

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICANT:** BARACUS PTY LTD  
**PREMISES:** BANJO'S BACKPACKERS  
**PREMISES ADDRESS:** 150 CLAISEBROOK ROAD, PERTH  
**APPLICATION ID:** A000177324  
**NATURE OF APPLICATION:** **APPLICATION FOR GRANT OF A SPECIAL FACILITY LICENCE**  
**DATE OF DETERMINATION:** 29 APRIL 2015

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### **Introduction**

1. This is an application by Baracus Pty Ltd ("the Applicant") for the grant of a special facility licence the prescribed purpose of tourism, for premises to be known as *Banjo's Backpackers* and situated at 150 Claisebrook Road, Perth.
2. The application is made pursuant to s 46 of the *Liquor Control Act 1988* ("the Act") and r 9A(7) of the *Liquor Control Regulations 1989* ("the regulations") and was advertised in accordance with instructions issued by the Director of Liquor Licensing, which resulted in the lodgement of:
  - (a) notices of objection from the Nyoongar Patrol System Incorporated and Mr Thomas Coyne, pursuant to the provisions of s 73 of the Act; and
  - (b) notices of intervention by the Commissioner of Police and Executive Director Public Health, pursuant to s 69 of the Act.
3. To give effect to the provisions of s 16 of the Act, a document exchange was initiated between the parties in order to ensure that each party was given a reasonable opportunity to present its case.
4. Pursuant to the provisions of ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties, which are summarised below.

### **Submissions**

#### ***Submissions of the Applicant***

5. The Applicant submitted that a licence is sought for the purpose of selling and supplying liquor to lodgers (or guests) staying at Banjo's Backpackers, a premises that supplies budget accommodation in Perth. According to the Applicant, the premises is marketed to backpackers, with the major demographic of guests being international tourists.

6. To support its application, the Applicant lodged a Public Interest Assessment (“PIA”), which explained *inter alia* the history of the premises, the intended manner of trade under the licence and also addressed those matters prescribed in s 38(4) of the Act.
7. In this regard, the Applicant submitted that the premises opened for trade in December 2012 and that:

“Banjo’s Backpackers has become a significant budget accommodation venue in Perth, being ranked in the top 10 hostels in Australia within 10 months of opening... Guests have expressed their desire to purchase liquor within the property.”
8. To support this assertion, the Applicant lodged a nine page petition signed by its patrons who indicate their support for the sale and supply of liquor to in-house guests staying at Banjo’s Backpackers.
9. In its PIA, the Applicant also submitted:

“We wish to offer packaged food and alcohol to guests staying at the Banjo’s Backpackers. Banjo’s Backpackers is registered for 140 guests. There are stringent house rules in place that guests agree to when checking into Banjo’s... No visitors or members of the public are permitted onsite...

RFID Keys are issued on registration and the bracelet easily identifies each guest and there is no ability for unregistered guests to access the premises. The Front Reception is staffed over three shifts, 7 am – 3 pm, 3 pm – 11 pm and 11 pm – 7 am...

No friends, visitors or members of the public will be permitted to purchase alcohol as a consequence of the strict entry policy.”
10. The Applicant proposes that the licensed premises be restricted to the Reception, bar area, dining area, lounge areas and courtyard.
11. The Applicant further submitted that while only a very small and modest range of alcohol will be made available, given that the demand by customers is for beer and wine, the liquor service will nonetheless considerably enhance the tourism experience of its patrons, given that at present it is extremely difficult for short term guests to purchase alcohol, with a walk of several kilometres to the closest liquor outlet.
12. The proposed trading hours are from 2 p.m. to 11 p.m. from Monday to Sunday.
13. The Applicant’s PIA also addressed those matters prescribed in s 38(4) of the Act, including a brief analysis of at risk communities in the locality and concluded that, with the exception of “tourists” who will be staying at the premises, the proportion of other “at-risk groups” is “either roughly the same or less than the WA State average.”
14. A number of harm minimisation initiatives were volunteered by the Applicant, including that:

- (a) each patron's alcohol consumption will be closely managed and monitored by staff;
  - (b) drinks will be served in line with standard servings as outlined under the Australian Alcohol Guidelines;
  - (c) patrons will only be permitted to purchase a limited amount of drinks at a time; and
  - (d) food will be available for purchase at all times when it liquor is proposed to be sold.
15. In terms of impact on the amenity of the locality, the Applicant submitted that Claisebrook is a residential and industrial area, which is being "gentrified" through the development of new residential and office buildings. It was also submitted that the Applicant has "already spent considerable time and funds upgrading the premises prior to opening the backpackers" and the "area for the bar is not visible from the street and therefore...will have minimal impact on the streetscape." The Applicant also asserted that:
- "Banjo's has developed a business proposal that will impact positively on the streetscape. The outlet is a small, low risk, low impact operation."
16. In support of the application, a letter was submitted from the Chief Executive Officer of the Tourism Council of Western Australia, which submitted that:
- "Backpacker accommodation like Banjo's Backpackers provides a vital service to a sector of visitors who provide a valuable contribution to the economy of Western Australia. While backpackers may often be young budget travellers, they should still be offered the same hospitality and service as other patrons – for example, the opportunity to purchase alcoholic beverages where they are staying in Perth..."
- Banjo's Backpackers has been an accredited tourism business under the Australian Tourism Accreditation Program since 2013, making it an exemplar of best business practice with a commitment to continually improving its services and contributing to the tourism industry in Western Australia..."

***Submissions of the Nyoongar Patrol System Incorporated***

17. The objection of the Nyoongar Patrol System Incorporated is based on the grounds that:
- (a) the grant of the application would not be in the public interest (s 74(1)(a) refers);
  - (b) the grant of the application will cause undue harm or ill-health (s 74(1)(b) refers);
  - (c) if the application were granted undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity , or to persons travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur (s 74(g)(i) refers); and

- (d) if the application were granted the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in some other manner be lessened (s 74(1)(g)(ii) refers).
18. The grounds of objection are expanded in a covering letter signed by Ms Maria McAtackney, Chief Executive Officer of the Association, dated 27 May 2014, in which it is submitted that the objection is based on concerns over the potential impact the grant of the licence will have on the homeless in the area and on disengaged youth in the area, as well as the potential impact of behaviour in public places around the locality, which will affect the safety of the local community.
19. Ms McAtackney further submitted that the Applicant's PIA failed to acknowledge the presence of Aboriginal homelessness and youth in the area and did not appropriately acknowledge the presence of family and youth residential accommodation in the locality.

### ***Submissions of Mr Coyne***

20. Mr Coyne objects to the application on the grounds that the grant of the application would:
- (a) not be in the public interest (s 74(1)(a) refers) because it would cause disturbance to residents and pedestrians;
  - (b) cause undue harm or ill-health to people, or any group of people, due to the use liquor (s 74(1)(b) refers) due to an increased use of liquor and the extent of the trading hours sought;
  - (c) cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity , or to persons travelling to or from an existing or proposed place of public worship, hospital or school (s 74(g)(i) refers); and
  - (d) in some other manner lessen the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated (s 74(1)(g)(ii) refers) to the extent of it being unsuitable for nearby house occupation; and
  - (e) otherwise be contrary to the Act (s 74(1)(j) refers).
21. In his covering letter to the notice of objection, Mr Coyne noted some errors in the Applicant's PIA and indicated concern for a number of third parties, such as families passing in front of premises to access Gladstone Reserve; users of a proposed Community Garden site and Neighbourhood Centre; and existing and future residents.
22. Notwithstanding the fact that Mr Coyne submitted that he experiences "loud noise and music on occasions which resonate across the street to my house" from the proposed licensed premises, this does not often happen and can be tolerated. However,

Mr Coyne further submitted strong opposition to the application, which he submitted would not allow him to peacefully inhabit his house.

### ***Submissions of the Commissioner***

23. The representations of the Commissioner are that if the application is granted and conditions not imposed on the licence, public disorder or disturbance would be likely to result and to other matters public interest matters, particularly relating to questions about:

- (a) whether the Applicant has discharged its onus under s 38 of the Act;
- (b) the intended manner of trade under the licence; and
- (c) the presence of 'at-risk' groups in the locality.

24. In this regard, the Commissioner submitted that:

"On 22 May 2014 offices of the Liquor Enforcement Unit ("LEU") attended Banjo's Backpackers at 150 Claisebrook Road, East Perth and spoke to the accommodation manager, Mr Luke Jones.

During discussions regarding the application, Mr Jones agreed that the sale of liquor should be in unsealed containers...

It was confirmed by Mr Brooks that only registered guests would be allowed on the premises and permitted to purchase liquor from the bar. The wristband system was explained and demonstrated, which appeared to be very well controlled and effective.

The applicant states that only beer, cider, wine and pre-mixed drinks would be available in cans or bottles... This was confirmed during the meeting with Mr Brooks."

25. In terms of 'at-risk' groups in the locality, the Commissioner accepts the Applicant's assertion that the premises will not be open to the public and that only residents will be able to purchase liquor and also conceded that this will eliminate potential harms to many of the 'at-risk' groups identified in the locality, with the exception of tourists. However, the Commissioner submitted that stringent trading conditions, such as a drink limit of four drinks per person per transaction, could address concerns relating to the health and wellbeing of tourists.

### ***Submissions of the EDPH***

26. The representations of the EDPH relate the risk of alcohol-related harm or ill-health specific to the application, and the minimisation of that harm or ill-health, principally because tourists and backpackers in particular, are an 'at-risk' group.

27. The EDPH also submitted that representatives of the Drug and Alcohol Office had been contacted by the Nyoongar Patrol System Incorporated regarding 'at risk' groups in the locality, including homeless and itinerant people and that such concerns support

the imposition of a condition on the licence to limit the sale and supply of liquor to guests staying at Banjo's Backpackers.

28. The EDPH also recommended conditions consistent with the Applicant's intended manner of trade, as specified in its PIA.

### **Determination**

29. The Applicant seeks the grant of a special facility licence for the prescribed purpose of tourism, to provide liquor to lodgers for consumption on the premises at an existing backpacker hostel. Although the application advertised was for the grant of a hotel restricted licence, the application has subsequently been amended from a hotel restricted licence to a special facility licence for the prescribed purpose of tourism, given that the Applicant does not seek to sell and supply liquor to the general public, which is a requirement for a hotel restricted licence (s 41(2) of the Act refers).
30. Pursuant to the flexible approach required of the licensing authority by ss 5(2)(e) and 16(1)(a) of the Act, I have considered the submissions of the parties in respect of the application for the hotel restricted licence in relation to the amended application. Furthermore, each objector and intervener was served notice of the amended application and provided with an opportunity to comment on the change and where relevant comments were made, these were also considered in my determination of this matter.
31. The Applicant submits that guests have been permitted to BYO liquor onto the premises since it opened for trade in December 2012 and that, to the best of its knowledge, this has not led to inappropriate behaviour. The Applicant further maintained that staff would be better able to manage the sale and consumption of liquor on the premises by controlling the amount of liquor at the point of sale and that permission for lodgers to BYO alcohol would cease, should the licence be granted.
32. The Applicant is seeking to provide a service to lodgers in a 'Guest only' facility at the hostel, so that lodgers are not required to walk or catch a taxi to the closest liquor outlet located several kilometres away. The Applicant's patrons have signed a petition, which indicates this service would be appreciated by those backpackers who wish to enjoy a quiet drink or two in the comfort of their accommodation.
33. The applicant for the grant of a special facility licence for the prescribed purpose under r 9A(7) must satisfy the licensing authority of the matters set out in ss 5, 38 and 46 of the Act, whilst under section 73(10), "the burden of establishing the validity of any objection lies on the objector."
34. It is generally accepted by contemporary standards that residents of a hotel should be able to purchase liquor at the hotel for their own consumption and, in my view, residents at the Applicant's premises should be able to enjoy similar privileges unless there are public interest reasons to suggest otherwise.

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35. I am satisfied on the evidence presented by the Applicant that there is a requirement of consumers staying at Banjo's Backpackers to be able to purchase liquor for consumption on the premises between 2 p.m. and 11.00 p.m. and that that the grant of a licence in these circumstances would be consistent with the proper development of the liquor and tourism industry in the State.
36. The general thrust of the objections are that the proposed premises:
- (a) will contribute to alcohol-related harm or ill-health due to the potential impact the grant of the licence will have on the homeless in the area and on disengaged youth in the area, as well as the potential impact of behaviour in public places around the locality, which will affect the safety of the local community; and
  - (b) will be problematic for a number of third parties, such as families passing in front of premises to access Gladstone Reserve; users of a proposed Community Garden site and Neighbourhood Centre; and existing and future residents.
37. The interveners are more concerned with ensuring that appropriate conditions are imposed on the licence to prohibit alcohol-related harm to at-risk persons in the community, such as homeless and itinerant people, but also to the Applicant's customers, who as tourists, are recognised as an 'at-risk' group themselves.
38. In regard to the concerns of the Nyoongar Patrol System Incorporated, I concur with the EDPH that such concerns would be appropriately addressed by the imposition of a condition on the licence to limit the sale and supply of liquor to only guests staying at Banjo's Backpackers.
39. I similarly consider that such a condition should also address the concerns of Mr Coyne relating to families visiting Gladstone Reserve and users of a proposed Community Garden site and Neighbourhood Centre. In relation to his concerns that the grant of the licence would not allow him to peacefully inhabit his house and make his residence uninhabitable, I note that he currently finds that noise from the proposed premises is tolerable.
40. The local authority has not provided any negative comment or reported complaints regarding the manner in which the business is currently conducted at the premises. Nor has any evidence been produced to establish that the grant of this application would be contrary to the public interest.
41. Therefore, based on the evidence presented, I find that the objectors have failed to establish their grounds of objection.
42. In accordance with section 46(2) of the Act, I am also satisfied that no other class of licence would achieve the purposes for which the special facility licence is sought.
43. I am also satisfied that the applicant has complied with all the necessary statutory requirements under the Act and that the grant of the application is in the public interest.

44. Accordingly, a special facility licence, for the prescribed purpose of tourism, is granted to Baracus Pty Ltd in respect of premises known as *Banjo's Backpackers*, subject to the following conditions:

(a) Trading Hours:

The permitted trading hours are specified for the purposes of s 98C of the Act are Monday to Sunday, from 2 p.m. to 11 p.m.

(b) Trading Conditions:

- (i) Pursuant to s 46(3) of the Act and r 9A(7), r 9A(8) and r 9A(9) of the regulations, this licence is granted for the prescribed purpose of "tourism", authorising the sale of liquor to lodgers of Banjo's Backpackers. The premises must not be open to the general public.
- (ii) The predominant purpose of the licensed premises must at all times remain as the provision of accommodation for tourists/backpackers.
- (iii) During the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises.
- (iv) The sale of packaged liquor for consumption off the licensed premises is prohibited. Liquor must not be consumed in the accommodation rooms.
- (v) Food must be available during trading hours.
- (vi) Liquor must not be sold in quantities of more than four drinks per person at any one time.
- (vii) The licensee shall not promote or sell drinks which offer liquor by virtue of their emotive titles such as, but not limited to, 'laybacks', 'shooters', 'slammers', 'test tubes' and 'blasters'.
- (viii) No liquor is to be supplied mixed with energy drinks. For the purposes of this condition "energy drink" has the same meaning as formulated caffeinated beverage within the Australia New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater.
- (ix) Any music played at the premises must be at a level that permits conversation to occur.

(c) Entertainment Condition:

- (i) A person resorting to, or on the premises, including the licensee or manager, or an employee or agent of the licensee or manager, shall not:
  - (1) be immodestly or indecently dressed on the licensed premises, and/or
  - (2) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
- (ii) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:



- (1) exhibiting or showing, or causing, suffering or permitting to be exhibited or shown, on the licensed premises any classified “R 18+”, “X 18+” or “RC” classified publication, film or computer game or extract therefrom; or
  - (2) causing, suffering or permitting any person employed, engaged or otherwise contracted to undertake any activity or perform any entertainment on the licensed premises to be immodestly or indecently dressed on the licensed premises; or
  - (3) causing, suffering or permitting any person to take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
- (iii) In this condition “licensed premises” includes any premises, place or area:
- (1) which is appurtenant to the licensed premises; or
  - (2) in respect of which an extended trading permit granted to the licensee is for the time being in force,

but does not include any part of the premises which is reserved for the private use of the licensee, manager or employees of the licensee and to which the public does not have access.

(d) Compliance with Harm Minimisation Policy:

The licensee has lodged a copy of the House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm Minimisation Policy. These documents must be retained on the licensed premises and produced to any Authorised Officer if required.

### General

45. Pursuant to s 127(2) of the Act, the prescribed licence fee is payable in respect of this licence prior to the operation of the licence. I am satisfied that the licence fee has been paid.
46. The licensed premises are defined as the area outlined in red on the plans attached and dated 7 April 2014. A copy of that plan is to be retained on the premises and produced to any authorised officer if required.
47. Pursuant to s 116(3) of the Act, the premises' trading name of *Banjo's Backpackers* is approved. The licensee shall not subsequently conduct business at the licensed premises under any other trading name, without the prior approval of the Director of Liquor Licensing.
48. The applicant must ensure that the signage required under s 116(5) of the Act is displayed on the licensed premises within 14 days of the date of this decision.
49. Additionally, pursuant to s 116(4) of the Act, the licensee must ensure a copy of the licence is displayed in a readily legible condition and in a conspicuous position in the licensed premises.

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50. Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.
51. This matter has been determined by me under delegation pursuant to s 15 of the Act.



Brett Snell

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING