



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

---

<b>APPLICATION NO:</b>	1-4027575953
<b>APPLICATION FOR:</b>	On-premises licence with restaurant, accommodation and catering classes
<b>PROPOSED TRADING HOURS:</b>	Monday to Saturday: 10:00am to 12:00am Sunday: 10:00am to 10:00pm
<b>APPLICANT:</b>	Cove at Byron Pty Limited
<b>PROPOSED LICENSED PREMISES NAME:</b>	Cove at Byron
<b>ISSUE:</b>	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for on-premises licence with restaurant, accommodation and catering classes.
<b>LEGISLATION</b>	S 45(1) of the <i>Liquor Act 2007</i>

**ILGA DELEGATED DECISION - APPLICATION FOR ON-PREMISES LICENCE WITH RESTAURANT, ACCOMMODATION AND CATERING CLASSES – COVE AT BYRON**

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 following licence application number 1-4027575953

On 30 August 2016 and after careful consideration of the Application and other material, the delegate decided to approve the Application.

**Conditions imposed:**

- 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.

- The premises are to be operated at all times in accordance with the Plan of Management dated December 2015 and may be varied from time to time after consultation with the Local Area Command.
- The business of providing the Catering Service must be for fee, gain or reward. Functions held pursuant to the Catering Service must be pre-booked. A Catering Service booking register must be maintained.
- The licensee must ensure that alcoholic drinks are restricted to table service only.
- The licensee must ensure that no person is permitted to take glass or open containers of liquor off the licensed premises when leaving.
- The licence cannot be exercised unless and until the Independent Liquor & Gaming Authority has been notified of the appointment of a manager to the licence.

#### Condition relating to Restaurant class

- Consumption on premises
  - Good Friday 12:00 noon - 10:00 PM
  - Christmas Day 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
  - December 31<sup>st</sup> 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 after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.

#### Conditions relating to Catering service class

- Consumption on premises
  - Good Friday Normal trading
  - Christmas Day Normal trading
  - December 31<sup>st</sup> Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

#### Conditions relating to Accommodation class

- 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.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate

The decision made by the delegate had the Application, and other relevant material:

- 1.1. Application form – 29 January 2016
- 1.2. Development Approval No. D97/0290 dated 3 October 1997 issued by the Byron Shire Council.
- 1.3. Plan of Management for the Premises including a venue specific Responsible Service of Alcohol (RSA) policy dated December 2015 and version 150667.6P
- 1.4. EVAT and Compliance report submitted by the Secretary of OLGR, dated 19 April 2016, indicating no concerns
- 1.5. Submission from Byron Shire Council, received 25 May 2016 stating that the council supports the application.
- 1.6. Submission from police dated 2 February confirming that police have no concerns with the application however requested a single condition be imposed on the licence. Applicant has consented to amended proposed condition.
- 1.7. Email correspondence from the Authority to the applicant including applicant's consent to the imposition of the licence conditions.
- 1.8. Risk report for the venue.
- 1.9. Premises plan.

### 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. Analysis of Submissions and other Materials

The application is for an on premises restaurant licence with catering service class and accommodation class. The licence will be exercised in accordance with a Plan of Management that addresses the responsible service of alcohol, management of patron behaviour, prevention of liquor service to minors and security when required.

There were no submissions opposing the grant of this licence and I am satisfied that the statutory advertising standards have been met.

### 5. Overall social impact

No identified negative impacts. There were no issues raised by key stakeholders during the consultation period.

### 6. Conclusion

- 6.1 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).
- 6.2 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.
- 6.3 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.

- 6.4 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.
- 6.5 Having considered together the positive benefits and negative impacts that I am satisfied 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.
- 6.6 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: 30 August 2016



Joanne Zammit, Coordinator 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>