

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

APPLICATION NO:	APP-0003641171
APPLICATION FOR:	Producer wholesaler with drink on premises authorisation.
TRADING HOURS:	Producer/wholesaler Monday to Saturday: 12:00 PM to 11:00 PM Sunday: 12:00 PM to 10:00 PM Drink on premises authorisation liquor trading hours Monday-Saturday: 12:00 PM to 12:00 AM Sunday: 12:00 PM to 10:00 PM
APPLICANT:	James Christopher
LICENCE NAME:	Brix Distillery
PREMISES ADDRESS:	352 Bourke St, 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

Brix Distillery

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 a producer/ wholesale liquor licence with a drink on premises authorisation, application number APP-0003641171.

On 9 January 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. Restricted trading and NYE (std)

Retail sales

Good Friday Normal trading

Christmas Day Normal trading

December 31st Normal trading

3. 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.

4. Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- 1) Take all practical steps to preserve and keep intact the area where the act of violence occurred,
- 2) Retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor & Gaming NSW website,
- 3) Make direct and personal contact with the NSW Police Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
- 4) Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.

5. The Licensee must maintain a closed-circuit television system on the premises in accordance with the following:
- i. The system must record continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times).
 - ii. Recordings must be in digital format and at a minimum of 15 frames per second.
 - iii. Any recorded image must specify the time and date of the recorded image,
 - iv. The system cameras must cover the following areas:
 - a. All the exit and entry points of the premises,
 - b. The footpath immediately adjacent to the premises,
 - c. All publicly accessible areas (other than toilets) on the premises.

The licensee must also:

- i. Keep all recordings made by the CCTV system for at least 30 days, and
- ii. Ensure that at least one member of staff is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage and
- iii. Provide any recording made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 2 December 2017.
- (2) Drink on premises application also lodged 2 December 2017.
- (3) Certification of Advertising document, signed and dated by the applicant on 19 December 2017.
- (4) Copies of Identification, Responsible Services of Alcohol certification and National Police Certificate for the applicant forwarded in support of the application.
- (5) ASIC company reports for the business and premises owners, detailing current director information.
- (6) Plan of the proposed licensed premises.
- (7) Development Application No. D/2017/1285 issued by City of Sydney Council 24 November 2017, for fit out and use as a licensed craft distillery with associated bar and tasting area.
- (8) Submission from City of Sydney Council, 6 December 2017, with no concerns.
- (9) Submission The Secretary to Liquor and Gaming NSW, received 8 January 2018 with no objections.
- (10) A Plan of Management for the venue has been forwarded in support of the application.
- (11) Email correspondence from the Authority to the applicant's legal representative requesting additional information in support of the application, dated 7 December 2017.
- (12) Email correspondence from the applicant's legal representative to the Authority in response to the requests for additional information, dated 19 December 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 Surry Hills, and the "broader community" of the City of Sydney LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for a producer wholesaler liquor licence with a drink on premises authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The submission which was received from the Council for the City of Sydney did not raise any objections to the granting of the licence.
- (3) The Secretary to Liquor and Gaming NSW has also forwarded a submission with no concerns.
- (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

This application is for the first specialised distillery to open in inner Sydney for 200 years. A change to the legislation (Liquor Amendment (Reviews) Bill 2017, now permits this type of application to be granted. A drink on premises authorisation has also been forwarded with this application.

(2) Negative impacts

The Plan of Management provided by the applicant and conditions imposed on the licence provide a level of certainty that there are unlikely to be any major 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) 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: 9 January 2018



Matt Weber,
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>