

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

APPLICATION NO:	APP-0002075634
APPLICATION FOR:	On-premises liquor licence for a vessel
APPLICANT:	Jervis Bay Wild Pty Ltd
LICENCE NAME:	Port Venture Jervis Bay Wild Pty Ltd
PREMISES ADDRESS:	15 Field Street, Huskisson NSW 2540
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
PORT VENTURE JERVIS BAY WILD PTY LTD**

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 the application for an on-premise liquor licence for a vessel, application number APP-0002075634.

On 13 March 2017, 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

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 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 licensee is authorised to sell liquor by retail to passengers on board the vessel, for consumption on board the vessel only between the period commencing one hour before the vessel starts any voyage or passage and ending 30 minutes after the voyage or passage is completed.

4. The premises are to be operated at all times in accordance with the Plan of Management dated 14 February 2017 as may be varied from time to time after consultation with the Local Area Commander.
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. The licensee is to ensure no patron is stockpiling drinks and that a single patron has no more than two unconsumed drinks at any one time that are for their consumption.
7. The licensee must not permit staff to consume liquor on the licensed premises while engaged in the sale or supply of liquor (including during any meal or other break).
8. The licensee must ensure liquor is not removed from the licensed premises.
9. The licensee must ensure that all bar staff will wear clothing that clearly identifies them as Bar Staff and employees of the licensee.
10. All security guards employed for a private charter or event must disembark at the same wharf patrons of that charter/event do to ensure that all patrons disembarking the licensed premises do not unduly disturb the local amenity.
11. The licensee will not host Stag/Buck's nights, Hen's nights, under 18 events, alcohol only events, dance parties and events incorporating adult entertainment. For the purpose of this condition:-

A dance party event means an event, whether ticketed event or otherwise, which is open to the public and where the primary activity is entertainment provided by live DJ/DJ's and/or the live performances for the purpose of dancing. This includes the vessel being part of a group of vessels or part of a land based activity which involves an event that could be described as a "Dance Party" or where amplified music is the main reason for the event or gathering. Note: This requirement is not intended to include wedding ceremonies/receptions, corporate events, and school formals at which DJ entertainment or other live performances of electronic dance music is provided ancillary to the event.

Adult entertainment may include, but is not limited to, events involving nudity, simulated sex and/or audience participation.
12. A maximum of 150 passengers are permitted on the vessel at any one time.
13. The number of passengers on the upper deck must not exceed 55.
14. The number of passengers on the sun deck must not exceed 21.
15. Alcohol is not to be provided unless food of a nature and quantity consistent with the responsible sale, supply and service of alcohol is made available whenever liquor is sold or supplied.
16. On voyages exceeding 30 minutes duration, seating must be provided for every passenger carried.
17. The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

Interior noise levels which, although restricted in accordance with the above condition, still exceed safe hearing levels, are in no way supported or condoned by the Authority.

18. The licensee must employ a minimum of one (1) fully licensed security guard whenever the vessel is hired for a private charter or event that is held on a Friday, Saturday or Sunday evening and the patron capacity exceeds 100 patrons.
19. Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing injury to a person on the premises, the person must:
 - a. Take all practical steps to preserve and keep intact the area where the act of violence occurred, and retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by NSW Police, and
 - b. make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
 - c. comply with and directions given by the Commander or delegate to preserve or keep intact the area where the act of violence occurred.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application form lodged 17 August 2016 (DOC16/090287)
- (2) Certificate of Survey and Operation, issued by the Australian Maritime Safety Authority on 19 December 2015, for the vessel Port Venture (DOC16/092775)
- (3) Submission from Nowra Police, received on 23 August 2016 (DOC16/093480)
- (4) Email correspondence from Liquor & Gaming NSW to Nowra Police, responding to the Police submission and inviting further comment or submission, dated 23 February 2017 (DOC17/037466)
- (5) Submission from the delegate of the Secretary of the Department of Justice, received on 3 February 2017 (DOC17/022812)
- (6) Plan of the licensed premises (DOC16/166562)
- (7) Photographs of the vessel (DOC17/029549)
- (8) Certification of Advertising Application, signed and dated by the applicant on 17 August 2016 (DOC17/029597)
- (9) Appointment of Manager Notice, appointing Mr Brendan Aulsebrook to the licence, signed and dated on 17 August 2016 (DOC17/029611)

- (10) Approved Manager Approval application, signed and dated on 17 August 2016 (DOC17/029633)
- (11) ASIC Company Statement for Jervis Bay Wild Pty Ltd ACN 130 703 301 (DOC17/037416)
- (12) Plan of Management, dated 14 February 2017 (DOC17/037425)
- (13) National Criminal History Check for Brendan Aulsebrook, dated 14 October 2016 (DOC17/037426)
- (14) Identification for Brendan Aulsebrook (DOC17/046106)
- (15) Email correspondence from Liquor & Gaming NSW to the applicant requesting additional information and seeking consent to a number of conditions to be imposed on the licence, and responses from the applicant providing the requested information and consenting to the proposed conditions (DOC16/090309, DOC16/092774, DOC16/093095, DOC16/093097, DOC16/093103, DOC16/166602, DOC17/022826, DOC17/026434, DOC17/029545, DOC17/029555, DOC17/029632, DOC17/037386, DOC17/037414, DOC17/042337)

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) 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 Huskisson, and the “broader community” of the Shoalhaven City Council LGA.

5. Analysis of Submissions and other Materials

- (5) The application is for an on-premises licence for a vessel with a patron capacity of 150 patrons. It is proposed that the vessel will provide private charters for a mature clientele for events such as weddings and corporate functions. Charters are conducted within the Jervis Bay Marine Park.
- (6) A submission was received from Police, raising concerns about issues in the local community with intoxicated patrons coming off cruises and attempting to gain entry to local clubs and pubs. The applicant has addressed this concern.
- (7) A submission was also received from the delegate of the Secretary, Department of Justice, proposing a number of conditions to be imposed on the licence, all of which the applicant has consented to.
- (8) No other submissions were received.
- (9) The licence will be exercised in accordance with a Plan of Management that details measures to be employed to ensure the responsible service of alcohol.
- (10) I am satisfied that the statutory advertising requirements have been met.
- (11) Having reviewed all of the material, I am satisfied that this application for an on-premises liquor licence is unlikely to result in any significant increase in alcohol-related harm in the local community.

6. Overall social impact

(1) Positive benefits

The proposed licensed premises comprises of a vessel with 150 patron capacity that will conduct private charters within the Jervis Bay Marine Park. The target market is persons in the age category of 30 to 95. It is not proposed that the vessel will host 18th or 21st birthday parties, dance parties, or hens or bucks nights.

(2) Negative impacts

Police raised concerns in respect of issues in the local community with intoxicated patrons coming off cruises and attempting to gain access to local clubs and pubs. The applicant has stated that their vessel does not contribute to this issue. The Plan of Management provided by the applicant and conditions imposed on the licence provide a level of certainty that there are unlikely to be any major impacts on the local or broader 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 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: 13 March 2017



Joanne Zammit
Coordinator, Licensing (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.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>