

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

APPLICATION NO: APP-0002580679

APPLICATION FOR: Packaged liquor licence (online only)

TRADING HOURS: Tuesday, Thursday and Friday:
10:00 AM to 4:00 PM

APPLICANT: Ms Therese Dimos

LICENCE NAME: The Scotch Elite

PREMISES ADDRESS: 25 Sunnyside Street
GLADESVILLE NSW 2111

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 *Liquor Act 2007*

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE
THE SCOTCH ELITE**

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 packaged liquor licence (online only), application number APP-0002580679.

On 8 June 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. Retail sales

Good Friday	Not permitted
December 24th	Normal trading Monday to Saturday, 8:00 AM to 10:00 PM Sunday
Christmas Day	Not permitted
December 31st	Normal trading
3. The licensee must limit the sale of liquor by means of only taking orders over the telephone or by facsimile or mail order, or through an Internet site.

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4. The licensee must ensure there are no deliveries of liquor to or from the premises and no storage of liquor on the premises.
5. The licensee must ensure that no tastings are conducted on the premises.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form for packaged liquor licence, lodged 13 January 2017 (DOC17/012120)
- (2) Category A Community Impact Statement, signed and dated by the applicant on 11 January 2017 (DOC17/012122)
- (3) Certification of Advertising Application, signed and dated by the applicant on 4 April 2017 (DOC17/079900)
- (4) Plan of the proposed licensed premises (DOC17/079898)
- (5) Copies of the applicant's identification, National Police Certificate, and RSA Interim Certificate (DOC17/012126, DOC17/012127, DOC17/012130, DOC17/012132)
- (6) Liquor Plan of Management, dated 12 April 2017 (DOC17/079896)
- (7) Submission from Hunter's Hill Council, received 1 February 2017 (DOC17/031245)
- (8) Correspondence from Hunter's Hill Council to the applicant, dated 4 May 2017 (DOC17/097774)
- (9) Email correspondence from the Authority to the applicant, requesting additional information in support of the application (DOC17/060826, DOC17/063557, DOC17/076751, DOC17/079895, DOC17/079902, DOC17/084659)
- (10) Email correspondence from the applicant to the Authority, in response to the request for additional information (DOC17/063491, DOC17/079892, DOC17/084654, DOC17/097773)

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 Gladesville, and the "broader community" is the state of New South Wales, due to the fact that the proposed licence allows for online and telephone sales.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an online packaged liquor licence is unlikely to result in any significant increase in alcohol-related harm in the local community.
- (2) The proposed licensed premises comprises a home office in a residential dwelling, at which online orders will be received and processed. Liquor will be stored and dispatched from a warehouse at another location.
- (3) The sale of liquor will be limited to the taking of orders over the telephone or by facsimile or mail order, or through an internet site. Customers will not be able to attend the premises to purchase liquor.

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- (4) Hunter's Hill Council made a submission advising that development consent is required and not in place, however, the applicant subsequently obtained written confirmation from Council advising that the intended use of the premises is classified as a 'Home Business' under the Local Environmental Plan, and as such development consent is not required.
- (5) No other submissions or objections have been received in respect of this licence application.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The granting of the licence will potentially result in positive economic benefits for the applicant, and will increase the variety and competitiveness of liquor retailers, which will benefit consumers.

(2) Negative impacts

This licence application is for a home office at which orders will be processed, with liquor to be stored and dispatched at from a separate warehouse at another location. Customers will not be attending the premises to browse, purchase or taste products. The nature of the licence sought means that it is unlikely to negatively impact on the amenity of 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. Given that no alcohol will be stored on the premises, there is virtually no risk of intoxication occurring on the premises.
- (4) Consistent with section 45(3)(c) of the Act requiring development consent from the local council, I am satisfied that development consent is not required and as such this section of the Act is satisfied.

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- (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: 8 June 2017



Mary Butterfield
A/ 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>