

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT:	FIRE AND RAIN PTY LTD
PREMISES:	AUSTIN LAKES IGA LIQUOR
PREMISES ADDRESS:	LOT 9010 CNR INLET BOULEVARD AND SCHOALES BEND SOUTH YUNDERUP
APPLICATION ID:	A000180967
NATURE OF APPLICATION:	CONDITIONAL GRANT OF A LIQUOR STORE LICENCE
DATE OF DETERMINATION:	30 OCTOBER 2015

Introduction

- 1 This is an application by Fire and Rain Pty Ltd (the applicant) for the conditional grant of a liquor store licence for premises to be located at the corner of Inlet Boulevard and Schoales Bend, South Yunderup and to be known as Austin Lakes IGA Liquor. The application is made pursuant to s 47 and s 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. There was one objection to the grant of the application, lodged by Comp-U-Cutt Pty Ltd, the licensee of Mandurah Cellars.
- 3 Pursuant to s 13 and s 16 of the Act, the application will be determined on the written materials lodged. The submissions and evidence of the parties are briefly summarised as follows.

The applicant's submissions

- 4 Austin Lakes is a new housing development in South Yunderup, which is located in the Shire of Murray. On completion, it will be home to over 7,000 people. The applicant seeks to establish a convenient style liquor store in the new Austin Lakes Shopping Centre, which will comprise, in addition to the applicant's proposed liquor store, an IGA supermarket, a pharmacy and medical centre. The nearest supermarkets to South Yunderup are 12km and 16km away in Pinjarra and Mandurah respectively.
- 5 According to the applicant, the South Yunderup area is a mix of traditional residential and canal blocks. The demographic has a high number of older people/retirees, with the overall population expected to increase significantly by 2023.
- 6 The proposed liquor store will have a trading area of approximately 140m² with a focus on craft beer and quality wines not offered locally. Ancillary services such as wine tastings and advice on matching food and wine will be provided.
- 7 The applicant submitted a Public Interest Assessment (PIA) to demonstrate that the grant of the application is in the public interest. The PIA contained information on the

demographic profile of the locality, growth in population, outlet density, proposed style of operation and addressed the matters set out in s 38(4) of the Act.

- 8 The applicant also submitted 40 witness questionnaires, which according to the applicant, reflects strong support from the local community for the grant of the application.

The objector's submissions

- 9 The objector is the licensee of Mandurah Cellars, which is located on the main road between Mandurah and the South Yunderup turnoff. According to the objector, South Yunderup is well catered for with the supply of liquor, with many of the objector's customers coming from that area. Mandurah Cellars is less than a seven minute drive from South Yunderup and provides a wide range of liquor products.
- 10 It was submitted that South Yunderup has always been a community which is away from the main residential areas of Mandurah and Pinjarra, however residents of South Yunderup travel to these towns to buy goods, including alcohol. According to the objector, South Yunderup has a higher rate of alcohol-related incidents than Halls Head, which is a built up area with a larger population. In the past two years there were 47 assaults, 37 burglaries and 14 motor vehicles thefts. The level of harm could rise with more alcohol being available a shorter distance from consumers, prompting them to drive instead of purchasing their liquor whilst they are shopping in Mandurah or Pinjarra or when driving back from those destinations.
- 10 It was also submitted by the objector that the road accessing South Yunderup is dangerous with poor lighting resulting in many accidents and fatalities. Many students travel to and from the Austin Lakes School by bus and another liquor outlet in the area will add to drink driving on the roads, putting students at risk.

Determination

- 11 Section 38(2) of the Act places a burden on an applicant for the grant of a liquor store licence to satisfy the licensing authority that the grant of the application is in the public interest, while, pursuant to s 73(10) of the Act, an objector must establish the validity of any objection. Each party must therefore adduce sufficient evidence to discharge their respective burden.
- 12 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation 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).
- 13 The factual matters which I am bound to take into account when determining whether the grant of an application is 'in the public interest' are those relevant to the primary

and secondary objects of the Act as set out in s 5 (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).

14 The primary objects of the Act are:

- to regulate the sale, supply and consumption of liquor;
- to minimise harm caused to people, or any group of people, due to the use of liquor; and
- to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

15 The secondary objects of the Act are:

- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
- to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

16 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.

17 The applicant's evidence establishes that Austin Lakes is a new housing development in South Yunderup, which will eventually be home to approximately 7,000 people. Residents of South Yunderup currently have to travel between 12 and 16 kilometres to undertake their shopping needs, including grocery shopping. The new Austin Lakes Shopping Centre will provide an alternative, local and more convenient option for residents to purchase their groceries. The applicant seeks to establish a moderately sized liquor store in the Austin Lakes Shopping Centre.

18 There is nothing in the evidence before me to suggest the population in the locality is socio-economically disadvantaged or overburdened with alcohol-related harm. Whilst the objector has provided some crime data, it is of little assistance because it does not identify what percentage of offending is alcohol-related, the source of the data or the context of the offending in the locality or the broader community.

19 The witness questionnaires submitted by the applicant reflect community support for the grant of the application, with many respondents indicating that South Yunderup is lacking in shopping and general amenities and the applicant's proposed liquor store will provide residents with greater convenience and choice.

- 20 In my view, the applicant's evidence establishes that the grant of the application would be catering to the requirements of consumers for liquor and related services (object 5(1)(c) of the Act), now and into the foreseeable future, and will facilitate the use and development of licensed facilities reflecting the diversity of the requirements of consumers in the State (object 5(2)(a)).
- 21 In respect of the harm minimisation object of the Act, I am satisfied that the grant of the application will not cause undue harm or ill-health in the community due to the use of liquor.
- 22 There was only one objection to the application, from an existing licensee. The objector has provided little or no evidence to support its grounds of objection, and the underlying intent of the objection would appear to be directed towards protecting the objector's existing market share. I find the objection has not been made out as required under s 73(10) of the Act.
- 23 Accordingly, in weighing and balancing the evidence presented, I am satisfied the applicant has discharged its onus, as required under s 38(2) of the Act, and the grant of the application is in the public interest.
- 24 Consequently, I am satisfied the applicant has complied with all other statutory requirements and conditions precedent to the application being granted. Therefore a liquor store licence is conditionally granted to the applicant subject to the following:
- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
 - (b) compliance with the Local Government Act 1960, Health Act 1911 and any written law relating to the sewerage and drainage of these premises;
 - (c) all work being completed within 12 months in accordance with the plans and specifications dated 9 July 2015.
 - (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director of Liquor Licensing being notified in writing at least 21 days prior to applicant wishing to trade under the licence;
 - (e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
 - (f) the applicant seeking confirmation of the grant on or before **29 October 2016** pursuant to s 62(4)(c) of the Act.

Conditions to be imposed on the issue of the licence

Trading hours

The permitted trading hours are those prescribed in s 98D of the Act. In this respect, only liquor stores located in the metropolitan area are permitted to trade on Sundays.

Trading

The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.

Approval under s 104

The percentage rent application lodged on 10 June 2015 between the licensee and Bowman Water Holdings Pty Ltd and Yunderup Holdings Pty Ltd is approved.

Tasting condition

Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:

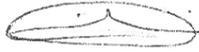
- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
- (b) Tastings cannot be supplied to juveniles.
- (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
- (d) Compliance with the Food Act 2008 at all times.
- (e) Tastings per sample must not exceed the following measures:
 - (i) Wine – 50 mls
 - (ii) Beer – 100 mls
 - (iii) Spirits – 15 mls.
- (f) Free drinking water must be made available at all times that samples of liquor are available for tasting.

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.

- 25 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 26 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.

- 27 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.
- 28 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING