

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

DOC16/092184

APPLICATION NO: APP-0002016768

APPLICATION FOR: On-premises licence for a restaurant with a primary service authorisation

PROPOSED TRADING HOURS: 10:00 AM to 12:00 AM Monday to Saturday
10:00 AM to 10:00 PM Sunday

APPLICANT: Fatima Zaidi

LICENSED PREMISES NAME: GIUSEPPES WAGGA

LICENSED PREMISES ADDRESS: 31 Kincaid Street, Wagga Wagga, NSW 2650,
lot 10 DP 1161687

ISSUE: 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 licence for a restaurant and a primary service authorisation and impose conditions for that licence.

LEGISLATION Section 45 (1)

**ILGA DELEGATED DECISION - APPLICATION FOR AN ON-
PREMISES LICENCE FOR A RESTAURANT WITH A PRIMARY
SERVICE AUTHORISATION – GIUSEPPES WAGGA**

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 application APP-0002016768 for an on-premises liquor licence for a restaurant, with a primary service authorisation.

On 24 August 2016, 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 – restaurant class

Good Friday 12:00 noon - 10:00 PM

(liquor can only be served with or ancillary to a meal in a dining area)

Christmas Day 12:00 noon - 10:00 PM

(liquor can only be served with or ancillary to a meal in a dining area)

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 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.

3. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
4. The premises must be operated at all times in accordance with the Plan of Management dated 4 August 2016, as may be varied from time to time in consultation with the Local Area Commander
5. The licence cannot be exercised unless and until the Independent Liquor & Gaming Authority has been provided with evidence that the premises is complete and ready to trade.
6. The premises must be operated with its principal business being that of a restaurant as defined by the Liquor Act and not as a bar.
7. The kitchen must remain open with substantial food service available to patrons during the approved hours of operation.
8. The licensee must ensure that no "shots", "shooters" or "slammers" are sold or supplied to any patron on the licensed premises.

STATEMENT OF REASONS

1. Material before the ILGA delegate

The decision made by the delegate had the Application, the accompanying community impact statement (CIS) and other relevant material:

1.1. Application form – lodged 22 July 2016 (DOC16/079204)

1.2. Community Impact Statement (CIS) document and supporting material that accompanies the Application, dated 12 May 2016. (DOC16/079206)

The CIS includes the following contentions on the social impact of granting the Application:

- The proposal will have minimal impact as the premises previously operated as a micro-brewery and bar.
- The proposed restaurant will have less of an impact, even though alcohol will be served with and without meals.
- Positive impacts will include financial benefit to the proprietors and the provision of employment and recreational opportunities.
- It is unlikely that there will be any negative impacts as liquor will be served responsibly and predominantly in conjunction with meals.

1.3. Development Approval DA16/0163 dated 6 May 2016 and issued by City of Wagga Wagga Council, approving the use of the proposed licensed premises as a restaurant. (DOC16/079205)

1.4. Letter from the applicant's agent explaining discrepancy between address of proposed licensed premises and address in DA dated 22 July 2016. (DOC16/079216)

1.5. Plan indicating boundary of proposed licensed area received 10 August 2016. (DOC16/092389)

1.6. Plan of Management for the premises dated 4 August 2016. (DOC16/87108)

1.7. House Policy for the premises dated 12 August 2016. (DOC16/088187)

1.8. Submission from Wagga Wagga Local Area Command dated 10 August 2016, which was required to be notified of the application, advising of no objection to the Application. (DOC16/086362)

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

3.1 In determining an application for a licence, under section 45(3) of the *Liquor Act 2007*, the delegate must also be satisfied that:

- 3.1.1 the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates,
- 3.1.2 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

- 3.1.3 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

4.1 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.

4.2 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.

4.3 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.

4.4 Local and Broader Community - for the purposes of this decision, the delegate is satisfied that the relevant "local community" is the community within the State suburb of Wagga Wagga and the "broader community" comprises the Wagga Wagga LGA.

5. Analysis of Submissions and other Materials

5.1 Having reviewed all the material, I am satisfied that this application for an on-premises licence with a primary service authorisation is for a low risk business model.

5.2 The proposed licensed premises will operate as a restaurant and not as a bar. The applicant has agreed to the imposition of a condition to that effect.

5.3 The proposed licensed premises will be operated in compliance with a detailed Plan of Management produced in consultation with Wagga Wagga LAC, which addresses crime scene preservation, restrictions on entertainment and security measures. The proposed licensed premises will also be operated in compliance with a House Policy which addresses responsible service of alcohol and prevention of supply of liquor to minors.

5.4 City of Wagga Wagga Council recently approved a DA in respect of the use of the proposed licensed premises as a restaurant, and the DA acknowledges the intention to operate the restaurant as a licensed premises.

5.5 Wagga Wagga LAC, a signatory to the Plan of Management, does not object to the Application.

5.6 There were no objections to the Application.

6. Overall social impact

6.1 Positive benefits

6.1.1 Police have been involved in the preparation of the Plan of Management and have no concerns about the granting of the licence.

6.1.2 The licence will provide further recreational opportunities for the local community.

6.2 Negative impacts

6.2.1 There were no concerns raised by any stakeholders during the consultation period.

7. Conclusion

7.1 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. The interested parties are NSW Police, the Licensee and (other parties who may be affected).

7.2 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.

7.3 Having considered the Plan of Management, House Policy and other 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.

7.4 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.

7.5 Having considered together the positive benefits and negative impacts that are likely to flow from granting the Application, I am satisfied that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.

7.6 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 with conditions the licence application.

Decision Date: 24 August 2016



Olga Lenger
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>