

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

APPLICATION NO: 1-4357999286

APPLICATION FOR: Liquor – on-premises liquor licence with catering service and sale on other premises authorisation.

TRADING HOURS:

Restaurant - Indoor
Monday – Thursday: 12 PM to 8 PM
Friday & Saturday: 12 PM to 12 AM
Sunday: 12 PM to 5 PM

Restaurant - Outdoor
Monday – Thursday: 12 PM to 8 PM
Friday & Saturday: 12 PM to 10 PM
Sunday: 12 PM to 5 PM

Catering Service - Indoor
Monday – Thursday: 12 PM to 8 PM
Friday & Saturday: 12 PM to 12 AM
Sunday: 12 PM to 5 PM

Catering Service - Outdoor
Monday – Thursday: 12 PM to 8 PM
Friday & Saturday: 12 PM to 10 PM
Sunday: 12 PM to 5 PM

Sale on other premises authorisation:
Monday – Thursday: 12 PM to 8 PM
Friday & Saturday: 12 PM to 12 AM
Sunday: 12 PM to 5 PM

APPLICANT: Dutch Smuggler Pty Ltd

LICENCE NAME: Dutch Smuggler

PREMISES ADDRESS: Tenancy 4 200 George Street, SYDNEY, NSW 2000

APPOINTED MANAGER: Not appointed yet

ISSUE: Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for on-premises liquor licence.

LEGISLATION Section 45(1) of the *Liquor Act 2007*

ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES LIQUOR LICENCE WITH CATERING SERVICE AND SALE ON OTHER PREMISES AUTHORISATION

DUTCH SMUGGLER

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 an on-premises liquor licence with catering service and sale on other premises authorisation, 1-4357999286.

On 31 October 2015, 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
<p>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.</p>	

3. 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. The premises are to be operated at all times in accordance with the Plan of Management dated 13 October 2016 as may be varied from time to time after consultation with the Local Area Commander.
5. The licence is authorised for the trading hours fixed by the Authority or such lesser hours as may be approved by the consent authority from time to time.
6. The sale on other premises authorisation can only be utilised for functions, occasions or events, which are by invitation only.
7. No drinks commonly referred to as shots, shooters, slammer, and/or bombs are to be sold or supplied after 10:00 PM.
8. The business of providing the Catering Service must be for fee, gain or reward. Functions held pursuant to the Catering Service must be pre-booked. A Catering Service booking register must be maintained.
9. The licensee or its representative must join and be an active participant in the local liquor accord.
10. The licence cannot be exercised unless and until the Independent Liquor & Gaming Authority has been notified of the appointment of a manager to the licence.
11. Crime Scene Preservation
 - a. Immediately after the person in charge of the Licensed Premises become aware of an incident involving an act of violence causing an injury to a person on the premises, the person must:
 - i. Take all practical steps to preserve and keep intact the area where the act of violence occurred
 - ii. Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police
 - iii. Make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident and
 - iv. Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.
12. A full copy of all current development consents (including approved plans) for the operation of the premises, any Registers required and any required Plan of Managements must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or OLGR Authorised Officers.

13. The sale and/or supply of liquor must cease 15 minutes prior to the cessation of the respective hours of operation for the specified indoor seating areas.

STATEMENT OF REASONS

1. Material before the ILGA delegate

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

- (1) Application form – Lodged 27 April 2016 (DOC16/039403)
- (2) Development consent approved by the Sydney City Council Dated 19 January 2016 (DOC16/039408)
- (3) Plan of Management for the Premises dated October 2016 (DOC16/126288)
- (4) ASIC Extract (DOC16/039407)
- (5) Certificate of advertising dated 1 June 2016 (DOC16/126180)
- (6) EVAT report and a submission submitted by Director Compliance dated 18 May 2016 which raised no objection. (DOC16/051108)
- (7) Premises plan of the proposed licensed area (DOC16/039410)
- (8) Submissions from Sydney City Council received 5 May 2016 which raised no objection (DOC16/126244)
- (9) Submission from Sydney City Local Area Command received 18 October 2016 which raised no objection to the application. (DOC16/127657)
- (10) Occupation Certificate of the proposed licensed area showing that the premises is complete and ready to trade, received 13 October 2016. (DOC16/126289)
- (11) Email correspondence from Mr Brett Tobin on behalf of the applicant, received 13 October 2016 & 21 October 2016 in response to Council & police submission and proposed licence conditions. (DOC16/126184 & DOC16/133706)

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. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on-premises liquor licence situated in the Sydney CBD Entertainment Precinct is unlikely to result in a significant increase in alcohol related issues in the local community.

- (2) The proposed licensed premises is a restaurant with catering and sale on other premises authorisation. A submission was received from Sydney City Council stating that the council has no matters of concern with this application.
- (3) A submission was received from Sydney City Local Area Command. Whilst the submission does not constitute an objection, it does raise concerns based on crime data and the high levels of alcohol related violence within the area, and requested a number of conditions to be imposed on the licence for the purpose of public safety. The applicant's submissions in response to the Police submission have been duly considered.
- (4) The licence will be exercised in accordance with a detailed Plan of Management that details the location, hours of trade and responsible service of alcohol.
- (5) I am satisfied that the statutory advertising requirements have been met.

5. Overall social impact

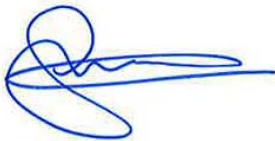
- (1) No public submissions have been received opposing the grant of the licence. A number of conditions have been imposed on the licence. The licence will be operated in accordance with harm minimisation measures outlined in the Plan of Management provided by the applicant.

6. 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 have considered the applicant's response to the conditions proposed by police.
- (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 on-premises liquor licence application with conditions.

Decision Date: 31 October 2016



Joanne Zammit

Coordinator, 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>