



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

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<b>APPLICATION NO:</b>	1-5908283704
<b>APPLICATION FOR:</b>	On-premises liquor licence for restaurant with primary service and extended trading authorisations
<b>TRADING HOURS:</b>	<b>Indoor</b> Monday to Sunday: 10:00 AM to 12:00AM <b>Balcony</b> Monday to Sunday: 10:00am to 10:00 PM
<b>APPLICANT:</b>	Bay Marius Kilpatrick
<b>LICENCE NAME:</b>	Stanton & Co
<b>PREMISES ADDRESS:</b>	1st Floor, 61 – 71 Mentmore Avenue ROSEBERY NSW 2018
<b>ISSUE:</b>	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should <i>grant</i> or <i>refuse</i> the liquor licence application
<b>LEGISLATION</b>	Section 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE**

**STANTON & CO**

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 restaurant liquor licence with primary service and extended trading authorisations, application number 1-5908283704.

On 11 October 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 six hours between 4:00am and 10:00am during each consecutive period of 24 hours. The licensee must comply with this six-hour closure period along with any other limits specified in the trading hours for this licence.

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### 2. Consumption on premises

Good Friday 12:00 noon - 10:00pm

Christmas Day 12:00 noon - 10:00pm (liquor can only be served with or ancillary to a meal in a dining area)

December 31<sup>st</sup> Normal opening time until normal closing time or 2:00am on New Year's Day, whichever is the later.

Note: trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00am.

3. There is to be no live entertainment or amplified music provided on the balcony at any time, furthermore, there is to be no entertainment or amplified music inside the premises after 10:00 PM.
4. All windows and doors leading onto the balcony must be kept closed after 10:00 PM.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate

RM8 Ref: DF17/011805

- (1) Applications for on-premises liquor licence, primary service authorisation, and extended trading authorisation, lodged 6 July 2017
- (2) Category A Community Impact Statement, dated 15 June 2017
- (3) Application Notices
- (4) Plan of the proposed licensed premises
- (5) Certification of Advertising Application, signed by the applicant on 9 August 2017
- (6) ASIC Current Company Extracts for E K Nominees Pty Ltd and Parlour Group Pty Ltd
- (7) Development Application No. D/2017/173, granted by City of Sydney Council on 11 April 2017, for the use of the first floor tenancy as a licensed restaurant
- (8) Two submission from the City of Sydney Council, received 2 June and 11 July 2017, raising no objection to the application
- (9) Submission from NSW Police Force, received 14 July 2017, objecting to the primary service authorisation, raising concerns in respect of potential noise disturbances, and proposing a number of licence conditions
- (10) Further submission from NSW Police Force, dated 13 September 2017, confirming the applicant's consent to the proposed licence conditions

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- (11) Copies of the applicant's National Police Certificate, RSA Competency Card and identification
- (12) Email correspondence from Liquor & Gaming NSW to the applicant, requesting further information in support of the application, dated 14 August 2017 and 29 September 2017
- (13) Email correspondence from the applicant to Liquor & Gaming NSW, in response to the request for further information, dated 28 September 2017 and 9 October 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 Rosebery, and the "broader community" of the City of Sydney Local Government Area.

#### 5. Analysis of Submissions and other Materials

- (1) This application is for an on-premises liquor licence with primary service and extended trading authorisations for a new restaurant to be located in Rosebery. The development consent for the premises permits 200 patrons internally, and an additional 90 patrons in the external balcony area.
- (2) I am satisfied that the statutory advertising requirements have been met.
- (3) I am satisfied that appropriate development consent permitting the proposed activity is in place.

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- (4) NSW Police Force made a submission noting that the venue will be the largest in the area, being over double the size of other restaurants on the block. Police raised concerns that the venue would cause noise disturbances to the local community, as the venue is located in a mixed use commercial and residential street, and overlooks residential dwellings. Police also noted upon reviewing the premises plan that there did not appear to be sufficient seating to cater for the proposed patron capacity, and raised concerns that the venue would be operated in the manner of a bar. Police ultimately did not object to the on-premises liquor licence, however objected to the primary service authorisation, submitting that as this is a new venue with no trading history the Authority cannot be satisfied that the granting of the primary service authorisation would not be detrimental to the amenity of community life. Police proposed nine licence conditions, should the Authority be minded to grant the primary service authorisation.
- (5) Police later made a further submission noting that the applicant has consented to the proposed licence conditions contained in their earlier submission, and confirming that the applicant has provided a revised seating plan which corresponds to the proposed patron capacity. No further concerns were raised.
- (6) Council made two submissions raising no concerns.
- (7) No other submissions or objections were received.

## 6. Overall social impact

### (1) Positive benefits

Rosebery is a former industrial suburb located six-kilometres south of the Sydney CBD presently undergoing significant hi-density residential redevelopment. The grant of the licence will contribute to the amenity and diversity of the local community, create local employment opportunities and provide residents with social and recreation facilities.

### (2) Negative impacts

The fact that the venue is large in size and is located on a mixed commercial/residential street, overlooking residential dwellings, has the potential to cause disturbance to the local community by way of noise, traffic and parking. A number of licence conditions were proposed by Police, and consented to by the applicant, in an attempt to mitigate these potential negative impacts.

## 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

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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: 11 October 2017



Dr Suzanne Craig  
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>