

NSW Department of Industry
Liquor & Gaming NSW

APPLICATION NO:	1-5040956498
APPLICATION FOR:	On-premises liquor licence for a restaurant and catering service
TRADING HOURS:	Monday to Sunday: 10:00 AM to 10:00 PM
APPLICANT:	Lee Kuhnell
LICENCE NAME:	House of Gabriel
PREMISES ADDRESS:	106 Riverside Drive, Tumbulgum NSW 2490
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
HOUSE OF GABRIEL**

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 liquor licence, application number 1-5040956498.

On 24 May 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. Consumption on premises
2. Consumption on premises - restaurant

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

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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.

3. 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
4. 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.
5. No drinks commonly referred to as shots, shooters, slammers, and/or bombs, or any drink designed for rapid consumption are to be sold or supplied.

STATEMENT OF REASONS

1. Material before the ILGA delegate

- (1) Application for on-premises liquor licence, lodged 24 October 2016 (DOC16/131696)
- (2) Certification of Advertising Application, signed and dated by the applicant on 22 March 2017 (DOC17/084768)
- (3) Plan of the proposed licensed premises (DOC17/084769)
- (4) Copies of the applicant's National Police Certificate, RSA Competency Card and identification (DOC16/131696)
- (5) Photographs of the premises (DOC17/084765)
- (6) Copies of the food and drinks menu (DOC17/084766, DOC17/084767)
- (7) Liquor Plan of Management for the premises (DOC17/113778)
- (8) Development Applications T4/1373 and D91/0336 granted by Tweed Shire Council for the proposed use of the premises (DOC16/146339)
- (9) Submission from Tweed Shire Council (DOC16/146339)
- (10) Submission from Tweed/Byron Local Area Command Licensing Unit (DOC16/163445)
- (11) Five submissions from members of the public (DOC16/145757, DOC16/151966, DOC16/151973, DOC16/162547, DOC16/162560)
- (12) Applicant's response to the submissions received in respect of the application (DOC17/084770)
- (13) Email correspondence from the Authority to the applicant, requesting further information in support of the application (DOC17/009896, DOC17/030796, DOC17/070384, DOC17/094414, DOC17/105335)

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- (14) Email correspondence from the applicant to the Authority, in response to the request for additional information (DOC17/015836, DOC17/021338, DOC17/084647, DOC17/084764, DOC17/113777)

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 Tumbulgum, and the "broader community" of Tweed Local Government Area.

5. Analysis of Submissions and other Materials

- (1) 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 harms in the local community.
- (2) The proposed licensed premises is an established restaurant and function venue with 100 patron capacity located in Tumbulgum.
- (3) Police made a submission raising no concerns or objections.
- (4) Tweed Shire Council provided a signed Local Consent Authority Notice, confirming that development consent is required and in place.
- (5) Five submissions were received from local residents raising concerns regarding noise; parking; traffic; antisocial behaviour by intoxicated persons; and disturbance of the peace

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and good order of the village. The applicant adequately addressed these concerns in a submission in response.

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

6. Overall social impact

(1) Positive benefits

The premises is an established restaurant and function venue located in the small historic village of Tumbulgum, which is described by Destination Tweed as Tweed Valley's most picturesque village, and a popular tourist destination. House of Gabriel has occupied the site as a café for over 10 years, with liquor consumed on the premises under BYO provisions. The granting of the licence will enable the business to supplement and enhance the services already offered, as well as to better monitor and control alcohol consumption on the premises.

(2) Negative impacts

A number of submissions were received from neighbouring residents in respect of the granting of the liquor licence. These concerns were adequately addressed by the applicant. Further, the premises is not late night trading and the applicant will continue to work with the local community to address any ongoing concerns.

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: 24 May 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>