



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

APPLICATION NO:	APP-0004874022
APPLICATION FOR:	Liquor – on premises –vessel class
APPLICANT:	Captain Cook Cruises
LICENCE NAME:	Aspro
PREMISES ADDRESS:	Pier 26 Aquarium Wharf Wheat Rd, DARLING HARBOUR, NSW 2000
ISSUE:	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 vessel class liquor licence.
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR
On premises-vessel class liquor licence**

Aspro.

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 vessel class liquor licence, application number APP-0004874022.

On 20 November 2018 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. 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. The licensee will not host Stag/Buck's nights, Hen's nights, under 18 events, alcohol only events, dance parties and events incorporating adult entertainment.

For the purpose of this condition:- A dance party event means an event, whether ticketed event or otherwise, which is open to the public and where the primary activity is entertainment provided by live DJ/DJ's and/or the live performances for the purpose of dancing. This includes the vessel being part of a group of vessels or part of a land based activity which involves an event that could be described as a "Dance Party" or where amplified music is the main reason for the event or gathering. Note: This requirement is not intended to include wedding ceremonies/receptions, corporate events, and school formals at which DJ entertainment or other live performances of electronic dance music is provided ancillary to the event.

Adult entertainment may include, but is not limited to, events involving nudity, simulated sex and/or audience participation.

4. The licensee is authorised to sell liquor by retail to passengers on board the vessel, for consumption on board the vessel only between the period commencing one hour before the vessel starts any voyage or passage and ending 30 minutes after the voyage or passage is completed.

STATEMENT OF REASONS

1. Material before the ILGA delegate (DF18/017598)

The decision has been made by the delegate, after having considered the following material:

- (1) Application form lodged on 5 October 2018.
- (2) Plan of proposed licensed area (main deck of vessel)

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- (3) Certification of Advertising, dated 16 October 2018.
- (4) Certificate of survey for the vessel, issued 31 January 2018.
- (5) An approved manager notice has been forwarded for Oleg Yevtikhevich.
- (6) ASIC company reports have been forwarded for the proposed licensee, Captain Cook Cruises Pty Ltd and premises owner, Sealink Vessels Pty Ltd.
- (7) A Plan of Management for the business has also been forwarded.
- (8) A submission has been received from City of Sydney Council, dated 17 October 2018, with no objections to the granting of this application.
- (9) Correspondence from Liquor and Gaming NSW to the applicant's agent.
- (10) Responses from the agent and consent to conditions imposed by Liquor and Gaming NSW.

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,

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- (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 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.

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 service or a vessel, and an application for a producer/wholesaler licence that includes an application for a drink on premises authorisation.

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- (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 Darling Harbour and the “broader community” of Sydney harbour where the vessel will be cruising.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on premises-vessel class liquor licence is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) Consent is in place for the proposed activity.
- (3) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (4) Police have not forwarded a submission relating to this application
- (5) Council for the City of Sydney have not objected to this application.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The licensee intends to operate a high-end superyacht, the Aspro, with a patron capacity of 49, for cruises within the Sydney harbour area.

(2) Negative impacts

No objections to this application have been forwarded to Liquor and Gaming NSW.

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.

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- (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: 21 November 2018



Manager, 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.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>

