

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

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**APPLICATION NO:** APP-0002311618

**APPLICATION FOR:** Liquor – on-premises Restaurant and Catering Service, primary service authorisation and extended trading authorisation

**TRADING HOURS:** Monday to Saturday:  
11:00 AM to 12:00 AM (indoors)  
11:00 AM to 10:00 PM (outdoors - Northwest)  
11:00 AM to 11:00 PM (outdoors - Southwest)

Sundays:  
11:00 AM to 12:00 AM (indoors)  
11:00 AM to 10:00 PM (outdoors - Northwest)  
11:00 AM to 11:00 PM (outdoors - Southwest)

**APPLICANT:** DIXON HOTELS OPERATIONS PTY LTD

**LICENCE NAME:** Untied

**PREMISES ADDRESS:** Tenancy R7.07 Building R7  
Level 4 300 Barangaroo Avenue  
BARANGAROO SOUTH NSW 2000

**ISSUE:** Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for an on-premises liquor licence with primary service authorisation and extended trading authorisation

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

**ILGA DELEGATED DECISION – APPLICATION FOR AN ON-PREMISES LIQUOR LICENCE WITH PRIMARY SERVICE AUTHORISATION AND EXTENDED TRADING AUTHORISATION**

**UNTIED**

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 primary service authorisation and extended trading authorisation, APP-0002311618.

APP-0002311618– Application for an on-premises liquor licence with primary service authorisation and extended trading authorisation under S45(1) Liquor Act 2007

On 18 January 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. 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 latter

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.

3. The business authorised by this licence must not operate with a greater overall level of social impact on the well-being 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 premise is to operate with its principle business being that of a restaurant and catering service as defined by the Liquor Act and not as a bar.

5. No drinks commonly referred to as shots, shooters, slammer, and/or bombs are to be sold or supplied after 10pm.

6. The premises are to be operated at all times in accordance with the Plan of Management dated October 2016 as may be varied from time to time after consultation with the Local Area Commander.

7. 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.

**8. CCTV footage on premises:**

The Licensee shall maintain a CCTV system that meets the following minimum requirements:

1) A camera must be located at the main entrance to the venue and positioned to record any person entering through this entrance. The CCTV recordings of this camera must be sufficient to enable an individual to be identified, beyond reasonable doubt, when:

- a. the person represents not less than 100% of the screen height, and
  - b. there is an unobstructed view of the person's face.
- 2) In addition, CCTV cameras must be maintained throughout the premises with camera coverage to specifically record images of the following areas:
  - a. all other public entrances and exits, whether or not in use at the time,
  - b. staircases,
  - c. all portions of the floor area accessible to the public where entertainment is provided,
  - d. toilet external entrances,
  - e. all public accessible areas within the premise excluding toilets and accommodation rooms,
  - f. the footpath area directly adjacent to the premises, and
  - g. Courtyard and smoking areas.
- 3) The CCTV recordings of the cameras referred to in sub condition (2) must be sufficient to enable the recognition of a person. A viewer must be able to say with a high degree of certainty whether or not an individual shown is the same as someone they have seen before, when:
  - a. the person represents not less than 50% of screen height, and
  - b. there is an unobstructed view of the person's face.
- 4) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.
- 5) Camera recordings must meet the standards set in sub condition (1) and (3) at all times, either by way of camera positioning, camera shades or other environmental factors.
- 6) Recordings must:
  - a. be in digital format,
  - b. record at a minimum of ten (10) frames per second, and
  - c. commence one hour prior to opening, and operate continuously until at least one hour after closing.
- 7) The correct time, date and camera identification must be automatically embedded on all recordings and be able to be read when the image is played back on a different system without interfering with the view of the target area.
- 8) Recordings should be retained for a period of 30 days before being reused or destroyed. The licensee shall ensure that no person is able to delete or alter any recordings within the 30 day period.
- 9) When the venue is open and trading, at least one person shall be at the venue that is capable of accessing the CCTV system and is able to immediately review recordings and produce copies.
- 10) Immediate access to the CCTV system and the ability to review recordings is to be granted to NSW Police, L&GNSW Officers or other regulatory officers upon request.

- 11) The CCTV system shall be able to reproduce a copy of the recordings on Compact Disc, DVD or USB memory stick and must, upon request, be provided within one working day to NSW Police, L&GNSW Officers or other regulatory officers.
- 12) Prior to the commencement of trade each day, the CCTV system shall be checked to ensure the equipment is in full operating order. If, during the daily check or at any other time, it is discovered that the equipment is not in full operating order, the licensee is to notify the Local Area Commander or delegate within two hours. All reasonable steps must be undertaken to repair the system as soon as practicable.

#### 9. **Crime Scene Preservation**

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, or in the vicinity of the premises, the person must:

- a. Take all practical steps to preserve and keep intact the area where the act of violence occurred
- b. Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police
- c. Make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident and
- d. Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

#### 10. **Neighbourhood Amenity**

- a. The management of the premises:
  - i. Shall ensure patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
  - ii. Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council, the Management is to employ private security staff to ensure that this condition is complied with.
  - iii. Shall record in a Register full details of any disturbance complaint/s made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.

- iv. Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by management / staff to resolve such complaint/s shall be recorded in the Register.
    - b. An **adequate queuing system** for patrons must be implemented at the main entrance of the licensed restaurant so as to ensure that if patrons are queuing to gain entry they do not obstruct or impede pedestrian traffic flow.
- 11. The licensee or its representative must join and be an active participant in the local liquor accord.
- 12. 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.
- 13. Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected near the main principle entry to the premises; in such manner that it would be reasonable to expect that a person leaving the premises will be alerted to its contents. The signage shall state: 'Please leave quickly and quietly and have regard to our neighbours'.
- 14. 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 L&GNSW Officers.

## 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 – On-premises lodged 21 October 2016. (DOC16/133171)
- (2) Community Impact Statement (CIS) document and supporting material accompanying the application, dated 20 October 2016. (DOC16/133173)
- (3) Plan of Management lodged with application dated October 2016. (DOC16/133179)
- (4) Premises plan lodged with the application. (DOC16/133175)
- (5) City of Sydney Council submission dated 28 October 2016 has no matters of concern with this application D/2016/1025 dated 12 October 2016. (DOC16/134767)
- (6) Police submission dated 1 November 2016 from Sydney City LAC Police “DO NOT OBJECT” to the granting of the application. However, Police request the inclusion of a number of conditions for the sole purpose of Public Safety. (DOC16/175181)
- (7) Certificate of advertising dated 26 October 2016. (DOC16/175213)
- (8) ASIC extract of the business owner dated 26 October 2016. DOC16/134770
- (9) Email correspondence dated 19 December 2016 from the Authority to the applicant requesting additional information including a response to submissions. (DOC16/175318)
- (10) Email correspondence dated 23 December 2016 from the applicant in response to the request for additional information including response to submissions and supporting documentation Email. (DOC16/178669)

## 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 State suburb of Barangaroo and the “broader community” of City of Sydney Council LGA.

#### 5. 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 with primary service authorisation and extended trading authorisation, is unlikely to result in any increase in alcohol-related harms in the local community.



- (2) The proposed premise has appropriate development consent and the proposal aligns with this consent.
- (3) Police do not object to the grant of the licence and propose a number of conditions to be included in the licence, should the application be granted. The applicant was provided an opportunity to provide a response to these conditions and the responses were duly considered.
- (4) The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol, and provides measures to ensure that the operation of the vessel does not impact detrimentally upon or detract from, the amenity of the neighbourhood.
- (5) I am satisfied that the statutory advertising requirements have been met.

## **6. 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.

## **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 liquor licence application for – on-premises Restaurant and Catering Service, primary service authorisation and extended trading authorisation with conditions.

Decision Date: 18 January 2017

Catherine Bass-Kendzy  
A/Director 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>