



## Customer Service

### Liquor & Gaming NSW

---

|                          |  |
|--------------------------|--|
| <b>APPLICATION NO:</b>   | <b>APP-0005862372</b>  |
| <b>APPLICATION FOR:</b>  | Liquor – on premises-restaurant , catering classes with a primary service authorisation, sale on other premises authorisation  |
| <b>TRADING HOURS:</b>    | <b>Restaurant - Indoor and Outdoor</b><br>Monday to Sunday: 10:00 AM to 10.00 AM<br><b>Primary Service Authorisation - Indoor and Outdoor</b><br>Monday to Sunday: 10:00 AM to 10.00 AM<br><b>Catering</b><br>Monday to Sunday: 10:00 AM to 10.00 AM<br><b>Sale on Other Premises Authorisation</b><br>Monday-Saturday: 10:00 AM to 12:00 AM<br>Sunday: 10:00 AM to 10:00 PM |
| <b>APPLICANT:</b>        | DEVILS ELBOW BREWING COMPANY PTY LTD   |
| <b>LICENCE NAME:</b>     | Devil's Elbow Brewery  |
| <b>PREMISES ADDRESS:</b> | 10 Commercial Avenue, DUBBO, NSW 2830  |
| <b>ISSUE:</b>            | Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for an on premises liquor licence   |
| <b>LEGISLATION</b>       | Section 45(1) of the <i>Liquor Act 2007</i>  |

### ILGA DELEGATED DECISION – APPLICATION FOR

#### On premises liquor licence

#### Devil's Elbow Brewery

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 Customer Service, has decided to grant the application for an on premises restaurant and catering



## Liquor & Gaming

service classes with a primary services authorisation and sale on other premises authorisation, application number APP-0005862372

On 01 July 2019 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 04:00 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. Restricted trading & NYE (except airport, catering, other public entertainment venue, vessel - std)  
Consumption on premises  
Good Friday                      12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)  
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 at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day.
3. Restricted trading & NYE (airport,catering - std)  
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. No drinks designed to be consumed rapidly, for example 'shots', 'shooters', 'slammers', 'bombs' are to be sold or supplied at the premises.
5. The licensee must not exercise the sale on other premises authorisation at locations/venues where there is already a current and valid liquor licence in force.
6. **CCTV condition**  
The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

## Liquor & Gaming

- (a) the system must record continuously at all times), from opening time and remain recording whist ever there are people on the premises
- (b) recordings must be in digital format and at a minimum of six (6) 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) car park immediately outside the premises

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.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate (DF19/008602)

The decision made by the delegate having assessed the application and other relevant material:

- (1) Application form lodged on 29 May 2019.
- (2) Community Impact Statement Category A.
- (3) Plan of proposed licensed area.
- (4) Certification of Advertising dated 5 June 2019.
- (5) Development Consent D-2018-56 for a restaurant/café and light industry( microbrewery) issued 5 March 2018 by Dubbo Regional Council.
- (6) Plan of management forwarded in support of this application.
- (7) ASIC report for the proposed organisational licensee, DEVILS ELBOW BREWING COMPANY PTY LTD
- (8) Copy of the lease agreement for the venue.

## Liquor & Gaming

- (9) Correspondence from Liquor and Gaming NSW to the applicant' agent, requesting additional information in addition to consent to conditions being imposed on the licence
- (10) Correspondence from the applicant's agent in response and consent to imposed conditions.
- (11) Evidence of completion of the relevant tiered industry training

### **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.

## Liquor & Gaming

### 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 4 Division 4.1 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.
  - d. the proposed approved manager/licensee has completed the relevant tiered industry training as per legislative requirements.

### 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:
  - a. the grant or removal of a small bar licence (where required),
  - b. a packaged liquor licence (limited to telephone/internet sales),
  - c. an application for extended trading hours to permit the sale of liquor after midnight in relation to a small bar (where required), an on premises relating to a restaurant that includes an application for a primary service authorisation, an on premises licence relating to a karaoke bar, a catering

## Liquor & Gaming

- d. service or a vessel, and an application for a producer/wholesaler licence that includes an application for a drink on premises authorisation.
- (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 town of Dubbo, and the “broader community” of Dubbo Regional Council.

### **5. Analysis of Submissions and other Materials**

- (1) Having reviewed all of the material, I am satisfied that this application for an on premises- restaurant with catering classes with a primary service authorisation and sale on other premises authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) No submissions have been forwarded which oppose this liquor licence application.
- (3) The licence will be exercised in accordance with the RSA practices provided to the Authority in a plan of management.
- (4) Council consent is in place which permits the proposed activity.
- (5) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (6) I am satisfied that the statutory advertising requirements have been met.
- (7) I am satisfied that the proposed licensee has completed the relevant licensee/approved manager tiered industry training as per legislative requirements.

### **6. Overall social impact**

#### **(1) Positive benefits**

The licensee intends to operate a restaurant and catering service combined with a primary service authorisation and a sale on other premises authorisation, in tandem with a separate micro-brewery liquor licence on-site. The licensee

## Liquor & Gaming

envisages catering for both local residents in addition to the vibrant tourist market within the area

### (2) Negative impacts

The delegate is satisfied that the plan of management in place, in addition to the imposition of a number of conditions on the licence, will ensure that all responsible services of alcohol measures will be maintained at all times.

## 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 from of the Authority, all statutory objects and considerations prescribed by section 3 of the Act were considered and accordingly, I have determined to grant the liquor licence application with conditions.

Decision Date: 01 July 2019



Wendy Yeung Wye Kong



Customer  
Service

Liquor & Gaming

A/Manager 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.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.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>