

## LICENCE DETAILS

<b>Application No.</b>	APP-0011376921
<b>Application type</b>	On-premises (restaurant) liquor licence with catering service, primary service authorisation (PSA) and Extended trading hours (ETA)
<b>Trading hours</b>	<p><i>On-premises (restaurant/Catering) hours</i></p> <p>Monday to Thursday 03:00PM to 11:00PM Friday and Saturday 12:00PM to 01:00AM Sunday 12:00PM to 10:00PM</p> <p><i>On-premises (restaurant/Catering) hours- <b>Outdoor</b></i></p> <p>Monday to Thursday 03:00PM to 11:00PM Friday and Saturday 12:00PM to 12:00AM Sunday 12:00PM to 10:00PM</p> <p><i>Primary service authorisation (PSA) hours</i></p> <p>Monday to Thursday 03:00PM to 11:00PM Friday and Saturday 12:00PM to 01:00AM Sunday 12:00PM to 10:00PM</p> <p><i>Primary service authorisation (PSA) hours – <b>Outdoor</b></i></p> <p>Monday to Thursday 03:00PM to 11:00PM Friday and Saturday 12:00PM to 12:00AM Sunday 12:00PM to 10:00PM</p>
<b>Applicant</b>	HUTCH & BOSS PTY LTD
<b>Licence name</b>	Dux Albury
<b>Premises address</b>	466 DEAN ST, ALBURY, NSW 2640 AUSTRALIA
<b>Matter</b>	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 (restaurant) liquor licence with primary service authorisation (PSA)
<b>Legislation</b>	Section 45(1) of the <i>Liquor Act 2007</i>
<b>Decision details</b>	Under delegation issued by the Independent Liquor and Gaming Authority under section 13 of the <i>Gaming and Liquor</i>

*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 an on-premises liquor licence, subject to conditions set out at Schedule 1 imposed on the licence.

**Decision date** 22/09/2023

**Delegate details**



Kieran McSherry Coordinator-Licensing  
Liquor and Gaming NSW  
Delegate of the Independent Liquor & Gaming Authority

## STATEMENT OF REASONS

### ANALYSIS OF SUBMISSIONS AND STATUTORY REQUIREMENTS

1. Development consent is in place for the use of the premises for use as a licensed restaurant. Council have confirmed that the restaurant may operate on both levels of the venue.
2. A Police submission was received and considered as summarised at **submission analysis** below.
3. No public submissions were received relating to any issues with the application.
4. I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions contained in the licence document.
5. I am satisfied that the statutory advertising requirements have been met.
6. Having reviewed all the material, I am satisfied that granting this application for a on premises (restaurant) liquor licence with primary service authorisation will not be detrimental to the local or broader community.
7. A detailed plan of management has been forwarded which lists Responsible Services of Alcohol measures that will be in place at the venue.

### MATERIALS CONSIDERED BY THE ILGA DELEGATE

#### Information considered.

1. Application form received: 04 April 2023
2. Plan of proposed licensed area: Compliant
3. Certification of Advertising: Compliant
4. Plan of management: Compliant
5. Documents
  - a) National Police Certificate: N/A
  - b) ID: N/A

- c) RSA competency card: Compliant
- 6. Approved Manager: Compliant
- 7. Licensee training: Compliant
- 8. Development consent: Compliant
- 9. Correspondence between Liquor & Gaming NSW and the applicant
- 10. Correspondence from Police: Received
- 11. Correspondence from Council: Not received.
- 12. Applicant's response to submissions received: Received
- 13. Applicant's consent to conditions: Received

### **Analysis of stakeholder submissions**

- 1. NSW Police:  
Police have objected to the 01:00 AM trading times for Friday/Saturdays and have requested a suite of conditions which the delegate has imposed, (see schedule 1).
- 2. Local consent authority  
Albury council has confirmed approval is in place for restaurant activity on both levels of the venue.
- 3. Public  
Not provided

### **OVERALL SOCIAL IMPACT**

#### **1. Positive benefits**

This liquor licence will enable the business to operate primarily a restaurant with the focus being food at the venue. A primary service authorisation (PSA) will permit patrons to consume liquor without a meal. The licensee may also host occasional family functions on the first floor of the venue. The liquor trading hours are extended to 01:00 AM Fridays and Saturdays but the balcony area at the first-floor level will close at midnight to ensure the quiet amenity of the neighbourhood will not be impacted.

#### **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 on the neighbouring premises.

### **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. 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 will be taken to prevent intoxication on the premises, and that those practices will remain in place.

3. 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.
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**

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.

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. In the case of the applicant, the fee payable is the fee applying to the original application. In all other cases, the fee is \$100.

Applications for review of ILGA delegated decisions, can be made via the [Liquor and Gaming Application Noticeboard](#). The Review Application form can be accessed online via the *make a submission* button.

Further information can be obtained from the [Reviews of liquor and gaming decisions](#) page on the Liquor & Gaming website.

## SCHEDULE 1

### 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.

### Dux Albury

Licence conditions to be imposed	Licence condition details
<b>Retail closure period</b>	Section 11A of the <i>Liquor Act 2007</i> 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.
<b>Restricted trading &amp; NYE (except airport, catering, other public entertainment venue, vessel - std)</b>	<p><b>Consumption on premises</b></p> <p>Good Friday 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)</p> <p>Christmas Day 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)</p> <p>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</p> <p>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 Day.</p>
<b>Restricted trading &amp; NYE (airport, catering - std)</b> <b>Consumption on premises</b>	<ul style="list-style-type: none"> <li>- Good Friday: Normal trading</li> <li>- Christmas Day: Normal trading</li> <li>- 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</li> </ul>
<b>Plan of management</b>	The premises is to be operated at all times in accordance with the Plan of Management dated August 2023 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 & Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
<b>Liquor Accord</b>	The licensee must join and be an active participant in the Albury Local Liquor Accord

Licence conditions to be imposed	Licence condition details
<b>Crime Scene Preservation</b>	<p>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:</p> <ol style="list-style-type: none"> <li>1) take all practical steps to preserve and keep intact the area where the act of violence occurred,</li> <li>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 &amp; Gaming NSW website,</li> <li>3) make direct and personal contact with NSW Police to advise it of the incident, and</li> <li>4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.</li> <li>5) 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.</li> </ol>
<b>Closed-circuit television system</b>	<ol style="list-style-type: none"> <li>1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements: <ol style="list-style-type: none"> <li>(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),</li> <li>(b) recordings must be in digital format and at a minimum of ten (10) frames per second,</li> <li>(c) any recorded image must specify the time and date of the recorded image,</li> <li>(d) the system's cameras must cover the following areas: <ol style="list-style-type: none"> <li>i. all entry and exit points on the premises, ii. the footpath immediately adjacent to the premises, and</li> <li>iii. all publicly accessible areas (other than toilets) within the premises.</li> </ol> </li> </ol> </li> <li>2) The licensee must also: <ol style="list-style-type: none"> <li>(a) keep all recordings made by the CCTV system for at least 30 days,</li> <li>(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</li> <li>(c) provide any recordings made by the system to a police officer or Liquor &amp; Gaming NSW inspector within 24 hours of any request by the police officer or Liquor &amp; Gaming NSW inspector to provide such recordings</li> </ol> </li> </ol>

Licence conditions to be imposed	Licence condition details
<b>Requirement to maintain an incident register</b>	<ol style="list-style-type: none"> <li>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: <ol style="list-style-type: none"> <li>a. any incident involving violence or anti-social behaviour occurring on the premises,</li> <li>b. any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,</li> <li>c. any incident that results in a person being turned out of the premises under section 77 of the Liquor Act 2007,</li> <li>d. any incident that results in a patron of the premises requiring medical assistance.</li> </ol> </li> <li>2. The licensee must, if requested to do so by a police officer or Liquor &amp; Gaming NSW inspector: <ol style="list-style-type: none"> <li>a. make any such incident register immediately available for inspection by a police officer or Liquor &amp; Gaming NSW inspector, and</li> <li>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.</li> </ol> </li> <li>3. 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.</li> </ol>
<b>Outdoor area condition</b>	<p>The licensee must ensure that patrons vacate the outdoor area on the first floor at 12:00 midnight with doors closed, to ensure minimum noise disturbance to the neighbourhood.</p>

Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)
<b>No rapid consumption drinks.</b>  The following drinks must not be sold or supplied on the licensed premises after 10:00 pm: Any drink that contains more than 30 mls of spirits or liqueur and that is designed to be consumed rapidly (commonly referred to as a "shot" or a "shooter").	Police	C

Proposed condition not imposed on the licence	Proposed by	Reason code (see 'List of reasons and codes for not imposing requested conditions' below this table)
<p><b>Closed-circuit television system</b></p> <p>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 and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.</p>	Police	G

**List of reasons and codes for not imposing requested conditions**

- A** Already covered by the *Liquor Act 2007*.
- B** Already a condition in the development consent.
- C** 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 proposed by the person putting forward the condition.
- D** Already covered in the plan of management. Plan of management condition has been imposed.
- E** Not aligned with the business type and would impose disproportionate unnecessary financial and operational burden.
- F** Being part of a liquor accord is on a voluntary basis only. Exceptional circumstances have not been proposed by the person putting forward the condition.
- G** ILGA/L&GNSW condition wording has been imposed.