



Ms Melanie Ruth Moss
melmoss79@gmail.com

24 March 2022

Dear Ms Moss

Application Nos.	1-8158292211
Applicant	Cellar By Sea Pty Ltd
Application for	Change licence conditions
Licence number	LIQP770017597
Licence name	Cellar By Sea
Current trading hours	Monday to Sunday 10:00 AM – 9:00 PM
Premises	35 Hilltop Road Avalon Beach NSW 2107
Legislation	Sections 3, 11A, 12, 29, 30, 40, 44, 45, 48, 53 and 114E-114G of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority
Application to change licence conditions – Cellar by Sea**

The Independent Liquor & Gaming Authority considered the application above, and decided on 16 March 2022 to **approve** the application pursuant to section 53(2) of the *Liquor Act 2007* (“Act”), subject to imposing and revoking conditions as set out in Schedule 1.

Concise statement of reasons

A concise statement of reasons for this decision is attached at the end of this letter.

In the interest of efficient finalisation of determined matters in a high-volume liquor and gaming jurisdiction, the Authority will only produce a detailed statement of reasons for applications which are refused, partially approved or the subject of stakeholder objections.

A concise statement of reasons is produced for non-contested applications that have been approved by the Authority or applications where the objections raised were of a generalised nature, in cases where a statement of reasons is required to be published for the application under section 36C of the *Gaming and Liquor Administration Act 2007*.

The concise statement of reasons briefly sets out the material considered by the Authority, the legislative requirements, and the Authority’s key findings.

If you have any questions, please contact the case manager at
joanne.zammit@liquorandgaming.nsw.gov.au

Yours faithfully

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

Concise statement of reasons

Key facts

Application No.	1-8158292211
Applicant	Cellar By Sea Pty Ltd
Application for	Change licence condition
Licence name	Cellar By Sea
Premises	35 Hilltop Road Avalon Beach NSW 2107
Current trading hours	Monday to Sunday 10:00 AM – 9:00 PM
Application date	21 December 2021
Decision	Approved under section 53(2) of the <i>Liquor Act 2007</i>
Decision date	16 March 2022

Material considered by the Authority

The Authority has considered the following material in determining the application:

- Application material, including evidence of notification to specified stakeholders and the community about the application;
- Category B community impact statement;
- Plan of management for the licensed business at the premises;
- Liquor & Gaming LiveData report for Avalon Beach;
- Stakeholder submissions in relation to the application, and the applicant's response to those submissions

Legislative requirements

The Authority has considered the application in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018:

- Section 3: Statutory objects of the Act and relevant considerations.
- Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.
- Sections 29-31: Specific provisions in respect of a packaged liquor licence.
- Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
- Section 44: Submissions to Authority in relation to licence applications.
- Section 45: Criteria for granting a liquor licence.
- Section 48: Requirements in respect of a CIS, including a requirement that the Authority must not approve the application unless it is satisfied, having regard to the CIS and other available information, that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community.
- Section 53: General provisions in respect of imposition, variation or revocation of licence conditions.
- Section 114E-114G: Specific provisions relating to same day liquor deliveries

The Authority has also had regard to its Guideline 6 in considering the overall social impact of approving the application pursuant to section 48 of the Act.

Key findings

In accordance with its Guideline 6, the Authority finds that the relevant local community for the purposes of this decision is the suburb of Avalon Beach, and the broader community is the Local Government Area of Northern Beaches.

Positive social impacts

The Authority is satisfied on the material before it that the proposal set out in the application, if approved, would likely benefit the local and broader communities through the provision of increased liquor access, choice and convenience.

The Authority notes the business model is to cater to the demand of customers with specific needs on the waterways within the local and broader community. The Authority notes the applicant's contention that the change of conditions would:

- a) allow the applicant to service areas in the community that do not have waterfront addresses
- b) allow for an alternate service route in bad weather conditions
- c) allow the applicant to provide multiple deliveries, and as a result reducing the waiting period for customers

Negative social impacts

The Authority accepts that the proposal may, over time, contribute to an increase in alcohol-related harm in the local and broader communities, including alcohol-fuelled violence, health problems and/or social and amenity issues, having regard to the:

- higher than average liquor licence density in the local and broader community
- presence of crime hotspots in the local community
- significantly higher than average level of alcohol-attributable hospitalisations in the broader community

The Authority is nevertheless satisfied that these risk factors are sufficiently mitigated by the following:

- the delivery of liquor products will be restricted to a designated delivery area only
- lower than average crime rates in Avalon Beach and Northern Beaches for all offences normally considered by the Authority
- relatively moderate licensing trading hours
- significantly lower than average level of alcohol-attributable deaths in the broader community
- the harm minimisation measures set out in the plan of management and licence conditions as set out in Schedule 1.

Overall social impacts and conclusion

Having considered the positive and negative social impacts that are likely to flow from the applicant's proposal, the Authority is satisfied that the overall social impact of approving the application will not be detrimental to the well-being of the local or broader community.

The Authority is also satisfied that the other legislative requirements for the approval of the application have been met.

The Authority finds, having regard to the above, that approving the application is consistent with the statutory objects and considerations of the Act to regulate the liquor industry in line with the community's expectations, needs and aspirations, and facilitate the balanced and responsible development of the liquor industry and related industries.

Accordingly, the Authority approves the application under section 53(2) of the Act.



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

Schedule 1 – Licence conditions to be imposed Cellar By Sea

1. The granting of the application is subject to the imposition of the following conditions, pursuant to section 53(1)(b) of the Act, on the licence: 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. Restricted trading and NYE (std)
Retail Sales
Good Friday Not permitted
December 24th Normal trading Monday to Saturday
8:00 AM to midnight Sunday
Christmas Day Not permitted
December 31st Normal trading
3. The business authorised by this licence must not operate with a greater overall level of social impact on the well-being of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of:
 - a) obtaining the licence on 29 January 2021
 - b) changing licence conditions (varying conditions 3040 and 3070) on 16 March 2022.
4. The premises is to be operated at all times in accordance with the Liquor Plan of Management dated February 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 and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. No walk-up sales
 - 1) Limited to the sale of liquor only by means of taking orders over the telephone or by facsimile or mail order, or through an Internet site.
 - 2) Orders must be processed on the licensed premises.
7. Liquor storage
 - 1) No liquor products for sale under this licence are to be delivered to, or stored at, the licensed premises.
 - 2) Alcohol may be carried onboard the delivery boats for the purpose of fulfilling orders received at the licensed premises only.
 - 3) Alcohol may not be sold or supplied to any customers approaching the delivery boat as a 'walk-up' sale
8. No tastings
The licensee must ensure that no tastings are conducted on the licensed premises.
9. No advertising
No advertising or promotional material relating to alcohol is to be displayed outside the licensed premises.
10. Deliveries
 - 1) All delivery persons must be RSA certified.
 - 2) Delivery persons must comply with RSA requirements, confirm the recipient is not intoxicated and is at least 18 years of age.
 - 3) No deliveries are to be left unattended at the delivery address.
 - 4) Delivery of alcohol can only be made to:

- a. a boat on water; boats moored at a marina, pier, quay, or jetty; or to a customer at a wharf attached to a residence or business (**excluding** Church Point)
- b. to a customer at a residence or business in the following suburbs (excluding Church Point):
 - Palm Beach
 - Whale Beach
 - Avalon
 - Bilgola
 - Newport
 - Mona Vale
 - Bayview
 - Elvina Bay
 - Lovett Bay
 - Morning Bay
 - Mackerel Beach
 - Scotland Island

11. No express delivery

Alcohol is not permitted to be delivered to a customer within one (1) hour of the order being placed.

In addition, the Authority has determined to revoke the following licence conditions, pursuant to section 53(2)(b) of the Act:

12. Condition 3010: The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
13. Condition 3020: The premises is to be operated at all times in accordance with the Plan of Management dated 29 January 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 and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
14. Condition 3040: Liquor storage
 - 1) No liquor products for sale under this licence are to be delivered to, or stored at, the licensed premises.
 - 2) No alcohol other than pre-ordered alcohol is to be stored on the delivery boat.
15. Condition 3070: Deliveries
 - 1) All delivery persons must be RSA certified.
 - 2) Delivery persons must comply with RSA requirements, confirm the recipient is not intoxicated and is at least 18 years of age.
 - 3) No deliveries are to be left unattended at the delivery address.
 - 4) Delivery of alcohol can only be made to a boat on water; boats moored at a marina, pier, quay, or jetty; or to a customer at a wharf attached to a residence or business with ID checked to confirm the customer resides or works at that address.
16. Condition 3090: New Applicants with no Licensee or Advanced Licensee Training

Licensee training must be completed no later than 6 months from the date of grant of the liquor licence.