

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

APPLICATION NO:	1-5747216796
APPLICATION FOR:	On-premises liquor licence for a restaurant, catering service, tourist facility, sale on other premises authorisation.
TRADING HOURS:	Monday to Saturday: 10:00 AM to 12:00 AM Sunday: 10:00 AM to 10:00 PM
APPLICANT:	Wyndham Catering Pty Ltd
LICENCE NAME:	Dalwood Catering
PREMISES ADDRESS:	Wyndham Estate 700 Dalwood Rd, DALWOOD, NSW 2335.
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 <i>Liquor Act 2007</i>

ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

Dalwood Catering

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 liquor licence for a restaurant, catering service, tourist facility and sale on other premises authorisation, application number 1-5747216796.

On 22 September 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 - restaurant
 - Good Friday 12:00 noon - 10:00 PM
 - Christmas Day 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)

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December 31st Normal opening time until normal closing time or 2:00 AM 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 5:00 AM.

3. Consumption on premises-catering service

Good Friday Normal trading

Christmas Day Normal trading

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

4. The sale on other premises authorisation can only be utilised for functions, occasions or events, which are ticketed or are by invitation only.
5. The licensee or a nominated employee in their absence, must be present when utilising the sale on other premises authorisation.
6. The licensee must not exercise the sale on other premises authorisation at any location/venue where a current and valid liquor licence exists.
7. A copy of the Plan of Management and any updates adopted from time to time shall be maintained in a register and shall be available for inspection at any time by members of the NSW Police Force or Inspectors of the Director of Liquor and Gaming.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 17 June 2017.
- (2) Certification of Advertising Application, signed and dated by the applicant on 10 August 2017
- (3) ASIC report for the organisation licensee forwarded 17 June 2017.
- (4) Plan of the proposed licensed premises forwarded 21 September 2017
- (5) Development Consent 328/94 issued 4 August 1994 and DA4/2008, issued 21 February 2008 by Singleton Council.
- (6) Photos of the proposed licensed area both indoors and outdoors.

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- (7) Submissions from the Singleton Council, dated 18 August 2017 and 5 September 2017, raising concerns with the extended trading times in addition to confirming that a separate development consent is required for public events.
- (8) Submission from Hunter Valley Local Area Command, received 19 June 2017, which requests conditions to be imposed on the licence and raises concerns with regard to the size of the proposed licensed premises.
- (9) A submission from the Secretary Liquor & Gaming NSW, dated 13 September 2017, confirms that consent is not in place for events to be held on the land surrounding the building.
- (10) A Plan of Management, dated August 2017 has been forwarded 16 August 2017.
- (11) Email correspondence from the Authority to the applicant's legal representative requesting additional information in support of the application, dated 24 July 2017, 18 August 2017, 5 September 2017, 19 and 20 September 2017
- (12) Email correspondence from the applicant's legal representative to the Authority in response to the requests for additional information, dated 17 August 2017, 29 August 2017, 7 September 2017, 15, 20 and 21 September 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

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- (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 Dalwood, and the "broader community" of the Singleton Council LGA as a sale on other premises authorisation has also been requested.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an on-premises liquor licence for a restaurant, catering service, tourist facility and sale on other premises authorisation is unlikely to result in any significant increase in alcohol-related harms in the local community. Although the applicant has also requested public arena and events, development consent is not in place for this class and therefore it cannot be granted.
- (2) Police made a submission raising no objections to the application but did raise concerns regarding the size of the proposed licensed boundary and did request conditions to be imposed on the licence, which have been duly considered by the delegate,
- (3) The Secretary to Liquor & Gaming NSW have also expressed reservations in relation to the size of the proposed licensed boundary, in addition to the fact that no consent is in place to hold public events on the land surrounding the building. However the Secretary

did contend that the catering service aspect of the licence, in tandem with the sale on other premises authorisation, could be utilised for the provision of food and liquor within the grounds.

- (4) The licence will be exercised in accordance with a Plan of Management and licence conditions that addresses the responsible service of alcohol, and provides measures to ensure that the operation of the premises 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) Positive benefits

This application is for a multi-faceted business operation of a vineyard premises in the Hunter Valley, to be utilised as a restaurant, and as a catering service for both weddings and other functions in addition to having the ability to conduct tours of the vineyard. A sale on other premises authorisation has also been forwarded with the application.

(2) Negative impacts

Council have confirmed that consent is not in place for the “public events and arena “, therefore the delegate cannot grant this class. Both Police and the secretary have raised concerns in relation to the proposed size of the licensed boundary.

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) 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.

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Decision Date: 22 September 2017



Matt Weber
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>