



Ms Fiona Myatt  
AMW Lawyers

By email to: [REDACTED]

4 April 2023

Dear Ms Myatt

<b>Application No.</b>	APP-0009210679
<b>Applicant</b>	Sarah Emily Tucker
<b>Application for</b>	Small bar licence
<b>Licence name</b>	Botany Bay Bar and Dining
<b>Trading hours</b>	<u>Consumption on premises</u> Monday to Saturday 10:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM <u>Take-away sales</u> (house-made cocktails in sealed containers only) Monday to Saturday 10:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM
<b>Premises</b>	1807 Botany Rd, Banksmeadow NSW 2019
<b>Legislation</b>	Sections 3, 11A, 12, 20A, 20B, 20C, 40, 44, 45 and 48 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority  
Application for a small bar licence – Botany Bay Bar and Dining**

The Independent Liquor & Gaming Authority considered the Application above, and decided on 18 May 2022 to **approve** the application under section 45 of the *Liquor Act 2007*, subject to imposing conditions as set out in Schedule 1.

**Trading on a Sunday that falls on 24 December**

In the case of any Sunday that falls on 24 December, the 6-hour closure period overrides the statutory provision that would otherwise allow the licence to trade from 8:00 am. In accordance with the 6-hour closure period for the current licence, the Premises must not trade earlier than 10:00 AM.

**Statement of reasons**

A statement of reasons for this decision is attached at the end of this letter.

If you have any questions, please contact the case manager, Wendy Yeung, at [wendy.yeung.wye.kong@liquorandgaming.nsw.gov.au](mailto:wendy.yeung.wye.kong@liquorandgaming.nsw.gov.au).

Yours faithfully

Murray Smith  
**Deputy Chairperson**  
For and on behalf of the **Independent Liquor & Gaming Authority**

# STATEMENT OF REASONS

## DECISION

1. On 22 September 2021, Sarah Emily Tucker (“Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor & Gaming Authority (“Authority”), an application (“Application”) for a Small Bar licence (“Licence”) for the premises at 1807 Botany Rd, Banksmeadow, NSW 2019 (“Premises”).
2. The Authority considered the Application at its meeting on 18 May 2022 and decided to grant the Licence under section 45 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the Act and the Liquor Regulation 2018.
4. A preliminary notification of this decision was sent to the Applicant on 23 June 2022, together with the licence document for the Premises.

## MATERIAL CONSIDERED BY THE AUTHORITY

5. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
6. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
7. In accordance with its *Guideline 6*, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
8. A list of the material considered by the Authority is set out in Schedule 2.

## LEGISLATIVE FRAMEWORK

9. The Authority has considered the application in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018:
  - a) Section 3: Statutory objects of the Act and relevant considerations.
  - b) Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.
  - c) Section 20A: Authorisation conferred by small bar licence.
  - d) Section 20B: Trading hours for small bars.
  - e) Section 20C: Small bar licences – miscellaneous conditions.
  - f) Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
  - g) Section 44: Submissions to Authority in relation to licence applications.
  - h) Section 45: Criteria for granting a liquor licence.
  - i) Section 48: Requirements in respect of a CIS, including a requirement that the Authority must not approve the application unless it is satisfied, having regard to the CIS and other available information, that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community.
10. An extract of these sections is set out in Schedule 3.
11. The Authority has also had regard to its Guideline 6 in considering the overall social impact of approving the application pursuant to section 48 of the Act.

## KEY FINDINGS

12. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

### Validity, procedural and trading hour requirements

13. The Authority is satisfied on the material before it that:

- a) the Application has been validly made and meets the procedural and trading period requirements under sections 11A, 12, and 40 of the Act, and
- b) if the Licence were to be granted, liquor would be sold in accordance with the authorisation conferred by the Licence as required by section 20A of the Act.

14. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements.

### Fit and proper person, responsible service of alcohol, and development consent requirements

15. Pursuant to section 45 of the Act, the Authority is also satisfied that:

- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- b) practices would be in place from the commencement of licensed trading at the Premises to facilitate the responsible serving of alcohol, having regard to the plan of management documentation for the Premises and the conditions to be imposed on the licence, and
- c) the requisite development consent is in force, based on the modification of DA no 02/399 in respect of the Premises, issued by Bayside Council on 19 December 2002.

## Community impact

### Local and broader communities

16. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Banksmeadow, and the relevant "broader community" comprises the Local Government Area ("LGA") of Bayside LGA.

### Licence density

17. The Authority notes that, compared to the NSW state average:

- a) Banksmeadow and Bayside LGA have a **lower** saturation of small bar licences
- b) Banksmeadow and Bayside LGA have a **lower** clustering of small bar licences.

### Crime data

18. The relevant BOCSAR data indicates that, in the year to December 2021:

- a) the Premises wasn't located within hotspots for incidents of alcohol-related assault, domestic and non-domestic assault, or malicious damage to property.
- b) the Premises was located in close proximity to hotspots for incidents of alcohol-related domestic assault and malicious damage to property, in areas that are likely to be serviced by the Licence
- c) the Bayside LGA recorded **lower** rates of alcohol related domestic and non-domestic assault, alcohol-related offensive conduct and malicious damage to property, compared to the NSW state average.

### ***Alcohol-related health data***

19. The most recent HealthStats NSW data available at the time of the Authority's decision indicates that Bayside LGA recorded a **lower** than average level of alcohol-attributable deaths for the period 2017-2019, and a **lower** than average level of alcohol-attributable hospitalisations for the period 2017-2018.

### ***Business model***

20. The Authority notes that the proposed business model involves operating a small bar licence on the ground floor only of the premises. This includes providing live entertainment, DJ's and background music.

### ***Purported benefits***

21. The Authority has had regard to the Applicant's purported benefits, including that:

- a) a selection of food will be provided from a full menu until 10:00 PM, then a select menu will apply. This will allow patrons the convenience of getting a meal until late in the evening with the venue closing shortly after.
- b) the venue is located within an industrial area and had a dormant hotel licence, trading as Botany Bay Hotel (LIQH400100647) which was moved to another premises in September 2021. The location of the venue allows the Applicant to operate with minimal disturbance to the local residents in the area.

22. The Authority considers the proposed benefits above to be limited by the absence of any substantive evidence of community support for the Application, noting that there was also no objection from any members of the community.

### ***Stakeholder submissions***

23. The Authority has had regard to the submissions from:

- a) **NSW Police Force**, which notes that the lack of need for the liquor licence due to the location, floor plan, size, isolation and lack of security for the premises. NSW Police submit the licence would be situated within an industrial area and this would give rise to potential vulnerability of patrons and staff members. NSW Police further submit that the Plan of Management does not provide details of any steps that would need to be taken in relation to a person's safety or the safety of staff members, should a patron be excluded from the venue. NSW Police also noted concerns that the first floor of the venue, which contains living quarters would potentially be used as a brothel.
- b) **L&GNSW Compliance**, which notes that there were no adverse findings in relation to the granting of the Application however noted that an updated Plan of Management would be needed to align with the new business model. L&GNSW noted that the Applicant would need to update the premises plan to include clear labels that relate to the new business and removes all reference to previous business operations.
- c) **Bayside Council**, which notes a conflict with condition 38 in DA 02/339 and the Premises plan of management.
- d) **South Eastern Sydney Local Health District**, which notes certain lower crime statistics and that alcohol related deaths and hospitalisations in the Bayside LGA are lower than the NSW average.
- e) **Transport for NSW**, which recommends participation in the local liquor accord and requests that education material on drink driving prevention and alternative transport is made available to patrons.

24. The Authority has also had regard to the Applicant's submission in response:

- a) no entertainment will be provided at the venue as per the DA.
- b) the first floor accommodation area will be used as either a rental space or for a live-in onsite manager.

### ***Findings of concern***

25. The Authority notes that there may be a risk that if the Licence were to be granted, liquor sold at the Premises will, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues in the local and broader communities, and in other areas of the State.

### ***Mitigating factors***

26. The Authority is nevertheless satisfied that the risk is sufficiently mitigated by the following:

- a) outlet saturation and outlet clustering of packaged liquor licences and licences authorised to sell packaged liquor in the local and broader communities is significantly lower compared to the NSW state average.
- b) the venue is located within an industrial area with very low residential population.
- c) the venue is not located within any alcohol related crime hotspots and there are relatively low crime statistics for the suburb.
- d) no objections were received from local council, NSW Health or the public.
- e) harm minimisation measures set out in the plan of management and licence conditions as set out in Schedule 1

## **CONCLUSION**

27. Having considered the positive and negative social impacts that are likely to flow from granting the Licence, the Authority is satisfied that the overall social impact of granting the Licence would not be detrimental to the well-being of the local and broader communities.

28. The Authority is also satisfied that the other legislative criteria for the granting of the Application have been met.

29. Accordingly, the Authority has decided to grant the Licence under section 45 of the Act.

Yours faithfully



Murray Smith  
Deputy Chairperson  
For and on behalf of the **Independent Liquor & Gaming Authority**

**Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the [Liquor & Gaming NSW website](#) and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The [NCAT website](#).

## **Schedule 1 – Licence conditions to be imposed Botany Bay Bar and Dining, Banksmeadow**

### **1. 6-hour closure**

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**

Restricted trading & NYE (std)

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 31<sup>st</sup> 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. Social impact**

The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.

### **4. Plan of management**

The premises is to be operated at all times in accordance with the Plan of Management dated **February 2022** as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

### **5. Liquor Accord**

The licensee or its representative must join and be an active participant in the local liquor accord.

### **6. CCTV**

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 ten (10) 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.

## **7. 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 and Gaming NSW website,
- 3) make direct and personal contact with NSW Police to advise it of the incident, and
- 4) comply with any directions given by NSW Police 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.

## **8. Incident register**

- 1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:
  - (a) any incident involving violence or anti-social behaviour occurring on the premises,
  - (b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
  - (c) any incident that results in a person being turned out of the premises under section 77 of the Liquor Act 2007,
  - (d) any incident that results in a patron of the premises requiring medical assistance.
- 2) The licensee must, if requested to do so by a police officer or Liquor & Gaming NSW inspector:
  - (a) make any such incident register immediately available for inspection by a police officer or Liquor & Gaming NSW inspector, and
  - (b) allow a police officer or Liquor & Gaming NSW inspector to take copies of the register or to remove the register from the premises.
- 3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

## **9. Security**

A minimum of one (1) licensed security guard must be employed at the premises from 06:00 PM until close daily.

## **10. No rapid consumption drinks**

The following drinks must not be sold or supplied on the licensed premises after 09:00 PM:

Any drinks designed to be consumed rapidly (commonly referred to as a "shot" or a "shooter").

## **11. Cessation of service**

Sale and service of liquor is to cease 15 minutes prior to closing.

## **12. No entry to persons displaying gang insignia**

- 1) The licensee must not permit any person to enter the premises, or to remain on the premises, if the person is wearing or carrying any clothing, jewellery or accessory displaying:
  - (a) the name of any of the following motorcycle-related and similar organisations: Bandidos, Black Uhlans, Coffin Cheaters, Comanchero, Finks, Fourth Reich, Gladiators, Gypsy Jokers, Highway 61, Life & Death, Lone Wolf, Mobshitters, Nomads, Odins Warriors, Outcasts, Outlaws, Phoenix, Rebels, Hells Angels, Scorpions, Mongols, Notorious, Muslim Brotherhood Movement; or any



"declared organisation" within the meaning of the *Crimes (Criminal Organisation Control) Act 2009*;

- (b) the colours, club patch, insignia or logo of any such organisation; or
  - (c) the "1%" or "1%er" symbol, or
  - (d) any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, any of the organisations specified in point 1(a).
- 2) Any incident where a person is refused entry or removed from the premises in relation to this condition must be recorded in the incident register
  - 3) The Licensee must ensure that the "No Gang Colours" sign as available from Liquor and Gaming is displayed prominently at all entrances to the licensed premises.

## Schedule 2 – Material considered by the Authority Botany Bay Bar and Dining

### Application material

1. Floor plan for the Premises, dated April 2002, indicating the proposed licensed area apply.
2. Completed application dated 20 September 2021.
3. Completed Category B Community Impact Statement dated 21 September 2021.
4. Plan of Management documents for the Premises, titled Plan of Management for Operation of Botany Bay Bar and Dining and dated 21 September 2021.
5. Completed certification of advertising dated 3 November 2021.
6. ASIC business records in relation to the Applicant.

### Development consent

7. Notice of determination issued by Bayside Council on 19 December 2002, approving the modification of development consent DA 02/399 for the Premises.

### Liquor & Gaming LiveData Report

8. L&GNSW Liquor & Gaming LiveData Report for the suburb of Banksmeadow, generated on **27 April 2022**, which sets out that:

#### Outlet diversification

- a. There are **three** authorised liquor licenses in Banksmeadow. Of these, **one** hotel licence is authorised to sell packaged liquor.

#### Offence data (annual rate per 100,000 residents)

In the year to December 2021:

- b. alcohol-related domestic assault in the Bayside LGA (**85.4**) is lower compared to NSW (**111.9**)
- c. alcohol-related non-domestic assault in the Bayside LGA (**32.5**) is lower compared to NSW (**84.8**)
- d. alcohol-related offensive conduct in the Bayside LGA (**7.2**) is lower compared to NSW (**22.4**)
- e. malicious damage to property in the Bayside LGA (**410**) is lower compared to NSW (**533.1**)

#### Alcohol-attributable hospitalisations & deaths (per 100,000 residents)

- f. In the period 2017/2018 the alcohol-attributable death rate in the Bayside LGA (**16.3**) was lower compared to the average across all of NSW (**19.7**)
- g. In the period 2017/2018-2018/2019 the alcohol-attributable hospitalisation rate in the Bayside LGA (**456.1**) was lower compared to the NSW average (**513.2**).

### Stakeholder submissions

9. Submission from Transport for NSW, dated 26 August 2021.
10. Submission from NSW Police, dated 20 October 2021.
11. Submission from South Eastern Sydney Local Health, dated 21 October 2021.
12. Submission from Bayside Council, dated 31 January 2022.
13. Submission from L&GNSW Compliance, dates 7 February 2022.

## **Other relevant information**

14. Correspondence between L&GNSW staff and the Applicant between 21 October 2021 and 22 April 2022 in relation to the assessment of the Application.

## Schedule 3 – Relevant extracts from the *Liquor Act 2007*

### Botany Bay Bar and Dining

#### 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 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.
  - (d) the need to support employment and other opportunities in the—
    - (i) live music industry, and
    - (ii) arts, tourism, community and cultural sectors.

#### 11A Special licence condition—6-hour closure period for licensed premises

- (1) This section applies in relation to:
  - (a) any licence granted on or after 30 October 2008, and
  - (b) any licence in force before that date, but only if an extended trading authorisation granted on or after that date is in force in relation to the licensed premises concerned.
- (2) A licence to which this section applies is subject to the condition that liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours (as determined in accordance with this section) during each consecutive period of 24 hours (the 6-hour closure period).
- (3) Except as provided by subsection (4), the 6-hour closure period for any particular licensed premises is the period that is approved for the time being by the Authority.
- (4) In the case of a licence:
  - (a) granted on or after 30 October 2008 but before the date on which this section (as inserted by the Liquor Legislation Amendment Act 2008) commenced, or
  - (b) granted by the Local Court (as provided by clause 25 of Schedule 1) at any time after the date on which this section commenced,the 6-hour closure period for the licensed premises is, subject to subsection (5), the period from 4 am to 10 am.
- (5) The Authority may at any time, on application by the licensee or by the Secretary or the Commissioner of Police, or on its own initiative, approve of licensed premises having a different 6-hour closure period than:
  - (a) the period as last approved by the Authority, or
  - (b) the period specified in subsection (4).
- (6) Any such application by the licensee must be accompanied by the fee prescribed by the regulations.
- (7) To avoid doubt, during the 6-hour closure period for any licensed premises:
  - (a) the licensed premises are not authorised to stay open for the retail sale of liquor on the premises, and
  - (b) the licensee is not authorised to sell liquor by retail for consumption away from the licensed premises.
- (8) This section has effect despite any other provision of this Act (in particular, those provisions relating to the standard trading period for licensed premises).
- (9) This section does not, however, apply to the sale or supply of liquor to a resident of licensed premises if the liquor is sold or supplied for consumption in the room in which the resident is residing or staying.
- (10) The regulations may also create exceptions to this section.

#### 12 Standard trading period for certain licensed premises

- (1) For the purposes of this Act, the **standard trading period** means—
  - (a) for any day of the week other than a Sunday—
    - (i) the period from 5 am to midnight, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed, and
  - (b) for a Sunday—

- (i) the period from 10 am to 10 pm, or
  - (ii) if the regulations prescribe a shorter period—the period as so prescribed.
- (1A) Despite subsection (1), the **standard trading period** for a small bar is the period from noon to midnight on any day of the week.

**Note—**

Small bars are subject to the 6-hour closure period under section 11A.

- (1B) Despite subsection (1)(b), the **standard trading period** for premises to which this subsection applies ends at midnight on a Sunday that falls on 24 or 31 December.
- (1C) Subsection (1B) applies to the following premises or part of premises—
- (a) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is the sale or supply of liquor for consumption away from the licensed premises—the licensed premises,
  - (b) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is not the sale or supply of liquor for consumption away from the licensed premises—the part of the premises that is a liquor sales area (within the meaning of section 30) of the licensed premises,
  - (c) if a hotel licence, club licence, on-premises licence or producer/wholesaler licence authorises the licensee to sell liquor for consumption away from the licensed premises—any part of the licensed premises to the extent that it is used for that purpose.
- (2) Any regulation that prescribes a shorter period for the purposes of subsection (1) may—
- (a) apply to a specified class of licensed premises, and
  - (b) apply in relation to a specified day or days, and
  - (c) in the case of licensed premises on which liquor may be sold or supplied for consumption on the premises as well as for consumption away from the premises—specify different periods for the sale or supply of liquor for consumption on the premises and for the sale or supply of liquor for consumption away from the premises.
- (3) Without limiting subsection (2)(a), a class of licensed premises may be specified by reference to licensed premises that are located in a particular area (however described).

**20A Authorisation conferred by small bar licence**

- (1) A small bar licence authorises the licensee to sell liquor by retail on the licensed premises—
- (a) for consumption on the premises, or
  - (b) as house-made cocktails in sealed containers for consumption away from the premises.
- (2) In this section—
- house-made cocktails**, in relation to licensed premises—
- (a) means alcoholic beverages that are mixed on the licensed premises, but
  - (b) does not include cocktails that are pre-mixed away from the licensed premises for the licensee to sell by retail.

**Note—**Gaming machines in small bars are prohibited under the [Unlawful Gambling Act 1998](#).

**20B Trading hours for small bars**

- (1) The times when liquor may be sold under the authority conferred by a small bar licence are during the standard trading period or at such other times as may be authorised by an extended trading authorisation.
- (2) An extended trading authorisation under section 49A is, on the granting of the licence, taken to be in force authorising the sale or supply of liquor on the licensed premises between midnight and 2 am on any day of the week.

**Note—**

Small bars may apply for longer trading periods under section 49A.

- (3) Despite subsection (1), the times when liquor may be sold for consumption on the licensed premises for a small bar on a restricted trading day are—
- (a) between midnight and 5 am, if authorised by an extended trading authorisation, and
  - (b) between noon and 10 pm.

**20C Small bar licence—miscellaneous conditions**

- (1) **Maximum number of patrons** Liquor must not be sold or supplied in a small bar if the number of patrons on the premises exceeds 60 or such greater number as may be prescribed by the regulations.
- (2) **Small bars must be open to general public** The business carried out under a small bar licence must not be, or include, a business that is limited to the sale or supply of liquor only—
- (a) to persons who have been invited to use or attend the small bar, or
  - (b) to a particular class, or particular classes, of persons using or attending the small bar.
- (2A) To avoid doubt, subsection (2)—

- (a) does not prevent a small bar being closed to the general public because it has been booked for a private function including, for example, a wedding or party, but
  - (b) does not allow it to be closed to the general public for use as a members-only premises or club, or for other exclusive use on a recurrent basis.
- (3) Subsection (2) is subject to such exceptions as may be approved by the Authority on a temporary basis in relation to any particular small bar or to such other exceptions as may be prescribed by the regulations. Also, subsection (2) does not apply to the extent that is necessary to comply with any other provision of this Act or with any other law.
- (4) **Food must be made available** Liquor may only be sold or supplied in a small bar if food of a nature and quantity consistent with the responsible sale, supply and service of alcohol is made available whenever liquor is sold or supplied on the premises. If any requirements are prescribed by the regulations in relation to the nature of any such food, those requirements must be complied with.

#### 40 Licence applications

- (1) Licence applications are to be made to the Authority.
- (2) An application for a licence may be made by:
- (a) an individual, or
  - (b) a corporation, or
  - (c) in the case of a club licence—a club (or a person on behalf of a club) that meets the requirements specified in section 10 (1) of the Registered Clubs Act 1976.
- (3) An application for a licence may not be made by:
- (a) an individual who is under the age of 18 years, or
  - (b) a person who is disqualified from holding a licence or who holds a suspended licence, or
  - (c) an individual who is a controlled member of a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012.

**Note.** Controlled members are prohibited from applying for licences—see section 27 of the Crimes (Criminal Organisations Control) Act 2012.

- (4) An application for a licence must:
- (a) be in the form and manner approved by the Authority, and
  - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
  - (c) be advertised in accordance with the regulations, and
  - (d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.

**Note.** See also section 48 which requires a community impact statement to be provided with certain licence applications.

- (5) If, before an application for a licence is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including any information provided in accordance with this subsection), the applicant must immediately notify the Authority of the particulars of the change.

#### 44 Submissions to Authority in relation to licence applications

- (1) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application for a licence.
- (2) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to grant the licence.

#### 45 Decision of Authority in relation to licence applications

- (1) The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (2) The Authority may, in such circumstances as the Authority considers appropriate, treat an application for a licence as having been withdrawn.
- (3) The Authority must not grant a licence unless the Authority is satisfied that:
- (a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and
  - (b) practices will be in place at the licensed premises 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.

**Note.** Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.

- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.
- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
  - (a) that the person:
    - (i) is a member of, or
    - (ii) is a close associate of, or
    - (iii) regularly associates with one or more members of, a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and
  - (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.
- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
  - (a) is of good repute, having regard to character, honesty and integrity, and
  - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.
- (7) In deciding whether or not to grant a licence, the Authority must consider whether, if the licence were granted, it would provide employment in, or other opportunities for, any of the following—
  - (a) the live music industry,
  - (b) the arts sector,
  - (c) the tourism sector,
  - (d) the community or cultural sector.

#### **48 Community impact**

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
  - (a) the views of the local community, and
  - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
  - (c) whether the granting of the application would provide employment in, or other opportunities for, any of the following—
    - (i) the live music industry,
    - (ii) the arts sector,
    - (iii) the tourism sector,
    - (iv) community or cultural sector.
- (2) In this section:

**relevant application** means any of the following:

  - (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
  - (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),
  - (e) an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),
  - (f) any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,
  - (g) any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,

but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).
- (3) A relevant application must be accompanied by a community impact statement.
- (3A) However, a small bar application is not required to be accompanied by a community impact statement if:

- (a) development consent is required under the Environmental Planning and Assessment Act 1979 to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
  - (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.
- (3B) For the purposes of subsection (3A), a **small bar application** means any of the following:
- (a) an application for a small bar licence,
  - (b) an application for approval to remove a small bar licence to other premises,
  - (c) an application for an extended trading authorisation for a small bar,
  - (d) an application to vary an extended trading authorisation for a small bar.
- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:
- (a) the application relates to the same premises as the premises to which a general bar licence relates, and
  - (b) development consent has been obtained under the Environmental Planning and Assessment Act 1979 to sell liquor during the times to which the application relates and those times are specified in the development consent.
- (3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:
- (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
  - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the Registered Clubs Act 1976.
- (4) The community impact statement must:
- (a) be prepared in accordance with the regulations and any requirements of the Authority, and
  - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
- (a) the community impact statement provided with the application, and
  - (a1) any published cumulative impact assessment that applies to the area in which the premises the subject of the application are located, and
  - (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),
- that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.
- (6) The regulations may make provision for or with respect to the following:
- (a) the requirements that must be satisfied in relation to the preparation of a community impact statement (including consultation requirements),
  - (b) the matters to be addressed by a community impact statement,
  - (c) the information to be provided in a community impact statement,
  - (d) the criteria for determining the local and broader community for the purposes of a relevant application,
  - (e) any other matter relating to the preparation and content of a community impact statement.
- (7) Without limiting subsection (6), the regulations may provide that the matters to be addressed by a community impact statement are, in the case of an application for an extended trading authorisation in relation to a hotel licence, to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.