


## LICENCE DETAILS

<b>Application No.</b>	1-9185262956
<b>Application type</b>	Removal – packaged liquor licence
<b>Trading hours</b>	Monday to Saturday 09:00 AM to 10:00 PM Sunday 09:00 AM to 08:00 PM
<b>Applicant</b>	Darren Pearson on behalf of BAYTWIG PTY LTD
<b>Licence name</b>	The Cellar Byron Plaza (LIQP700357029)
<b>Current premises</b>	Shop 2, 90 Jonson St, BYRON BAY NSW 2481
<b>Proposed premises</b>	Suites 2 and 3, 107 Jonson St, BYRON BAY NSW 2481
<b>Matter</b>	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for the removal of a packaged liquor licence.
<b>Legislation</b>	Section 45(1) of the <i>Liquor Act 2007</i>
<b>Decision details</b>	Under delegation issued by ILGA under section 13 of the Gaming and <i>Liquor Administration Act 2007</i> , a designated Public Service employee or other Public Service employee of Liquor & Gaming NSW in the Department of Creative Industries, Tourism, Hospitality and Sport, has decided to grant the application for a removal of a packaged liquor licence, subject to conditions set out at Schedule 1 imposed on the licence.
<b>Decision date</b>	15/10/2024
<b>Delegate details</b>	 Gabrielle Gallagher, Director Liquor and Gaming NSW Delegate of the Independent Liquor & Gaming Authority

## **STATEMENT OF REASONS**

### **ANALYSIS OF SUBMISSIONS AND STATUTORY REQUIREMENTS**

1. Appropriate consent is in place for the use of the premises as a bottle shop – to be operated under packaged liquor licence. Local council confirms they have no objection to the liquor licence being removed to Suites 2 and 3, 107 Jonson St, BYRON BAY, NSW 2481.
2. Police raise no objections in relation to this application.
3. L&GNSW Compliance has reviewed the application and note there are no current adverse compliance holdings for the past five years.
4. No public submissions or other agency submissions were received objecting to the application.
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 will not be detrimental to the local or broader community.

### **MATERIALS CONSIDERED BY THE ILGA DELEGATE**

#### **Information considered**

1. Application form received: 19 August 2024.
2. Plan of proposed licensed area: Compliant
3. Certification of Advertising: Compliant
4. Liquor plan of management: Compliant
5. Approved Manager: Mr Michael John Clarke
  - a) Certification as Approved Manager: Compliant
  - b) Current competency card: Compliant
6. Licensee Training: Compliant
7. Development consent: Compliant
8. Correspondence between Liquor & Gaming NSW to the applicant.
9. Correspondence from Police.
10. Correspondence from Council.
11. Applicant's response to submissions received.
12. Applicant's consent to conditions.
13. Harm minimisation and community impact data.

#### **Analysis of stakeholder submissions**

1. NSW Police Force:

Police raised no objections to the application.
2. Local consent authority:

Council raised no concerns with the application.

3. Public and other agency submissions:

No submissions were received from members of the public or other agencies in response to the advertising of the application.

## **OVERALL SOCIAL IMPACT**

### **1. Positive benefits**

The granting of the removal will continue to provide patrons with the convenience of access to packaged liquor products for consumption away from the premises during the standard liquor trading period.

### **2. Mitigation of potential negative impacts**

I am satisfied that the business model, conditions imposed, liquor plan of management and 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.

## **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 informed 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 existing licensee is a fit and proper person to carry on the business or activity to which the proposed licence relates.
3. Having considered the 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 removal comes into effect that ensure, as far as reasonably practicable, that all reasonable steps will be 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 ILGA, 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.

## **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:

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.
  - d) the need to support employment and other opportunities in the—
    - i. live music industry, and
    - ii. arts, tourism, community and cultural sectors.

### **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.

### **Risks and potential effects**

Under section 48(3) of the *Liquor Act 2007* (the Act), ILGA must not grant a licence, licence removal, authorisation or approval of a kind prescribed by section 48(1) of the Act unless ILGA is satisfied, having regards to the Statement of Risks and Potential Effects, 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.

The test applying under section 48(3) relates to delegated decisions regarding:

- a) the grant or removal of a small bar licence (where required),
- b) the grant of a packaged liquor licence (limited to telephone/internet sales),
- c) the grant removal of a packaged liquor licence within the same local community
- d) 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 Statement of Risks and Potential Effects provides ILGA with information about the potential risks associated with the application and how these are to be mitigated, as well as 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.

## 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 may 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. In the case of the applicant, the fee payable is the fee applying to the original application. In all other cases, the fee is \$100.

Applications for review of ILGA delegated decisions, can be made via the [Liquor and Gaming Application Noticeboard](#). The Review Application form can be accessed online via the *make a submission* button.

Further information can be obtained from the [Reviews of liquor and gaming decisions](#) page on the Liquor & Gaming website.

## SCHEDULE 1

### Conditions considered by the ILGA delegate

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:

- whether the need for the condition has been adequately established
- whether the benefits of imposing the condition are likely to outweigh the costs and
- whether the proposed condition is proportionate to the potential harm identified.

## Glebe Liquor Mart

Licence conditions to be imposed	Licence condition details								
Retail closure period	Section 11A of the <i>Liquor Act 2007</i> applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 03:00 AM and 09:00 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	<p>Retail sales</p> <table> <tbody> <tr> <td>Good Friday</td><td>Not permitted</td></tr> <tr> <td>December 24th</td><td>Normal trading Monday to Saturday, 8:00AM to 12:00 midnight on a Sunday</td></tr> <tr> <td>Christmas Day</td><td>Not permitted</td></tr> <tr> <td>December 31st</td><td>Normal trading Monday to Saturday, 10:00AM to 12:00 midnight on a Sunday</td></tr> </tbody> </table>	Good Friday	Not permitted	December 24th	Normal trading Monday to Saturday, 8:00AM to 12:00 midnight on a Sunday	Christmas Day	Not permitted	December 31st	Normal trading Monday to Saturday, 10:00AM to 12:00 midnight on a Sunday
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Social impact	<p><b>Social impact</b></p> <p>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 reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of removing this licence to the premises at <b>Suites 2 &amp; 3, 107 Jonson Street Byron Bay, NSW 2481</b>.</p>								
Liquor plan of management	The premises is to be operated at all times in accordance with the Plan of Management dated <b>17 May 2024</b> as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.								
Participation in the local liquor accord	The licensee or its representative must join and be an active participant in the local liquor accord.								

<b>CCTV</b>	<ol style="list-style-type: none"> <li>1. The licensee must maintain a closed-circuit television (CCTV) system on the licensed premises ("the premises") in accordance with the following requirements: <ol style="list-style-type: none"> <li>a. the system must record continuously from opening time until one hour after the premises is required to close,</li> <li>b. recordings must be in digital format and at a minimum of <b>ten (10)</b> frames per second,</li> <li>c. any recorded image must specify the time and date of the recorded image,</li> <li>d. the system's cameras must cover the following areas: <ol style="list-style-type: none"> <li>i) all entry and exit points on the premises, and</li> <li>ii) all publicly accessible areas (other than toilets) within the premises.</li> </ol> </li> </ol> </li> <li>2. The licensee must also: <ol style="list-style-type: none"> <li>a. keep all recordings made by the CCTV system for at least 30 days,</li> <li>b. ensure that the CCTV system is accessible at all times the system is required to operate pursuant to sub-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</li> <li>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.</li> </ol> </li> </ol>
<b>Crime scene preservation</b>	<p>Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:</p> <ol style="list-style-type: none"> <li>1. take all practical steps to preserve and keep intact the area where the act of violence occurred,</li> <li>2. retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,</li> <li>3. make direct and personal contact with NSW Police to advise it of the incident, and</li> <li>4. comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.</li> </ol> <p>In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.</p>

**Requirement to  
maintain an incident  
register**

1. The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:
  - a. any incident involving violence or anti-social behaviour occurring on the premises,
  - b. any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
  - c. any incident that results in a person being turned out of the premises under section 77 of the Liquor Act 2007,
  - d. any incident that results in a patron of the premises requiring medical assistance.
2. The licensee must, if requested to do so by a police officer or Liquor & Gaming NSW inspector:
  - a. make any such incident register immediately available for inspection by a police officer or Liquor & Gaming NSW inspector, and
  - b. allow a police officer or Liquor & Gaming NSW inspector to take copies of the register or to remove the register from the premises.
3. The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.