

# NSW Independent Liquor & Gaming Authority

Our ref: DF24/010213

Mr Adam Francois Van Kempen

BvK Solicitors

26 June 2024

Dear Mr Kempen

Application No.	APP-0012902119
Applicant	The Bay Bottleshop Pty Ltd
Application for	Packaged liquor licence
Application date	3 March 2024
Decision date	15 May 2024
Proposed licence name	The Bay Bottleshop
Proposed trading hours	Monday to Sunday 10:00 AM – 10:00 PM
Proposed premises	Shop 4, 108-114 Jonson Street Byron Bay NSW 2481
Legislation	Sections 3, 11A, 12, 29, 40, 44, 45, 48, and 123 of the <i>Liquor Act 2007</i>

## Decision of the Independent Liquor & Gaming Authority

### Application for a packaged liquor licence – The Bay Bottleshop

Application for a packaged liquor licence – The Bay Bottleshop We **refuse** the application above under section 45 of the *Liquor Act 2007*

### Statement of reasons

Overall, we are concerned that the social impact of approving the application may be detrimental to the well-being of the local or broader community.

#### Our main findings

##### *Procedural and trading hour requirements*

We are satisfied that:

- the application meets the Act's requirements for procedural fairness and trading period

- the sale of liquor would comply with the licence's authorisation
- sections 30 and 31 of the Act don't apply to this application.

#### *'Fit and proper person'*

The applicant is a 'fit and proper person' to operate the business to which the proposed licence relates, as law enforcement agencies raised no concerns about their integrity.

#### *Responsible service of alcohol*

Procedures for the responsible service of alcohol will be in place at the premises from the start of licensed trading, under the plan of management and the conditions on the licence.

#### *Development consent requirements*

The necessary development consent is in force. Byron Shire Council approved the development application 10.2023.458.1, PAN-377660 for the premises on 23 February 2024 for change of use to retail premises (bottleshop).

#### *Community impact*

##### *Local and broader communities*

The local community for the purposes of this decision is Byron Bay. The broader community is the Local Government Area (LGA) of Byron.

##### *Diversity and density of licensed outlets*

L&GNSW Liquor & Gaming Harm Minimisation and Community Impact Data Report for the suburb of Byron Bay shows:

- there are 113 Licences authorised liquor licenses, of which 21 premises are authorised to sell packaged liquor. This includes 6 packaged liquor licences, 3 registered club licences, 4 hotel (full) licences and 8 producer/wholesaler licences.
- saturation of packaged liquor licences in Byron Bay is higher compared to the LGA of Byron and to all of NSW.

##### *Crime data (annual rate per 100,000 residents)*

BOCSAR data shows that, in the year to December 2023:

- the proposed premises is located within hotspots for non-domestic assault, malicious damage, and alcohol-related assault
- there are high-density hotspots in the suburb for incidents of non-domestic assault, malicious damage, and alcohol-related assault as well as medium-density hotspot for domestic assault
- incidents for alcohol-related domestic and non-domestic assault were substantially higher in Byron Bay than in the Byron LGA and in all of NSW
- incidents for alcohol-related offensive conduct and malicious damage to property were also substantially higher in Byron Bay than in the Byron LGA and in all of NSW.

##### *Alcohol-related health data (per 100,000 residents)*

HealthStats NSW data showed that:

- alcohol-related deaths in the LGA of Byron were higher than the NSW average
- alcohol-related hospitalisations in the LGA were lower than the NSW average.

##### *ABS Socio-Economic Index for Areas (SEIFA)*

The suburb of Byron Bay and the Byron LGA were ranked as relatively advantaged in terms of household income and residents in skilled occupations compared to other suburbs and LGAs in NSW.

#### *Business model*

We note that the proposed business model involves a new standalone boutique packaged liquor store in a shopping centre, supplying high end packaged liquor that includes craft beers, wine, and spirits. The applicant requested to vary the Specialised Liquor Products condition, increasing 'other complementary products' from 10% to 50%.

#### *Benefits proposed by applicant*

The applicant proposes that there would be these benefits:

- Increased convenience due to the premises being located in Mercato, Byron Bay's only full-service shopping centre; resulting in consumers no longer having to drive into the busy centre of town with limited parking available.
- Improvement of local outcomes and positive contribution to the suburb's reputation as a popular seaside destination for international and domestic holiday makers.
- Distinct business model - small high end packaged liquor supplier predominantly selling craft beers, wine and spirit that are not readily available through other packaged liquor retailers in the area. This may also contribute to visitor/tourist attraction and benefit the local economy.

However, we were not persuaded that the proposal would be consistent with the objects of the Act. Having considered the submissions made both in support and opposing the application, we do not believe that the proposal would meet the needs of the wider local community and that it would facilitate the balanced development of the liquor industry in the public interest. We were also unconvinced that the business model offers a distinctive community benefit of the kind proposed by the applicant.

#### *Stakeholder submissions*

We considered the submissions from:

- NSW Police Force, dated 28 March 2024, objecting to the proposal, raising concerns about the pre-existing high saturation of licensed premises in the suburb, and high crime rates as well as the potential for an additional outlet to increase alcohol-related anti-social behaviour and crime in the area.
- Local Council, dated 4 April 2024, raising no concerns, or objection.
- NSW Health, dated 2 April 2024, objecting to the proposal, and raising concerns on the high licence density, saturation and crime rates in the area as well as the potential increase of detrimental health and wellbeing outcomes in the local community if the application is approved
- L&GNSW Compliance, which notes no adverse history, or objection.
- One submission by the Mayor of Byron Shire in support of the proposal emphasising the boutique nature of the proposal as well as it being a small-scale premises operated by a local well-regarded family.

We also considered the applicant's submission in response to these submissions, which notes that:

- over a 10-year period to December 2023, incidents of alcohol related assault fell by 4.5% per year in the Byron LGA against the NSW state average of 3.3%
- a substantial estimated 60% decrease in alcohol related incidents within the township and the LGA between 2012 and 2016

- there is no known opposition to the granting of this licence by any community groups or individuals
- the applicant's director is a fit and proper person to operate the proposed premises as director and approved manager and is cognizant of his obligation to his community.

### **Findings of concern**

While recognising the proposed premises would be located in a tourist region, we were influenced by the risk factors, including the high saturation of packaged liquor licences and of liquor outlets generally in the suburb, the high crime statistics, hotspots for violent crime and objections from Police and Health.

If the licence is granted, there is a risk that liquor sold at or from the premises would lead to an increase in alcohol-related crime, health, and other social and amenity issues, worsening these problems.

### *Negative social impacts*

The proposal could contribute to an increase in alcohol-related harm in the local and broader communities because of the:

- high-density hotspots in the suburb for incidents of non-domestic assault, malicious damage and alcohol-related assault, and medium-density hotspot in the suburb for domestic assault
- proposed premises being located within hotspots for non-domestic assault, malicious damage, and alcohol-related assault
- higher crime rates in the suburb and LGA for all offence categories we considered
- higher rate of alcohol-attributable deaths in the LGA compared to NSW
- higher saturation rates of packaged liquor licences in the suburb (around three times) and LGA (around double) the rate for NSW.

Our concerns about these risks were somewhat reduced by the:

- indication of an above-average level of socio-economic advantage and disadvantage in the suburb and LGA compared to other communities in NSW
- harm-minimisation measures outlined in the plan of management.
- lower rate of alcohol-attributable hospitalisations in the LGA compared to NSW
- possibility that crime statistics may be skewed due to the local area being a known tourist destination

However, on balance, we consider that the likelihood of adverse social impact from approving the application outweighs any benefit to the local or broader community and accordingly, approval of the application is not in the public interest.

### **The material we considered**

We considered the following material when making our decision:

- the application material — including evidence that stakeholders and the community were notified about the application
- a community impact statement (CIS)
- the plan of the licensed premises and any authorisations
- a plan of management for the licensed business
- a development consent for the premises

- statistics from Liquor & Gaming NSW, Bureau of Crime Statistics and Research, NSW Health and Australian Bureau of Statistics on the socio-economic status, liquor licence density, alcohol-related crimes rates and health issues in the local and broader communities
- Byron Bay Alcohol Action Plan – May 2015
- stakeholder submissions and the applicant’s response to them.

We also considered Guideline 6 to assess the likely social impact to the local and broader community.

This decision will be published on the ILGA website in accordance with section 36C of the *Gaming and Liquor Administration Act 2007*.

**If you disagree with this decision**

If the applicant, or a person who was notified of the application and made a submission, is unhappy with this decision, they may apply to NCAT for a review of the decision.

An application for review must be made no later 28 days after the decision is published on the ILGA website. There is a fee to lodge the application.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney or visit the NCAT website.

**If you have any questions**

Please contact the case manager, Sophie Cartwright, at Liquor & Gaming NSW if you have any questions.

Yours sincerely



Caroline Lamb

**Chairperson**

For and on behalf of the **Independent Liquor & Gaming Authority**