



NSW Department of Industry
Liquor & Gaming NSW

APPLICATION NO: APP-0005132767

APPLICATION FOR: Liquor – on premises restaurant with a primary services authorisation (PSA)

TRADING HOURS:

Restaurant liquor trading hours
Indoor Dining
Monday to Saturday: 10:00 AM to 12:00 AM
Sunday: 10:00 AM to 10:00 PM

Outdoor Dining
Monday to Saturday: 10:00 AM to 12:00 AM
Sunday: 10:00 AM to 10:00 PM

PSA liquor trading hours
Indoor Dining
Monday to Saturday: 10:00 AM to 12:00 AM
Sunday: 10:00 AM to 10:00 PM

Outdoor Dining
Monday to Saturday: 10:00 AM to 12:00 AM
Sunday: 10:00 AM to 10:00 PM

APPLICANT: Zora Sepesiova

LICENCE NAME: El Camino Cantina Byron Bay

PREMISES ADDRESS: Shop 7 108-114 Jonson St, 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 an on premises liquor licence.

LEGISLATION Section 45(1) of the *Liquor Act 2007*

ILGA DELEGATED DECISION – APPLICATION FOR

On premises- liquor licence

El Camino Cantina Byron Bay

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 restaurant with a primary services authorisation, application number APP-0005132767.

On 18 April 2019 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. 0000101 Restricted trading & NYE (except airport, catering, other public entertainment venue, vessel - std)

Consumption on premises

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 premise is to operate with its principal business being that of a restaurant as defined by the Liquor Act and not as a bar, with the kitchen to be open and substantial food service to be available to patrons at all times during the approved hours of operation.
4. The premises are to be operated at all times in accordance with the Plan of Management email date 04 April 2019 as may be varied from time to time after consultation with the Police District Commander NSW Police.

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5. The Licensee is to ensure that no drinks commonly referred to as shots, shooters or slammers etc. are to be sold or supplied at the premises, this includes all drinks that are prepared to be consumed rapidly.
6. **Closed-circuit television system**

The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

- (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
- (b) recordings must be in digital format and at a minimum of six (6) frames per second,
- (c) any recorded image must specify the time and date of the recorded image,
- (d) the system's cameras must cover the following areas:
 - (i) all entry and exit points on the premises,
 - (ii) the footpath immediately adjacent to the premises, and
 - (iii) all publicly accessible areas (other than toilets) within the premises

The licensee must also:

- (a) keep all recordings made by the CCTV system for at least 30 days,
 - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
 - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.
7. The licensee must ensure that immediately after the licensee or a staff member becomes aware of any incident involving an act of violence causing an injury to a person on the premises, the following is adhered to:-
 - a) The licensee and/or staff 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) The licensee and/or staff make direct and personal contact with the Police District Commander or his/her delegate and advise the Commander or delegate of the incident;

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- c) The licensee and/or staff comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

STATEMENT OF REASONS

1. Material before the ILGA delegate (DF18/021669)

The decision made by the delegate having reviewed the application and supporting documents;

- (1) Application form lodged on 5 December 2018.
- (2) Plan of proposed licensed area.
- (3) Signed Certification of Advertising.
- (4) Community Impact statement Category A
- (5) National Police certificate for the proposed licensee, dated 25 February 2019.
- (6) A plan of management has been forwarded in support of the application.
- (7) Council submission dated 20 December 2018.
- (8) Development consents 10.2013.587.3 dated 25 May 2013, Section 96, 10.2013.587, dated 16 May 2018, issued by Byron Bay Council.
- (9) Submission from Tweed/Byron Licensing Police, dated 19 February 2019, objecting to the granting of the primary service authorisation
- (10) Correspondence from Liquor and Gaming NSW to the applicant' agent.
- (11) Responses from the applicant's agent and consent to conditions imposed by Liquor and Gaming NSW.

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,

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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 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.

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,

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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.
- (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 Byron Bay, and the "broader community" of Byron Shire Council.

5. Analysis of Submissions and other Materials

- (1) Having reviewed all of the material, I am satisfied that this application for an on premises-restaurant with a primary service authorisation is unlikely to result in any significant increase in alcohol related harms in the local community.
- (2) Development consent is in place for the proposed activity at the premises.
- (3) I have duly considered police's objection to the primary service authorisation but have imposed conditions on the licence to ensure it will be exercised according to the responsible services of alcohol measures and guidelines.
- (4) Council have raised no objection to this application.
- (5) The applicant has forwarded a plan of management and house policy for the venue.
- (6) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.

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- (7) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The venue will primarily be a restaurant, providing quality food to the Byron Bay area. A primary service authorisation will enhance this service to the public.

(2) Negative impacts

The conditions which I have imposed in addition to a detailed plan of management, provided by the applicant, will ensure that there is 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.
- (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.



Department
of Industry

Liquor & Gaming

Decision Date: 18 April 2019

Wendy Yeung Wye Kong
A/Coordinator (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.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.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>