



**NSW Department of Justice
Liquor & Gaming NSW**

DOC16/174023

APPLICATION NO:	1-4633216751
APPLICATION FOR:	On-premises liquor licence with catering class
PROPOSED TRADING HOURS:	11:00 AM to 11:00 PM Monday to Saturday 11:00 AM to 10:00 PM Sunday
APPLICANT:	Mali Brae Pty Ltd
PROPOSED LICENSED PREMISES NAME:	Mali Brae Farm
PREMISES ADDRESS:	562 Nowra Rd, Moss Vale NSW 2577
ISSUE:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for Liquor – on-premises liquor licence with Primary Service Authorisation.
LEGISLATION:	Section 45(1) of the Liquor Act 2007

**ILGA DELEGATED DECISION – APPLICATION FOR ON-PREMISES LIQUOR
LICENCE WITH CATERING CLASS –
MALI BRAE FARM**

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 Justice, has decided to grant with conditions the following licence application number: 1-4633216751.

On 19 December 2016, 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. Consumption on premises
 - 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

3. The business of providing the Catering Service must be for fee, gain or reward. Functions held pursuant to the Catering Service must be pre-booked. A Catering Service booking register must be maintained.

4. The premises are to be operated at all times in accordance with the Plan of Management dated 1 September 2016 as may be varied from time to time after consultation with the Local Area Commander NSW Police.

5. The licensee or its representative must join and be an active participant in the local liquor accord.

6. Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing injury to a person on the premises, the person must:
 - (a) Take all practical steps to preserve and keep intact the area where the act of violence occurred, retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police.
 - (b) Make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
 - (c) Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

7. The licensee must maintain a closed-circuit television system on the premises in accordance with the following requirements:
 - (a) The system must record continuously from start of function/event until one hour after the premises closes.
 - (b) Any recorded image must specify the time and date of the recorded image.
 - (c) The systems cameras must cover all entry and exit points and all licensed area.
 - (d) The licensee must keep the recordings made by the CCTV system for at least 30 days, and provide any recordings made by the system to a police officer or authorised licensing inspector when requested by a police officer or authorised licensing inspector

8. When an event other than a wedding is being held at the venue the licensee will notify The Hume Licensing Officer in writing at least 30 days before the event that an event is being held, the notification will specify the type of event, number of people attending, and the start and finish time of the event.

9. When an event other than a wedding is being held at the venue and there is expected to be over two hundred persons attending and any type of amplified music is being played the licensee will employ at least one security guard to patrol the licensed area and monitor intoxication at the event.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the Application, and other relevant material:

- (1) Application form for on-premises liquor licence with catering class, lodged 27 June 2016 (DOC16/073537)
- (2) Plan of the premises, approved by the applicant on 15 December 2016 (DOC16/173930)
- (3) Development Application No. LUA12/0320 granted by Wingecarribee Shire Council on 29 August 2012 approving the use of the premises as a function centre (DOC16/117340)
- (4) Certificate of Advertising Application, signed and dated on 13 December 2016 (DOC16/172771)
- (5) ASIC extract for licensee and business owner, Mali Brae Pty Ltd ACN: 160 303 337 (DOC16/073540)
- (6) Submission from Senior Constable Anderson, The Hume Local Area Command, NSW Police Force, dated 9 December 2016 (DOC16/170509)
- (7) Local Consent Authority Notice signed by Wingecarribee Shire Council on 19 April 2016, which indicates that development consent is required and in place
- (8) Email correspondence from the Authority to the applicant requesting further information (DOC16/073589, DOC16/169882, DOC16/170510, DOC16/173940)
- (9) Email correspondence from the applicant to the Authority, including applicant's consent to the imposition of the licence conditions (DOC16/099441, DOC16/172769, DOC16/173930, DOC16/173934)
- (10) Plan of Management, dated 1 September 2016 (DOC16/173933)
- (11) Appointment of Manager Notice, appointing Mr Gregory Wyndham Dark to the licence (DOC16/109326)

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:
 - 4.2.1. the grant or removal of a small bar licence (where required),
 - 4.2.2. a packaged liquor licence (limited to telephone/internet sales),
 - 4.2.3. 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.
- (3) 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 Moss Vale and the “broader community” comprises the Wingecarribee LGA.

5. Analysis of Submissions and other Materials

- (1) The application is for an on-premises licence with catering class. The premises is a scenic rural property located in the Southern Highlands of NSW which holds boutique weddings.
- (2) The Hume Local Area Command has lodged a submission in respect of the application advising that they do not object to the application, and proposing a number of conditions to be imposed on the licence, all of which the applicant consented to.
- (3) Wingecarribee Shire Council signed a Local Consent Authority Notice indicating that development consent is required and in place.
- (4) No other objections or submissions were received in respect of this application.
- (5) The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol and harm minimisation measures.
- (6) I am satisfied that the statutory advertising requirements have been met.
- (7) Having reviewed all of the material, I am satisfied that this application for an on-premises liquor licence is unlikely to result in any significant increase in alcohol-related harm in the local community.

6. Overall social impact

(1) Positive benefits

Having examined the material provided with the application, I am satisfied that the granting of the licence will bring a number of benefits to the local community including economic benefits and the provision of a luxury wedding venue in rural NSW.

(2) **Negative impacts**

No identified negative impacts. There were no issues or objections raised by key stakeholders during the consultation period.

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) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (6) 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 on-premises liquor licence with catering class with conditions.

Decision Date: 19 December 2016



Catherine Bass-Kendzy
A/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>