

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: HOWARD PARK WINES PTY LTD
PREMISES: THE WINE CHAPEL
PREMISES ADDRESS: 137 FIFTY ONE ROAD, COWARAMUP
APPLICATION NO: 14999
NATURE OF MATTER: GRANT OF A SPECIAL FACILITY LICENCE

1. This is an application by Howard Park Wines Pty Ltd (“the applicant”) for the grant of a special facility licence, for the prescribed purpose of tourism, for premises to be known as *The Wine Chapel* and situated at 137 Fifty One Road, Cowaramup. 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”).
2. The application was advertised in accordance with instructions issued by the Director of Liquor Licensing and no objections or interventions were lodged. Therefore, pursuant to the provisions of ss 13 and 16 of the Act, the application will be determined on the Applicant’s written submissions.
3. The Applicant lodged a Public Interest Assessment (“PIA”) in support of its application, in which it was submitted that:

“The Wine Chapel is a purpose designed wine education facility targeting international and Australian tourists and catering to specific small groups up to 30 people. It includes a lounge, wine tasting room, cellar and kitchen. The cellar is designed for storage and display of museum wines and the licensed commercial kitchen will cater for small functions.

Wine education classes will be a key feature of the facility with its operation to include tasting museum cellar wines produced by Howard Park and occasional wines from select other producers with food matching and the sale of Howard Park Wines as tasted during a course of instruction. It will offer these private tastings, education courses and small functions by appointment/booking only, incorporating a fine dining experience offering wines and food with an express regional perspective.”
4. In submissions dated 8 October 2014 the Applicant also indicated its desire to sell packaged liquor from the proposed premises in the form of wine produced by Howard Park Wines Pty Ltd.
5. The submissions of the Applicant regarding the requirements of consumers for the liquor and related services proposed to be offered at the premises were advanced by way of letters of support from a number of tour operators in the region, such as:
 - (a) the Augusta Margaret River Tourism Association Inc. who stated that the proposed premises “...will offer a higher level of wine education in a facility that

will be seen as an attraction for the many tourists visiting the Margaret River Region...”;

- (b) the Geographe Bay Tourism Association, who commented that “The Wine Chapel will no doubt enhance the state’s [sic] tourism industry by providing a higher level of wine education in a facility that will be seen as an attraction for visitors to the Margaret River Region...”; and
- (c) A/Professor Jack Carlsen, who submitted that:

“...the Burch Family Wine Chapel provides the quintessential example of a wine tourism facility and that the planned events to be held in the facility will provide a significant new attraction for visitors both within WA, across Australia and internationally... It provides a unique opportunity for hosting high-end wine tourists and is located on a site overlooking the vineyards that supports the attraction of additional wine tourism and even related visitors to the region... There is already a very high level of interest in the new facility shown by tourism agencies in Western Australia...”

- 6. An applicant for the grant of a licence must, pursuant to s 38(2) of the Act, satisfy the licensing authority that granting the application is in the public interest. The Act as a whole establishes a regime for the control and regulation of the sale, supply and consumption of liquor. The Act does not proceed on the basis that there is a presumption in favour of the grant of a licence, but rather the reverse, that the an applicant must demonstrate that it is in the public interest that the application should succeed.
- 7. In determining whether the grant of an application is “in the public interest” I am required to exercise a discretionary value judgement confined only by the scope and purpose of the Act (refer *Water Commission and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O’Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources; ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- 8. In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:

“The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.”
- 9. Additionally, advancing the objects of the Act as set out in s 5 is also relevant to the public interest considerations of the licensing authority (see *Palace Securities, supra*).
- 10. In my view, the grant of the licence will promote one of the primary objects of the Act, namely object 5(1)(c), which relates to catering to the requirements of consumers for

- liquor and related services, with regard to the proper development of, relevantly, both the liquor and tourism industries in the State.
11. However, s 46(1) of the Act proscribes the licensing authority from granting a special facility licence except for a prescribed purpose and s 46(2b) of the Act prescribes that the applicant for a special facility licence must demonstrate how the business for which the licence is sought meets any of the prescribed purposes for which a special facility licence may be granted.
 12. In regards to the tourism purpose advanced by the Applicant, r 9A(7) provides that a special facility licence may be granted for the purposes of allowing the sale and supply of liquor to persons likely to be attracted to, or present at, a place that in the opinion of the licensing authority is or will become an attraction for tourists or a facility that enhances the State's tourist industry.
 13. As to the merits of the application, the Applicant seeks to be able to sell and supply liquor for consumption on the premises and to sell packaged liquor for consumption off the licensed premises. Therefore, notwithstanding that *The Wine Chapel* may be an attraction for tourists, I am of the view that the Applicant's proposed manner of trade can be facilitated under a tavern licence.
 14. Therefore, pursuant to s 46(2) of the Act, I consider that I am precluded from granting a special facility licence to the Applicant in these proceedings. However, I note that in correspondence dated 23 February 2015, the Applicant consented to the application being treated as an application for the grant of a tavern licence, notwithstanding its view that the Certificate of Local Planning Authority lodged in support of the application did not support the grant of such a licence.
 15. However, in my examination of the Certificate of Local Planning Authority issued by the Shire of Augusta-Margaret River on 26 February 2014, I failed to identify any restriction on the type liquor licence approved and noted that the proposed business will comply with the relevant local planning scheme, subject to:
 - (a) the sale and supply of wine, for consumption on and off the premises, produced from grapes grown on the site and/or in the locality;
 - (b) a maximum capacity of no more than 30 people per day in the 'Wine Chapel'; and
 - (c) in accordance with the attached site plan and floor plan dated 29 January 2014.
 16. The s 40 certificate also noted that "...although the abovementioned planning approvals are silent on the matter, operating hours for the 'Wine Chapel' are proposed to be limited to Monday and Sunday from 11:30 a.m. to 10 p.m. and Tuesday to Saturday (inclusively) from 11.30 a.m. to 1 a.m."

17. I am therefore satisfied that, subject to the conditions imposed by the Shire of Augusta-Margaret River, the s 40 certificate would permit the conduct of business in the manner proposed by the Applicant under a tavern licence.
18. Accordingly, I am also satisfied that the applicant has complied with all the necessary statutory criteria, requirements and conditions precedent to the application being granted and that the grant of the application is in the public interest and the application is granted, subject to the following conditions:
- (a) Trading Hours:
- (i) For the purposes of s 98 of the Act, the following hours are approved as permitted hours in respect of this licence:
1. Sunday to Monday, from 11.30 a.m. to 10 p.m.;
 2. Tuesday to Saturday, from 11.30 a.m. to midnight;
 3. New Year's Eve (where it falls on a Monday or Sunday), from 10 p.m. until midnight;
 4. New Year's Day – up to 1 a.m., from immediately after 12 midnight on New Year's Eve; and
 5. trading is not permitted on Christmas Day, Good Friday and Anzac Day.
- (b) Trading Conditions:
- (i) The licensee is permitted to sell and supply liquor in accordance with the provisions of s 41 of the Act as it relates to a tavern licence.
- (ii) The sale of liquor for consumption on the licensed premises is restricted to wine produced from grapes grown on the site and/or in the Margaret River Wine Region.
- (iii) The sale of packaged liquor is restricted to wines produced by the licensee (i.e. Howard Park Wines Pty Ltd).
- (iv) The maximum number of patrons permitted to be on the licensed premises at any time is not more than 30.
- (v) Food must be available during trading hours.
- (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:

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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;
 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.
19. Pursuant to s 127(2) of the Act, the prescribed licence fee payable is payable prior to the grant of the licence. I am satisfied that the licence fee has been paid.
 20. The licensed premises are defined as the area outlined in red on the plans attached and dated 24 February 2014. A copy of that plan is to be retained on the premises and produced to any authorised officer on request.

21. The premises' name *The Wine Chapel* is approved and may not be altered without prior approval of the Director of Liquor Licensing.
22. Pursuant to s 116(4) of the Act, the Applicant must ensure a copy of the licence is displayed in a readily legible condition and in a conspicuous position in the licensed premises.
23. Additionally, 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.
24. 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

9 March 2015