



## Liquor & Gaming NSW

### NSW Department of Enterprise Investment and Trade Liquor & Gaming NSW


Application number:	APP-0009778859	
Application for:	Liquor - Producer Wholesaler licence with Drink on premises authorisation	
Trading hours:	<b>Producer/Wholesaler – Retail</b> 10:00 AM to 12:00 AM 10:00 AM to 10:00 PM  <b>DOPA – Indoor/outdoor</b> 10:00 AM to 12:00 AM 10:00 AM to 10:00 PM	Monday – Saturday Sunday  Monday – Saturday Sunday
Applicant:	Kellie Plenty	
Licence name:	Foxdog Distillery	
Premises address:	312 Tomakin Road, MOGO NSW 2536	
Issue:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a Liquor - Liquor - Producer Wholesaler licence with Drink on premises authorisation	
Legislation:	Section 45(1) of the <i>Liquor Act 2007</i>	

### Liquor - Producer Wholesaler licence with Drink on premises authorisation Foxdog 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 Enterprise Investment and Trade, has decided to grant the application for a Liquor licence - Producer Wholesaler licence with Drink on premises authorisation, application number APP-0009778859.

After careful consideration of the application and other material, the delegate decided to approve the application, subject to conditions listed in table 1.

Date Granted: 4 May 2022



Kieran McSherry

Team Leader/Manager Licensing-New Licensing and Special Events

Liquor and Gaming NSW

Delegate of the Independent Liquor and Gaming Authority

## STATEMENT OF REASONS

### Analysis of Submissions and statutory requirements

- (1) Appropriate consent is in place for the use of the premises as a producer/wholesaler licence with a drink on premises authorisation
- (2) Police have no issues in relation to this application but have requested a suite of conditions. I have imposed the normal conditions relating to this licence and authorisation type.
- (3) Council advised that they have no objection to the liquor licence.
- (4) No submissions were received relating to any issues with the application
- (5) I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions contained in the licence document.
- (6) I am satisfied that the statutory advertising requirements have been met.
- (7) Having reviewed all the material, I am satisfied that granting this application will not be detrimental to the local or broader community.

### Overall social impact

#### (1) Positive benefits

The granting of the licence will provide patrons with increased choice to socialise, including to enjoy a meal and/or a social drink with the licence within the suburb of Mogo.

#### (2) Mitigation of potential negative impacts

I am satisfied that the business model, conditions imposed, and any other information contained in the application will provide that the lawful operation of the premises will not be detrimental to the local or broader community.

In particular, the Plan of Management and licence conditions will serve to mitigate any potential negative impacts

## Conditions considered by the ILGA delegate

All requests to impose conditions on the licence are reviewed on a case-by-case basis and a merit-based assessment is conducted.

In considering whether a proposed condition has merit, delegates consider: (a) whether the need for the condition has been adequately established (b) whether the benefits of imposing the condition are likely to outweigh the costs and (c) whether the proposed condition is proportionate to the potential harm identified.

The **Proposed conditions imposed on the licence** sets out the conditions which I have decided to impose on the licence, and the **Proposed conditions not imposed on the licence** sets out conditions put forwarded for consideration which I have decided not to impose, and the reasons for that decision.

### Proposed conditions imposed on the licence

- 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) **Restricted trading & NYE (std)**

#### Retail sales

Good Friday: Normal trading

December 24th: Normal trading Monday to Saturday, 10:00 AM to 12:00 midnight on a Sunday

Christmas Day: Normal trading

December 31st: Normal trading Monday to Saturday, 10:00 AM to 12:00 midnight on a Sunday

- 3) **0000140 Restricted trading & NYE (std)**

#### Drink on-premises authorisation

Good Friday 12:00 noon - 10:00 PM

Christmas Day 12:00 noon - 10:00 PM

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

- 4) **Plan of management**

The premises is to be operated at all times in accordance with the Plan of Management dated April 2022 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

- 5) **Closed-circuit television system**

1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

(a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),

- (b) recordings must be in digital format and at a minimum of ten (10) frames per second,
- (c) any recorded image must specify the time and date of the recorded image,
- (d) the system's cameras must cover the following areas:
  - (i) all entry and exit points on the premises,
  - (ii) the footpath immediately adjacent to the premises, and
  - (iii) all publicly accessible areas (other than toilets) within the premises.

2) The licensee must also:

- (a) keep all recordings made by the CCTV system for at least 30 days,
- (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
- (c) provide any recordings made by the system to a police officer or Liquor & Gaming NSW inspector within 24 hours of any request by the police officer or Liquor & Gaming NSW inspector to provide such recordings

#### 6) **Crime Scene Preservation**

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 NSW Police to advise it of the incident, and
- 4) comply with any directions given by NSW Police 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 (e.g., crowd controller or bouncer) on or about the premises.

- 7) Licensee training must be completed no later than six months from the date of grant of this liquor licence.

#### **Proposed conditions not imposed on the licence**

<b>TABLE 2 – Proposed conditions not imposed on the licence:</b>		<b>Proposed by:</b>	<b>Reason code (see table 9)</b>
<b>1.</b>	Liquor Accord The licensee or their representative is to join and be an active participant in the Eurobodalla Liquor Accord.	Police	H
<b>2.</b>	Incident register condition 1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident: (a) any incident involving violence or anti-social behaviour occurring on the premises, (b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate	Police	C

	<p>vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,</p> <p>(c) any incident that results in a person being turned out of the premises under section 77 of the Liquor Act 2007,</p> <p>(d) any incident that results in a patron of the premises requiring medical assistance.</p> <p>2) The licensee must, if requested to do so by a police officer or Liquor &amp; Gaming NSW inspector:</p> <p>(a) make any such incident register immediately available for inspection by a police officer or Liquor &amp; Gaming NSW inspector, and</p> <p>(b) allow a police officer or Liquor &amp; Gaming NSW inspector to take copies of the register or to remove the register from the premises.</p> <p>The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.</p>		
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## Materials considered by the ILGA delegate

### Submission analysis

#### Stakeholder submissions

1. NSW Police: No objections – Conditions
2. Local consent authority: No objections
3. Public: Did not submit
4. Compliance: No objections - Conditions

### Document analysis

1. Application form received: 18 March 2022
2. Plan of proposed licensed area: Compliant
3. Certification of Advertising: Compliant
4. Plan of management
5. Documents
  - a. National Police Certificate: Compliant
  - b. ID: Compliant
  - c. RSA competency card: Compliant
  - d. Licensee training: Compliant
6. Approved Manager: N/A
7. Development consent: Compliant

8. Correspondence from Liquor & Gaming NSW to the applicant requesting additional information and consent to conditions.
9. Correspondence from the applicant in response to Liquor & Gaming NSW.
10. Correspondence from Police.
11. Correspondence from Council.
12. Applicant's Response to Police's Submission
13. Applicant's consent to conditions

### **Conclusion**

- 1) I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether to grant the application. 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. The decision was made by the delegate having reviewed the application statement, business model and risk analysis, stakeholder submissions and other relevant material.
- 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 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 with conditions.

### **Relevant extracts from the Liquor Act 2007**

#### **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:

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.
  - d. the need to support employment and other opportunities in the—
    - i. live music industry, and
    - ii. arts, tourism, community and cultural sectors.

### **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 4 Division 4.1 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.
  - d. the proposed approved manager/licensee has completed the relevant tiered industry training as per legislative requirements.

### **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.

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.

### **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.nsw.gov.au/Pages/public-consultation/online-application-noticeboard/online-application-noticeboard.aspx>. The Review Application form can be accessed online via the Application Number hyperlink.

Further information can be obtained from the Reviews page on the Liquor & Gaming website at: <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>

### **Reasons for not imposing requested conditions**

- **A** – Do not impose. Already covered by the Liquor Act.
- **B** - Do not impose. Already covered/already a condition in the DA.
- **C** - Do not impose. Not a relevant condition for this licence type. Condition sought is generally only imposed on high-risk licence type or in exceptional circumstances. Exceptional circumstances have not been sufficiently made out by the person putting forward the condition.
- **D** - Do not impose. This condition would be more restrictive than similar venues in Kings Cross which remains subject to the lockout laws in 2020.



- **E** - Do not impose. Small Bars are considered low risk. 2016 Review of Small Bars found Venues with a small bar licence have a lower incidence of alcohol-related violence than venues operating as a small bar under another type of liquor licence. Smaller bars have a lower incidence of alcohol-related violence than other types of licensed venue.
- **F** - Do not impose. Already covered in the Plan of Management. Plan of management condition has been imposed.
- **G** - Do not impose. Not in alignment with the business type, risk associated and would impose disproportionate unnecessary financial and operational burden (small business).
- **H** - Do Not Impose. Being part of a liquor accord is not compulsory / on a voluntary basis only. Exceptional circumstances for imposing condition have been sufficiently made out by the person putting forward to the condition.
- **I** - Do not impose – wording not consistent with ILGA/L&GNSW conditions – ILGA/L&GNSW condition wording has been imposed instead.