

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

APPLICATION NO:	APP-0003084002
APPLICATION FOR:	Liquor - packaged liquor licence (online)
TRADING HOURS:	Monday to Saturday: 10:00AM - 11:00PM Sunday: 10:00AM-10:00PM
APPLICANT:	Incy Wincy Cyder Pty Limited
LICENCE NAME:	Incy Wincy Cyder Pty Limited
PREMISES ADDRESS:	41 Narone Creek Rd WOLLOMBI NSW 2325
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</i> 2007

**ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE
INCY WINCY CYDER PTY LIMITED**

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 a packaged liquor licence (online), application number APP-0003084002.

On 29 August 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:

- 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.
- Retail sales

Good Friday	Not permitted
December 24th	Normal trading Monday to Saturday, 8:00 AM to 10:00 PM Sunday
Christmas Day	Not permitted
December 31st	Normal trading

3. Limited to the sale of liquor only by means of taking orders over the telephone or by facsimile or mail order, or through an Internet site.

STATEMENT OF REASONS

Material before the ILGA delegate (DF17/010884)

- (1) Application form lodged 16 June 2017
- (2) Category A Community Impact Statement, signed and dated by the applicant on 14 June 2017
- (3) Certification of Advertising Application, signed and dated by the applicant on 19 July 2017
- (4) Plan of the proposed licensed premises
- (5) Signed notice from the Cessnock City Council, dated 26 June 2017, confirming that council consent is required but not in place to permit the proposed activity
- (6) Signed notice from the Cessnock City Council, dated 28 June 2017, confirming that council consent is not required to permit the proposed activity
- (7) Submission from the Cessnock City Council, dated 29 June 2017, confirming that council consent is not required as the proposed use of the premises complies with the definition of a "home occupation"
- (8) Current company extract (ASIC) for Incy Wincy Cyder Pty Limited ACN:110 597 503, dated 16 June 2017
- (9) Submission from a member of the public, received 7 July 2017, objecting to the application being granted on the assumption that it is for an apple cider manufacturing plant.
- (10) Email correspondence from the Authority to the applicant requesting additional information in support of the application, dated 3 August 2017.
- (11) Email correspondence from the applicant to the Authority in response to the requests for additional information, dated 10 August 2017.

1. 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,

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- 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 Wollombi, and the "broader community" of the Cessnock City Council LGA.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all the material, I am satisfied that this application for an online packaged liquor licence is unlikely to result in any significant increase in alcohol-related harms in the local community.
- (2) The sales of liquor will be limited to: telephone orders, as well as facsimile, online or mail order.
- (3) The proposal is for an on-line based liquor distribution company, with the proposed business activity essentially involving dispatching service from a locked shipping container at the proposed premise, via courier to the end-consumer.
- (4) The proposed licensed premises comprise a home office, at which orders will be received and processed for remote sales only (i.e. via telephone, internet, facsimile or mail orders). There will be no liquor or alcohol sold on the licensed premises. I am satisfied that development consent is not required to permit the proposed activity.
- (5) A submission was received from the Cessnock City Council confirming that no further development consent is required for the proposed use of the premises.
- (6) A submission was received from a member of the public, alleging that the application was made for an apple cider manufacturing plant, for the production and sale of cider to buyers. Given that the proposed premises fell just out of the local heritage/conservation zone, the submission raises concerns with potential increases in noise and traffic levels, should the licence been granted. The submission notes that no DA was issued for the processing plant. The submission also raises concerns that heavy traffic supply of apples

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7 days a week to the premises could adversely impact the already flood prone surrounding terrain and damage to the local road.

- (7) No other submissions have been received in respect of this application.
- (8) The applicant noted the restricted nature of the licence sought. Namely, the business is proposed to be primarily via the internet and, therefore, not involve any retail sales at the licensed premises. As such no adverse effects on the wellbeing of the local community is expected.(CIS)
- (9) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (10) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The proposed licence will provide convenient access to liquor, offering the option of ordering online, by phone, fax or mail, and including delivery to customers via courier. No sales will be made in person at the licensed premises.

(2) Negative impacts

Although a public objection was received prior to granting this application, the concerns raised do not reflect the nature of the licence sought. The nature of the licence sought means that there are unlikely to be any amenity impacts on the local community.

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.

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- (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: 29 August 2017



Joanne Zammit
Coordinator, 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>