

Liquor & Gaming NSW

NSW Department of Enterprise Investment and Trade
Liquor & Gaming NSW

Application number:	APP-0009414029	
Application for:	On Premises (Restaurant) liquor licence with primary service authorisation	
Trading hours:	On premises (restaurant) with PSA: 10.00AM to 6:00 PM	Monday - Sunday
Applicant:	HADIMIOGLU, Atilla Kaan	
Licence name:	Summi's Yamba	
Premises address:	Shop 4 / 15 Clarence street YAMBA NSW 2464	
Issue:	Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for an On Premises (Restaurant) liquor licence with Primary Service Authorisation.	
Legislation:	Section 45(1) of the <i>Liquor Act 2007</i>	

On-premises (restaurant) liquor licence
with Primary Service Authorisation
Summi's Yamba

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 Enterprise Investment and Trade, has decided to grant the application for an On Premises (Restaurant) liquor licence with Primary Service Authorisation, application number APP-0009414029.

After careful consideration of the application and other material, the delegate decided to approve the application, subject to conditions listed below in **proposed conditions imposed on the licence**.

Decision Date: 17 May 2022



Kieran McSherry
Team Leader Licensing

STATEMENT OF REASONS

Analysis of Submissions and statutory requirements

- (1) Appropriate consent is in place for the use of the premises for use as a licensed cafe and restaurant
- (2) Police have raised concerns to be addressed in the Plan of Management in relation to this application with conditions added to table.
- (3) I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions contained in the licence document.
- (4) I am satisfied that the statutory advertising requirements have been met.
- (5) Having reviewed all the material, I am satisfied that granting this application for a on premises (restaurant) liquor licence with Primary Service Authorisation will not be detrimental to the local or broader community.
- (6) A Plan of Management has been forwarded which confirms what Responsible services of Alcohol measures are in place at the venue. CCTV, and incident register will operate at the premises and there will be no adverse impact on the area.
- (7) I have considered the adverse crime statistics of Yamba in comparison to the NSW state average and accordingly, I have imposed the Plan of Management condition on the licence

Overall social impact

(1) Positive benefits

The granting of the licence will enable a restaurant serving meals to increase their level of customer service and cater for the needs of various business and social groups within the suburb of Yamba.

(2) Mitigation of potential negative impacts

I am satisfied that the business model, conditions imposed, and any 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.

In particular, the Plan of Management and licence conditions will serve to mitigate any potential negative impacts

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:

- (a) whether the need for the condition has been adequately established
- (b) whether the benefits of imposing the condition are likely to outweigh the costs and

(c) whether the proposed condition is proportionate to the potential harm identified.

The **Proposed conditions imposed on the licence** sets out the conditions which I have decided to impose on the licence, and the **Proposed conditions not imposed on the licence** sets out conditions put forwarded for consideration which I have decided not to impose, and the reasons for that decision.

Proposed conditions imposed on the licence

- 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 04:00 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) **Restricted trading & NYE (except airport, catering, other public entertainment venue, vessel - std)**

Consumption on premises

Good Friday	12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
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 st	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) **Plan of management**
The premises is to be operated at all times in accordance with the Plan of Management dated 5/5/2022 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 & Gaming NSW inspector, or any other person authorised by the Independent Liquor & Gaming Authority.
- 4) **No rapid consumption drinks**
The following drinks must not be sold or supplied on the licensed premises: Any drink (commonly referred to as a "shot" or a "shooter", (with the exception of cocktails) that contains more than 30 ml of spirits or liqueur and that is designed to be consumed rapidly.

Proposed conditions not imposed on the licence

Proposed conditions not imposed on the licence:		Proposed by:	Reason code (see Reasons for not imposing requested conditions below)
1.	Plan of management The premises is to be operated at all times in accordance with the Plan of Management 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 & Gaming NSW inspector, or any other person authorised by the Independent Liquor & Gaming Authority.	Police	A

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Materials considered by the ILGA delegate

Submission analysis

Stakeholder submissions

1. NSW Police: No objection with Plan of Management conditions to be added – Conditions
2. Local consent authority: Did not submit
3. Public: Did not submit

Document analysis

1. Application form received: 11 Nov 2021
2. Plan of proposed licensed area: Compliant
3. Certification of Advertising: Compliant
4. Plan of management
5. Documents
 - a. National Police Certificate: Compliant
 - b. ID: Compliant
 - c. RSA competency card: Compliant
6. Approved Manager: Not required
7. Licensee training: Compliant
8. Development consent: Compliant
9. Correspondence from Liquor & Gaming NSW to the applicant requesting additional information and consent to conditions.
10. Correspondence from the applicant in response to Liquor & Gaming NSW.
11. Correspondence from Police.

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 helped inform 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) 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.

- 3) 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.
- 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 of the Authority, 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.

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:
 - a. the grant or removal of a small bar licence (where required),
 - b. a packaged liquor licence (limited to telephone/internet sales),
 - c. 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 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.

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.nsw.gov.au/Pages/public-consultation/online-application-noticeboard/online-application-noticeboard.aspx>. The Review Application form can be accessed online via the Application Number hyperlink.

Further information can be obtained from the Reviews page on the Liquor & Gaming website at: <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>

Reasons for not imposing requested conditions

- **A** – Do not impose. Already covered by the Liquor Act.
- **B** - Do not impose. Already covered/already a condition in the DA.
- **C** - Do not impose. Not a relevant condition for this licence type. Condition sought is generally only imposed on high-risk licence type or in exceptional circumstances. Exceptional circumstances have not been sufficiently made out by the person putting forward the condition.
- **D** - Do not impose. This condition would be more restrictive than similar venues in Kings Cross which remains subject to the lockout laws in 2020.
- **E** - Do not impose. Small Bars are considered low risk. 2016 Review of Small Bars found Venues with a small bar licence have a lower incidence of alcohol-related violence than venues operating as a small bar under another type of liquor licence. Smaller bars have a lower incidence of alcohol-related violence than other types of licensed venue.
- **F** - Do not impose. Already covered in the Plan of Management. Plan of management condition has been imposed.
- **G** - Do not impose. Not in alignment with the business type, risk associated and would impose disproportionate unnecessary financial and operational burden (small business).
- **H** - Do Not Impose. Being part of a liquor accord is not compulsory / on a voluntary basis only. Exceptional circumstances for imposing condition have been sufficiently made out by the person putting forward to the condition.
- **I** - Do not impose – wording not consistent with ILGA/L&GNSW conditions – ILGA/L&GNSW condition wording has been imposed instead.