle on 7 July 2016, approving the use of the premises as a gym, small bar, and café
- (5) Plan of the proposed licensed premises
- (6) ASIC Current Organisation Extract for the applicant, business owner and premises owner, Rosekelly Property Holdings Pty Ltd
- (7) ASIC Organisation Name Search extract for Big Poppy Pty Ltd
- (8) Liquor Plan of Management for the venue, dated August 2017
- (9) Sample food and drink menu for the venue
- (10) Submission from Newcastle City Licensing Police, received on 4 April 2017, which raised no objection to the application, however, proposed seven licence conditions
- (11) Submission from the Compliance branch of Liquor & Gaming NSW, received on 7 June 2017, which raised no objection to the application
- (12) Email correspondence from Liquor & Gaming NSW to the applicant, requesting further information in support of the application, dated 6 June 2017
- (13) Email correspondence from the applicant to Liquor & Gaming NSW, in response to the request for further information, dated 14 June 2017, 1 August 2017 and 7 August 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 Newcastle, and the “broader community” of the Newcastle LGA.

## 5. Analysis of Submissions and other Materials

- (1) This application is for a new small bar located in Newcastle, which is part of a gym that has an onsite café/restaurant and small bar.
- (2) The venue is being developed by the premises owner, who intends to select an appropriate person to conduct the business and manage the licence. The will licence will not be exercised until transferred to a suitably qualified person.
- (3) I am satisfied that appropriate development consent is in place for the proposed use of the premises.
- (4) Newcastle Licensing Police made a submission raising no objections to the application, however did propose a number of licence conditions, all of which have been duly considered by the applicant and Authority.
- (5) A submission was received from the Compliance branch of Liquor & Gaming NSW raising no objection to the application.
- (6) No other submissions were received in respect of this application.
- (7) I am satisfied that the statutory advertising requirements have been met.
- (8) Having reviewed all the material, I am satisfied that this application for a small bar liquor licence is unlikely to result in any significant increase in alcohol-related harms in the local community.

## 6. Overall social impact

### (1) Positive benefits

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

**(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 major 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: 7 August 2017



Matt Weber  
A/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>