

**NSW Department of Customer Service**  
**Liquor & Gaming NSW**

Application number:	APP-0007377369	
Application for:	Packaged (online) liquor licence	
Trading hours:	Monday – Sunday	8:30 AM – 4:30 PM
Applicant:	BYRON BAY GIFTS PTY LTD	
Licence name:	Byron Bay Gifts	
Premises address:	UNIT 3 67 CENTENNIAL CCT BYRON BAY NSW 2481	
Issue:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for a Packaged (online) liquor licence.	
Legislation:	Section 45(1) of the <i>Liquor Act 2007</i>	

**PACKAGED (ONLINE) LIQUOR LICENCE**

**Byron Bay Gifts**

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 Customer Services, has decided to grant the application for a Packaged (online) liquor licence, application number APP-0007377369.

After careful consideration of the application and other material, the delegate decided to approve the application, subject to conditions listed in table 1.

Decision Date: 27 October 2020



**Kieran Mcsherry**

**A/Senior Licensing Officer, Low Licensing and Special Events**  
**Liquor, Gaming and Racing NSW**  
**Delegate of the Independent Liquor & Gaming Authority**

## STATEMENT OF REASONS

### Analysis of Submissions and statutory requirements

- (1) Submissions were received and considered as summarised at Table [3]. In relation to the submissions received, while there were concerns raised about the potential impact of granting the licence, I am satisfied that these can be addressed by the conditions which I have imposed on the licence.
- (2) Appropriate consent is in place for the use of the premises.
- (3) Police have no adverse submission in relation to the application and have proposed conditions to be imposed on the licence.
- (4) Byron Shire Council raises no objection to Packaged (online) Liquor Licence.
- (5) I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions contained in the licence document.
- (6) I am satisfied that the statutory advertising requirements have been met.
- (7) Having reviewed all the material, I am satisfied that granting this application for a packaged (online) liquor licence will not be detrimental to the local or broader community.

### Overall social impact

#### (1) Positive benefits

Byron Bay Gifts package together goods obtained from Northern Rivers businesses and deliver them Australia wide. These goods include food, baby gifts and pamper gifts. They may or may not be packaged with alcohol the latter of which is sourced from both international and Australian entities. Sales are made online through our website and via phone. The business operates out of a warehouse in the Byron Bay industrial estate and does not provide retail sales.

#### (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.

## Liquor & Gaming NSW

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### Conditions considered by the ILGA delegate (DF20/007464)

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.

Table 1 sets out the conditions which I have decided to impose on the licence, and the Table 2 sets out conditions put forwarded for consideration which I have decided not to impose, and the reasons for that decision.

<b>TABLE 1 - Proposed conditions imposed on the licence:</b>									
<b>1.</b>	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 02:30 AM and 08:30 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>2.</b>	<p><b>Restricted trading &amp; NYE (std)</b></p> <p>Retail sales</p> <table border="0"> <tr> <td>Good Friday</td> <td>Not permitted</td> </tr> <tr> <td>December 24th</td> <td>Normal trading Monday to Saturday 8:00 AM to 10:00 PM Sunday</td> </tr> <tr> <td>Christmas Day</td> <td>Not permitted</td> </tr> <tr> <td>December 31st</td> <td>Normal trading</td> </tr> </table>	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
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<b>3.</b>	The licensee must ensure that the sale of liquor is limited to taking orders over the telephone or by facsimile or mail order, or through an Internet site.								
<b>4.</b>	The licensee must ensure that no tastings are conducted on the premises.								
<b>5.</b>	No advertising or promotional material relating to liquor is to be displayed outside the premises.								
<b>6.</b>	Licensee/manager training must be completed no later than 12 months from the date of grant of the liquor licence.								

<b>TABLE 2 – Proposed conditions not imposed on the licence:</b>		<b>Proposed by:</b>	<b>Reason code (see table 9)</b>
<b>1.</b>	The licensee must ensure that the sale of liquor is limited to taking orders over the telephone or by facsimile or mail order, or through an Internet site.	Police	A
<b>2.</b>	No advertising or promotional material relating to liquor is to be displayed outside the premises.	Police	A
<b>3.</b>	Quiet & Good Order	Police	C

	The business authorised by this licence must not operate with a greater overall level of social impact on the well-being 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		
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**Materials considered by the ILGA delegate**

<b>TABLE 3: Submissions analysis</b>	
<b>Stakeholder submissions</b>	
1.	<p><b>NSW Police</b></p> <ul style="list-style-type: none"> <li>Police have no adverse submission in relation to the application but request conditions to be imposed on the licence</li> </ul>
2.	<p><b>Local consent authority</b></p> <ul style="list-style-type: none"> <li>Council advises that a development consent for home occupation is not required if no liquor to be stored on site.</li> </ul>
3.	<p><b>Public</b></p> <ul style="list-style-type: none"> <li>Council understands the nature of the land use conducted by Byron Bay Gifts; it raises no objection to Packaged Liquor Licence APP-0007377369.</li> </ul>

<b>TABLE 4: Document analysis</b>		
	<b>Details</b>	<b>Dated received/comment</b>
1.	Application form	17/06/2020
2.	Plan of proposed licensed area	Compliant
3.	Certification of Advertising	Compliant
4.	Plan of management	Compliant
5.	RSA competency card	Compliant
6.	Licensee training	Condition imposed
7.	Development consent	The subject property has an approval under DA 10.2001.751.1 for light industry.

8.	Correspondence from Police advising not opposed to the granting of this application but request conditions to be imposed.
9.	Correspondence from Byron Shire Council advising no objection.

### 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) 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 plan of management 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 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.

**TABLE 5: 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:

#### **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.

**TABLE 6: 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.

**TABLE 7: 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:
  - 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.

**TABLE 8: 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.nsw.gov.au/Pages/public-consultation/online-application-noticeboard/online-application-noticeboard.aspx>. The Review Application form can be accessed online via the Application Number hyperlink.

Further information can be obtained from the Reviews page on the Liquor & Gaming website at: <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>

**TABLE 9: - Reasons for not imposing requested conditions.**

A	Do not impose. Already covered by the Liquor Act.
B	Do not impose. Already covered/already a condition in the DA.
C	Do not impose. 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 sufficiently made out by the person putting forward the condition.
D	Do not impose. This condition would be more restrictive than similar venues in Kings Cross which remains subject to the lockout laws in 2020.
E	Do not impose. Small Bars are considered low risk. 2016 Review of Small Bars found Venues with a small bar licence have a lower incidence of alcohol-related violence than venues operating as a small bar under another type of liquor

	licence. Smaller bars have a lower incidence of alcohol-related violence than other types of licensed venue.
F	Do not impose. Already covered in the Plan of Management. Plan of management condition has been imposed.
G	Do not impose. Not in alignment with the business type, risk associated and would impose disproportionate unnecessary financial and operational burden (small business).
H	Do Not Impose. Being part of a liquor accord is not compulsory / on a voluntary basis only. Exceptional circumstances for imposing condition have been sufficiently made out by the person putting forward to the condition.
I	Do not impose – wording not consistent with ILGA/L&GNSW standard conditions – ILGA/L&GNSW standard condition wording has been imposed instead.