

Liquor & Gaming NSW

**NSW Department of Enterprise Investment and Trade**  
**Liquor & Gaming NSW**

Application number:	APP-0009928844	
Application for:	On-premises (restaurant) liquor licence with primary service authorisation	
Trading hours:	<b>On Premises (Restaurant) + PSA:</b> <b>Indoor liquor trading;</b> 10.00 AM to 12:00 AM 10:00 AM to 10:00 PM <b>On Premises (Restaurant) + PSA:</b> <b>Outdoor liquor trading</b> 10.00AM to 10:00 PM 10:00 AM-10:00 PM	Monday - Saturday Sunday  Monday-Saturday Sunday
Applicant:	BAR HEATHER PTY LIMITED	
Licence name:	BAR HEATHER	
Premises address:	Shop G09, 139 Jonson Street BYRON BAY NSW 2481	
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**  
**Bar Heather**

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-0009928844.

After careful consideration of the application and other material, the delegate decided to approve the application, subject to conditions listed below in **Schedule 1, on the licence**.

Decision Date: 25 May 2022



## **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) Tweed/Byron Police have raised concerns which are highlighted within the submission analysis and have advised if the application is to proceed, 9 conditions are to be considered on the licence. These conditions have been added to the condition table.
- (3) Council submission not received
- (4) I am satisfied that the applicant has been provided with an opportunity to consider and comment upon the conditions contained in the licence document.
- (5) I am satisfied that the statutory advertising requirements have been met.
- (6) 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.

### **Overall social impact**

#### **(1) Positive benefits**

The granting of the licence will enable the licensee to serve genuine meals within a new restaurant precinct in the suburb of Byron Bay. A primary service authorisation will permit liquor to be consumed without a meal however the business model of the venue will always relate to the provision of food.

#### **(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.

Please refer to schedule 1 to view the suite of conditions imposed on this liquor licence.

## **Materials considered by the ILGA delegate**

### **Submission analysis**

Stakeholder submissions

#### **NSW Police:**

Tweed Byron Police have referred to the high rates of alcohol-related crime within the Byron Bay area in addition to a high saturation of licensed venues within the town. I have considered both the live data analysis in addition to the police submission and have imposed a suite of conditions which will mitigate any potential adverse impact to the amenity of the neighbourhood.

A plan of management, CCTV, crime scene, and liquor accord conditions have all be imposed on this liquor licence. Although police have requested additional conditions relating to trading hours, the hours are already covered within the liquor licence document. Three conditions related to noise have however not been imposed as this will be covered within the development approval for the venue.

**Local consent authority:** Not received

**Public:** Did not submit

### **Document analysis**

1. Application form received: 13 April 2022
2. Plan of proposed licensed area: Compliant
3. Certification of Advertising: Compliant
4. Plan of management
5. Documents
  - a. National Police Certificate: N/A
  - b. ID: Compliant: N/A
  - c. RSA competency card: Compliant
6. Approved Manager: Condition agreed to
7. Licensee training: Condition agreed to
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. CISA documents received

## **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.

## Schedule 1

### Conditions imposed on the licence

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.

- 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 <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 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 July 2021 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) Closed-circuit television system

1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

- (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
- (b) recordings must be in digital format and at a minimum of ten (10) frames per second,
- (c) any recorded image must specify the time and date of the recorded image,
- (d) the system's cameras must cover the following areas:
  - (i) all entry and exit points on the premises,
  - (ii) the footpath immediately adjacent to the premises, and
  - (iii) all publicly accessible areas (other than toilets) within the premises.

2) The licensee must also:

- (a) keep all recordings made by the CCTV system for at least 30 days,
- (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system,

including downloading and producing recordings of CCTV footage, and  
 (c) provide any recordings made by the system to a police officer or Liquor & Gaming NSW inspector within 24 hours of any request by the police officer or Liquor & Gaming NSW inspector to provide such recordings

**5) Crime Scene preservation condition**

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,
- 3) make direct and personal contact with NSW Police to advise it of the incident, and
- 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.

In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (e.g., crowd controller or bouncer) on or about the premises.

- 6) Licensee training must be completed within six months from the date of the grant of this liquor licence
- 7) This licence cannot be exercised unless an individual has been appointed by Liquor and Gaming NSW as approved manager to exercise the licence, or the licence has been transferred to a suitably qualified individual.
- 8) The Licensee must join and be an active participant in the local liquor accord.

**Proposed conditions not imposed on the licence**

<b>Proposed conditions not imposed on the licence:</b>	<b>Proposed by:</b>	<b>Reason code</b> (see Reasons for not imposing requested conditions below)
Liquor may only be supplied to patrons seated at dining tables with the exception of waiter service only at functions.	<b>Police</b>	<b>C</b>
Hours of Operation shall be limited to 7:00am until 10:00pm Monday to Saturday & 8:00am until 10:00pm Sundays. Outdoor dining shall be limited to 7:00am until 10:00pm Monday to Saturday & 8:00am until 10:00pm Sundays.	<b>Police</b>	<b>B</b>
Entertainment is not permitted. The playing of music shall be restricted to low background (ambient) music only.	<b>Police</b>	<b>B</b>
All amplified music shall be limited to 7:00am until 10:00pm Monday to Saturday & 8:00am until 10:00pm Sundays.	<b>Police</b>	<b>B</b>
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.	<b>Police</b>	<b>B</b>



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.		
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