

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

APPLICATION NO:	APP-0005046302
APPLICATION FOR:	Application for of an on premises catering service accommodation.
TRADING HOURS:	Catering service liquor trading hours Monday- Saturday: 10:00 AM-12:00 AM Sunday: 10:00 AM-10:00 PM Accommodation class liquor trading hours Monday- Sunday: 05:00 AM-05:00 AM
APPLICANT:	THE BOWER BYRON BAY PTY LTD
LICENCE NAME:	The Bower Byron Bay
PREMISES ADDRESS:	28-32 Bangalow Road, BYRON BAY, NSW 2481
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 2007</i>

ILGA DELEGATED DECISION – APPLICATION FOR A LIQUOR LICENCE

The Bower 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, catering service with accommodation classes, application number APP-0005046302.

On 15 March 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 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-Catering service**

Good Friday	Normal trading
Christmas Day	Normal trading
December 31st	Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later
3. This licence authorises the sale of liquor for consumption on the licensed premises only – at any time on any day to a resident (or a guest of a resident while in the resident's company) or to an employee of the licensee. Liquor must not be sold to a guest of a resident or to an employee of the licensee for consumption on the licensed premises, or to a resident for takeaway from the premises, between the hours of 4:00AM and 10:00AM. Liquor sold to a resident between the hours of 4:00AM and 10:00AM must only be sold or supplied for consumption in the room in which the resident is residing or staying.
4. The swimming pool and terrace area is not to be used in association with any occasion, function or event held at the licensed premises. The service of liquor in this area is restricted to between 10.00am and 7.00pm daily.
5. If functions, occasions or events are held on the driveway/parking bays at the Premises (rather than in other areas of the Premises) then if there are more than 20 persons in attendance at the function, occasion or event then the front entry point to the driveway at the Premises will be roped off preventing motor vehicles from entering or departing the site for the duration of the function, occasion or event.

STATEMENT OF REASONS

1. Material before the ILGA delegate (Reference DF18/021221)

- (1) Application lodged 10 December 2018.
- (2) Additional documents have also been forwarded in support of the application.
- (3) Plan of the proposed licensed premises.
- (4) Signed certificate of advertising.
- (5) ASIC reports for the proposed licensee/ business owner and premises owners.
- (6) Three development consents have been forwarded in support of the application; 99/0175 granted 20 August 1999 to convert the existing residential flat building to a motel, DA 10.2001.487.1 granted 12 March 2002 to extend the existing motel (2 additional units and a

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new manager's residence) and DA.2017.497.1 granted 4 June 2018 for a swimming pool and associated works ancillary to an existing motel.

- (7) Correspondence from Byron Shire Council, dated 19 December 2018, in support of the grant of the liquor licence.
- (8) A submission from Tweed/Byron Licensing Police dated 1 March 2019 objects to the proposed licensed boundary and requests conditions to be imposed should the licence application be granted.
- (9) Three submissions have been forwarded from neighbours who have objected to the grant of this application.
- (10) Email correspondence from Liquor & Gaming NSW to the applicant's agent requesting additional information in support of the application
- (11) Email correspondence in response, from the agent to Liquor & 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,
 - 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) 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 area of Byron Shire Council.

5. Analysis of Submissions and other Materials

- (1) The Bower Byron Bay is boutique, exclusive accommodation retreat venue which has 24 accommodation rooms and has applied for a liquor licence to have mini bars in the rooms. The venue has also applied for a catering service class, to host small functions within the grounds of the premises. A pool area has also been included within the licensed boundary for the exclusive use by accommodation patrons.
- (2) Council are in support of the licence grant.
- (3) Police have objected to the proposed licence area and have requested conditions to be imposed on the licence if granted, which have been duly considered by the delegate.
- (4) Three submissions have been received by neighbours all opposing the licence grant.
- (5) I am satisfied that development consent is in place to permit the proposed activity at the premises.
- (6) I am satisfied that the statutory advertising requirements have been met.

6. Overall social impact

(1) Positive benefits

The venue will provide several luxury accommodation suites/packages to high-end clientele in a boutique setting with the exclusive use of a private outdoor pool surrounded by palm trees. The proposed licensee also intends to utilise the venue for small functions/events.

(2) Negative impacts

Three public submissions have been received which object to the licence grant due to concerns regarding potential noise. Police have also objected to the proposed licensed area. The delegate has duly considered these submissions and imposed specific conditions (in addition to the conditions in the current development consent), and is satisfied that the liquor licence will not adversely affect the amenity of the neighbourhood.

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

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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 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 15 March 2019



Wendy Yeung Wye Kong
A Coordinator (Business Licensing)
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>