

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

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| APPLICATION NO: | 1-5750384842 |
| APPLICATION FOR: | On-premises catering class with a sale on other premises authorisation. |
| TRADING HOURS: | Catering service Monday to Thursday: 12:00 PM to 9:00 PM Friday: 10:00 AM to 9:00 PM Saturday: 10:00 AM to 8:00 PM Sunday: 10:00 AM to 4:00 PM Sale on other premises authorisation Monday to Saturday: 10:00 AM to 12:00 AM Sunday: 10:00 AM to 10:00 PM |
| APPLICANT: | James Scott-Mackenzie |
| LICENCE NAME: | Cellarmaster Wines Pty Ltd |
| PREMISES ADDRESS: | Level 2 71-111 Cooper Street, SURRY HILLS, NSW 2010 |
| 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

Cellarmaster Wines 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 Industry, has decided to grant the application for an on-premises catering service with a sale on other premises authorisation, application number 1-5750384842.

On 19 September 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 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. Catering service

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| 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. |
3. The licence cannot be exercised unless and until Liquor and Gaming NSW has granted a transfer of the licence to a suitable qualified person or a manager is approved and appointed to manage the premises.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 20 June 2017.
- (2) Floor plans for the proposed licensed premises lodged 30 July 2017.
- (3) National Police Certificate for the applicant forwarded 29 August 2017.
- (4) Development consent D/2010/1167 issued by City of Sydney Council, 22 September 2010, for change of use of levels 2 and 3 to commercial offices.
- (5) Certification of Advertising Application, signed and dated by the applicant on 20 June 2017
- (6) A submission from a member of the public relating to potential parking concerns, dated 15 June 2017.
- (7) A submission from the Secretary to Liquor & Gaming NSW was forwarded 1 August 2017, with no objection providing certain conditions were adhered to by the applicant.
- (8) Email correspondence from the Authority to the applicant requesting additional information in support of the application.
- (9) Email correspondence from the applicant to the Authority in response to the requests for additional information.

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" and the "broader community" will relate to anywhere in the state of NSW as a sale on other premises authorisation has been forwarded with this application.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on-premises catering class with a sale on other premises authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) One public submission was received which raised concerns regarding parking problems in the area but as this liquor licence will be used exclusively as an office with events/functions taking place elsewhere, the granting licence will not add to parking problems in the area.
- (3) The Secretary to Liquor & Gaming NSW has not objected to the application.

Liquor & Gaming

- (4) I am satisfied that appropriate development consent which permits the proposed activity is in place.
- (5) The licence will be exercised in accordance with a Plan of Management and licence conditions that addresses the responsible service of alcohol, and provides measures to ensure that the operation of the premises does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The applicant intends to provide wine education and appreciation functions and events for their customer base. The sale on other premises authorisation will enable the applicant to cater for these events away from the proposed licensed premises.

(2) Negative impacts

The delegate has duly considered the public submission regarding parking issues in the vicinity should the licence be granted. No other objections have been forwarded.

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: 19 September 2017



Matt Weber
Acting 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.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>