

**NSW Department of Justice
Liquor & Gaming NSW**

APPLICATION NO:	1-4373486993
APPLICATION FOR:	Liquor - packaged liquor licence (online)
TRADING HOURS:	Monday to Friday 10:00 AM to 8:00 PM Saturday to Sunday 10:00 AM to 6:00 PM
APPLICANT:	MOS Beverages Pty Ltd
LICENCE NAME:	MOS Beverages Pty Ltd
PREMISES ADDRESS:	Unit 1, 64-66 Burrows Road ALEXANDRIA NSW 2015
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a packaged liquor licence (online).
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR
PACKAGED LIQUOR LICENCE (ONLINE)**

MOS BEVERAGES PTY LTD

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 Justice, has decided to grant the application for a packaged liquor licence (online), 1-4373486993.

On 9 November 2016, 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. Retail sales

Good Friday December 24th	Not permitted Normal trading Monday to Saturday 8:00 AM to 10:00 PM Sunday
Christmas Day December 31st	Not permitted Normal trading
3. 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 be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4. The premises are to be operated at all times in accordance with the Plan of Management dated June 2016 and updated September 2016 as may be varied from time to time in consultation with the Local Area Commander. The premises are to be operated at all times in accordance with the Plan of Management dated 1 September 2016, as may be varied from time to time in consultation with the Local Area Commander.
5. Limited to the sale of liquor only by means of taking orders over the telephone or by facsimile or mail order, or through an Internet site.
6. No advertising or promotional material relating to alcohol is to be displayed outside the premises.
7. The licensee will prominently display the licence number on any website and in any advertisement or published information. Displayed on the website home-page, as well as the page where online sales are made, will be the following notice:

"It is against the law to sell or supply alcohol to, or to obtain alcohol on behalf of a person under the age of 18 years."
8. CCTV surveillance cameras shall be strategically installed, operated and maintained throughout the premises with particular coverage to:
 - (i) principal entrances and exits
 - (ii) all areas within the premises used to store liquor excluding toilets.

All CCTV recording equipment and cameras shall be of high grade digital quality capable of establishing the population and identification of patrons offenders and incidents within the depth of field view of the cameras. In this respect each surveillance camera shall be capable of recording a minimum rate of 10 frames per second and at high resolution.

CCTV recording discs or hard drive recordings shall be retained for 28 days before being re-used, destroyed or deleted. Time and date shall be auto recorded on the disc or hard drive. The CCTV recording equipment shall be capable of reproducing a CD, DVD, USB

or other appropriate digital copy of recorded footage on demand of council or police either immediately or within 24 hours of the request being made.

All CCTV recording devices and cameras shall be checked daily to ensure the equipment is operating correctly. The Licensee shall record this daily checking activity in the security/incident register book that meets the standards required by the Licensing Police and Council. If it is discovered at any time that the equipment is not in full operating order all reasonable steps must be taken to repair the system as soon as practicable. Where the system shall not be functioning in full operating order for a period of longer than 24 hours the manager/licensee is to notify the relevant Local Area Commander or delegate.

The CCTV recording device shall be secured within the premise and only be accessible to senior management personnel so as to maintain the integrity of the recorded footage. When the premises are operating there must be at least one staff member present at the premises who is authorised to assess the CCTV system and able to immediately review recording and produce copies.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the application, the accompanying community impact statement (CIS-Category A) and other relevant material:

- (1) Application form lodged 2 May 2016 (DOC16/040868)
- (2) Community Impact Statement (CIS) document and supporting material accompanying the application dated 16 March 2016 (DOC16/040880)
- (3) Appointment of manager – notice lodged 2 May 2016 (DOC16/040942)
- (4) Certificate of Advertising signed and dated 20 September 2016 (DOC16/111375)
- (5) Plan of proposed licensed premises lodged 2 May 2016 (DOC16/040875)
- (6) Plan of Management dated June 2016 and updated September 2016 (DOC16/111376)
- (7) ASIC company extract for MOS Beverages Pty Ltd ACN 609 622 380 (DOC16/040870)
- (8) Two submissions from City of Sydney Council, dated 14 January 2016 and 6 April 2016, advising that the proposed use constitutes “exempt development” (DOC16/040873 and DOC16/053093)

- (9) Two submissions from NSW Police, dated 3 June 2016 and 6 September 2016, advising that there is no objection to the application and requesting the imposition of a number of conditions (DOC16/063447 and DOC16/099884)
- (10) Email correspondence between L&GNSW staff and the applicant's legal representative, dated 19 September 2016, 23 September 2016 and 26 September 2016 (DOC16/105899)
- (11) Email correspondence from applicant providing responses to request for additional information, imposition of conditions and response to submissions, received 27 September 2016 (DOC16/106799, DOC16/111374 and DOC16/112228)

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:
 - 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.
- (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 Alexandria and the “Broader Community, the entire state of NSW given that the licence will be operated remotely and will provide convenient home delivery-based access to liquor products to persons located anywhere across the state.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an online packaged liquor licence is unlikely to result in any increase in alcohol-related harms in the Local Community. The sale of liquor will be limited to by means of taking orders over the telephone or by facsimile or mail order, or through an internet site.
- (2) The proposed licensed premises comprises a commercial office, at which online orders will be received and processed. There will be no advertising on the premises and customers will not be able to attend the licensed premises.
- (3) Liquor will be stored at a separate warehouse facility located in the same building as the office that is proposed to comprise the licensed premises.
- (4) The licence will be exercised in accordance with a detailed Plan of Management that details the location, hours of trade, signage requirements, storage of alcohol, responsible service of alcohol and delivery of alcohol.
- (5) Two submissions were received from City of Sydney Council, advising that development consent is in place, and that Council has “no matters of concern” in respect of the application provided that no direct sales of liquor take place on the premises.
- (6) Two submissions were received from NSW Police, advising that there is no objection to the application and requesting the imposition of various conditions.
- (7) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The licence will be operated from a commercial office by internet, telephone, facsimile and mail order between the reduced hours of 10:00 AM and 8:00 PM Monday to Friday and 10:00 AM and 6:00 PM Saturday to Sunday.

Customers will not be permitted to attend the licensed premises.


(2) Negative impacts

The nature of the licence sought means that there are unlikely to be any amenity 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) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (6) 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 packaged liquor licence application with conditions.

Decision Date: 9 Novemebr 2016



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>