

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

APPLICATION NO:	1-6320942755
APPLICATION FOR:	On-premises liquor licence for a vessel
TRADING HOURS:	Monday to Saturday: 10:00 AM to 12:00 AM Sunday: 10:00 AM to 10:00 PM
APPLICANT:	Captain Cook Cruises Pty Ltd
APPROVED MANAGER:	To be advised
LICENCE NAME:	Capricornian Sunrise
PREMISES ADDRESS:	Wharf 1, Pier 26, Aquarium Wharf Wheat Road DARLING HARBOUR NSW 2000
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse the liquor licence application
LEGISLATION	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE
CAPRICORNIAN SUNRISE**

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 liquor licence for a vessel, application number 1-6320942755.

On 14 December 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 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)

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December 31st Normal opening time until normal closing time or 2:00 AM on 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 must not permit stag/bucks nights, hens 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 other live performance/s for the purpose of dancing.

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 following drinks must not be sold or supplied at any time;

Any drink (commonly referred to as a shot, shooter, slammer or bomb) that is designed to be consumed rapidly.

Doubles (does not apply to genuine cocktails).

Ready to drink (RTD) packaged beverages exceeding 5% alcohol by volume.

5. The licensee is to ensure no patron is stockpiling drinks and that a single patron has no more than two unconsumed drinks at any one time that are for their consumption.
6. The Licensee must not permit staff to consume liquor on the licensed premises while engaged in the sale or supply of liquor (including during any meal or other break).
7. The Licensee must ensure that all bar staff will be wearing a uniform that clearly identifies them as staff of the vessel.
8. The licensee is to maintain an approved Incident Register with incidents and details of the action taken to be recorded in the Incident Register at all times.
9. The licensee is to notify the NSW Police Marine Area Commander or his/her representative of all serious incidents (serious incidents include any injury sustained by a patron that requires medical treatment or any unscheduled dockings to turn out a person who is intoxicated, violent, quarrelsome or disorderly).

STATEMENT OF REASONS

1. Material before the ILGA delegate

CM9 Ref: DF17/015952

- (1) Application for on-premises liquor licence, dated 2 August 2017
- (2) Application Notices
- (3) Certification of Advertising Application, signed by the applicant on 12 October 2017
- (4) Plan of the proposed licensed vessel
- (5) Certificate of Operation for the vessel, issued by Australian Maritime Safety Authority on 25 August 2016
- (6) ASIC Current Company Extract for BITS ASSETS PTY LTD
- (7) ASIC Current Company Extract for CAPTAIN COOK CRUISES PTY LTD
- (8) Liquor Safe Management Plan for the vessel
- (9) Submission from City of Sydney Council, received 14 September 2017, raising no objection to the application
- (10) REGIS compliance history report for the organisation applicant, revealing no known incidents, dated 28 November 2017
- (11) Email correspondence from Liquor & Gaming NSW to the applicant, requesting further information in support of the application, dated 5 October 2017, 28 November 2017, and 30 November 2017
- (12) Email correspondence from the applicant to Liquor & Gaming NSW in response to the request for additional information, dated 7 November 2017, and 30 November 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 Darling Harbour, and the "broader community" of the City of Sydney Local Government Area and Sydney Harbour.

5. Analysis of Submissions and other Materials

- (1) This application is for an on-premises liquor licence for a vessel with 400 patron capacity, which is part of the SeaLink Travel Group, which includes Captain Cook Cruises, an established and well-regarded cruise operator.
- (2) The vessel will be berthed in Sydney Harbour and will offer tourism cruises which will be complimented by Australian food and wine.
- (3) Only one submission was received in respect of this application, from Council, raising no objections.
- (4) A review of the corporate applicant's compliance history reveals no known incidents.
- (5) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The granting of the licence will enable an established cruise operator to expand its fleet, which will enable tourists and locals to enjoy a cruise on Sydney Harbour which is complimented by Australian cuisine.

(2) Negative impacts

No objections have been received in respect of this licence application. Having reviewed all of the material, I am satisfied that the granting of this licence is unlikely to result in any significant increase in alcohol-related harm in 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: 14 December 2017



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>