

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: RIOSTAR PTY LTD

PREMISES: CELLARBRATIONS AT SUBIACO

PREMISES ADDRESS: SHOP 3, 531 HAY STREET, SUBIACO

APPLICATION ID: A000182930

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 2 DECEMBER 2015

Introduction

- 1 On 13 July 2015, an application was lodged by Riostar Pty Ltd (the applicant) for the conditional grant of a liquor store licence in respect of premises to be known as Cellarbrations at Subiaco and located at Shop 3, 531 Hay Street, Subiaco. 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 were no objections to the grant of the application, however, pursuant to s 69 of the Act, the Commissioner of Police (the Commissioner) lodged a notice of intervention.
- 3 Pursuant to s 13 and s 16 of the Act, the application will be determined on the written material lodged. The submissions and evidence of the parties are briefly summarised as follows.

The applicant's evidence and submissions

- 4 The applicant seeks to establish a moderately sized liquor store in Subiaco which will focus on the sale of premium wines, whiskies, other spirits and craft beer. The proposed liquor store will incorporate a dedicated liquor seminar room, to facilitate liquor tutorials and a wine school. Those who attend these liquor tutorials are expected to people of means with a keen interest in fine wine and liquor.
- 5 It was submitted by the applicant that Subiaco is one of Perth's more stylish and cosmopolitan suburbs, known for its markets, boutiques, restaurants and jewellery outlets which are located along Hay Street and Rokeby Road. The Colonnade shopping complex is home to Versace, Calvin Klein and other branded stores. In the area are a number of gourmet food stores that sell quality vegetables, imported cheeses, meats, herbs and spices.
- 6 According to the applicant, the proposed liquor store will be located in the heart of the thriving commercial Subiaco Town Centre and will be ideally positioned for its target market, which will comprise:

- professional people who work in nearby offices and other commercial businesses in Subiaco;
 - diners who patronise nearby unlicensed restaurants in the area (currently there are 13 unlicensed restaurants within walking distance of the applicant's premises);
 - local residents;
 - people from Perth city and West Perth on their way home from work, who drive along Hay Street heading home to the Western suburbs; and
 - connoisseurs of fine wine and spirits from further afield.
- 7 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA provided information on the locality surrounding the proposed liquor store, including: the demographic profile; future growth in residential and commercial property; existing licensed premises; and data on the existing level of alcohol-related harm. The PIA also addressed the matters set out in s 38(4) of the Act.
- 8 The applicant also submitted various witness questionnaires, which according to the applicant; reflect strong support from the community for the grant of the application.

Submissions and evidence from the Commissioner of Police

- 9 The Commissioner intervened on the basis that public disorder or disturbances may result from the grant of the application and to minimise any negative impact on the community, conditions should be imposed on the operation of the licence if the application is approved.
- 10 In acknowledging the consumer surveys provided by the applicant indicate a positive response to the proposed liquor store, the Commissioner submitted that due to the limited nature of the survey and the selective participants involved, the survey may not accurately reflect the views of the broader community. The Commissioner also submitted that whilst the applicant proposes to stock many products that may not be readily available in the locality, this in itself may not be justification for the grant of a licence, and there is nothing holding the applicant to its proposed manner of trade once the application is approved.
- 11 The Commissioner provided data on the existing level of alcohol-related crime in the locality. Although alcohol-related offences within the locality are generally lower than many other suburbs, it was submitted by the Commissioner that alcohol is still a contributing factor in many of the reported incidents of domestic and non-domestic assaults.
- 12 Concern was also expressed by the Commissioner relating to the theft of liquor from outlets in the locality. Police evidence indicates that where licensed premises keep spirits in lockable glass cabinets, there is a 100% reduction in the theft of bottled spirits. Whilst theft is still occurring, the number of thefts is greatly reduced and the

items stolen were generally pre-mixed spirits, beer or fortified wine, however the concentration of alcohol per volume in regard to the liquor unlawfully obtained by “at risk” groups is significantly lower and less appealing.

- 14 The Commissioner also highlighted the fact that there are a number of existing packaged liquor outlets in the locality and an additional outlet may lead to the increased consumption of liquor in the area which could increase the potential for violence and crime.
- 15 Consequently, the Commissioner submitted that if the application is approved, conditions relating to CCTV, dress standards and keeping all spirits in locked glass cabinets should be imposed on the licence.

Determination

- 16 The onus is on the applicant to satisfy the licensing authority that the grant of the application is in the public interest - refer s 38(2).
- 17 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).
- 18 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).
- 19 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.
- 20 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;

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- 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.
- 21 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.
- 22 The applicant seeks to establish an upmarket browse style packaged liquor outlet in Subiaco. The evidence indicates that what is proposed by the applicant will be different to what is currently available in the locality, particularly the focus on premium liquor products with a dedicated liquor seminar room, to facilitate liquor tutorials and a wine school. The locality is reasonably affluent with a significant number of residential and commercial developments planned for the area.
- 23 There were no objections to the grant of the application and the Commissioner intervened with a recommendation that, if the application is granted, conditions be imposed on the licence in order to minimise any potential negative impact that the operation of the premises may have on the community. The applicant agreed to the conditions proposed by the Commissioner.
- 24 There is some evidence of support for the services and facilities proposed by the applicant from persons who work, reside or resort to the locality. Although aspects of the applicant's evidence was somewhat scant and less than compelling, particularly the questionnaire data, nonetheless in consideration of all of the circumstances of this case, I am satisfied that the grant of the application would be consistent with object 5(1)(c) and object 5(2)(a) of the Act. There is some existing alcohol-related harm in the locality, however, it is generally lower than many other suburbs and the locality is not disadvantaged. I therefore conclude that the grant of the application will not cause undue harm or ill-health to people, or any group of people, due to the use for liquor – object 5(1)(b).
- 25 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.
- 26 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 premise;

- (c) all work being completed within 12 months in accordance with the plans and specifications dated 13 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 **1 December 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.

CCTV

The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing.

Storage of Spirits

All spirits to be displayed behind locked glass cabinets and accessible only by authorised staff.

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.
- 27 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 28 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 29 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.
- 30 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