

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: BESK PTY LTD

PREMISES: BESK

PREMISES ADDRESS: 264-270 RAILWAY PARADE LEEDERVILLE

APPLICATION ID: A000230950

NATURE OF APPLICATION: APPLICATION FOR THE CONDITIONAL GRANT OF A TAVERN LICENCE

DATE OF DETERMINATION: 21 JULY 2017

Introduction

1. On 29 March 2017, an application was lodged by Besk Pty Ltd (“the applicant”) for the conditional grant of a tavern licence in respect of premises to be situated at 264-270 Railway Parade, Leederville and to be known as Besk.
2. The application is made pursuant to ss 41, 62 and 68 of the *Liquor Control Act 1988* (“the Act”).
3. Pursuant to s 67 of the Act, the application was required to be advertised by way of a notice in *The West Australian* newspaper; by way of a notice on the site of the premises for a period of 28 days commencing on 12 April 2017; by way of a notice to residents and businesses located within a 200-metre radius of the premises; and a general notice to educational, health care and local and regional government institutions, as well as community and church groups, within the locality.
4. No objections were lodged. However, pursuant to s 69 of the Act the Commissioner of Police (“the Commissioner”) lodged a notice of intervention.
5. By letter dated 25 May 2017, a document exchange process was initiated between the parties. Each party was afforded the opportunity to lodge any further submissions and evidence; and any closing submissions to be taken into consideration in the determination of the application.
6. Pursuant to ss 13 and 16 of the Act, the application will be determined on the papers. The submissions and the evidence of the parties to these proceedings are briefly summarised below.

Submissions of the Applicant

7. The applicant seeks the conditional grant of a tavern licence for the proposed premises to be located at 264-270 Railway Parade, Leederville.
8. The applicant’s overview of its proposal included:

The Besk concept is truly unique in Western Australia.

Besk will combine a packaged liquor service with onsite tasting, education, dining and drinking in a bespoke manner so as to create a destination venue for craft beer enthusiasts and to promote and showcase craft beer a high quality, speciality product to be respected and savoured.

Whilst the application is for a tavern class of licence, Besk will be anything but a traditional pub style tavern. Besk will be a relatively small, upmarket venue providing for patrons to enjoy a wide selection of craft beer on tap at the premises whilst at the same time also providing one of the widest selections of packaged beer for take-away purchase.

Whilst there are a range of different breweries that supply their own varieties of craft beer and some bars do offer a selection of craft beer, there is no single, purpose-built venue designed for and dedicated to the sale, supply, education, tasting and consumption of craft beer. There are no existing premises that brings together a large range of craft beers from different producers which are promoted and showcased.

9. According to the applicant, the proposed premises will comprise a ground floor at street level (approximately 365m²), mezzanine (approximately 76m²) and basement (approximately 141m²) comprising the following main parts:
 - Packaged liquor display/browsing area.
 - Dining and drinking area.
 - Bar.
 - Private dining section.
 - Function mezzanine area.
 - Tasting table.
 - Kitchen.
 - Keg storage.
 - Cold storage.
 - Service area.
 - Entrance.
 - Toilets.
 - Office and staff amenities.

10. In support of the application, the applicant lodged a comprehensive Public Interest Assessment (PIA) which outlined the intended manner of trade; a description of the facilities; the applicant's intended customer base; and addresses the matters contained in s 38(4) of the Act. The PIA, amongst many things, was supported by:
 - approvals from the local authority;
 - acoustic environmental noise assessment report prepared by Gabriels Environmental Design;
 - public questionnaires;
 - summary of public surveys; and

- letters of support.
11. In conclusion, the applicant submitted that:
- It has provided a detailed proposal including necessary formalities and an overwhelming amount of evidence from various sections of the community in support of proposal.
 - The large number of positive public interest factors in this case far outweigh the few negatives which, in any event, have been addressed in the proposal.
 - The grant of the licence will fulfil the objects of the Act and can therefore be considered to be in the public interest.

Submissions of the Commissioner

12. The Commissioner intervened in the application on the basis that if the application was granted public disorder or disturbance would be likely to result and any other matters relevant to the public interest.
13. The Commissioner's intervention included an analysis of the applicant's PIA and evidence; and makes representations regarding general crime data for the suburbs of West Leederville, Leederville, Subiaco, West Perth and Wembley; CCTV; Entertainment; Energy Drinks; Crowd Controllers; and At Risk Groups in the vicinity of the proposed premises.
14. The Commissioner submitted that while he does not oppose the approval of the application, he also submitted that after undertaking research, the applicant's recurring statement indicating that the venue will offer a unique service may be slightly ambiguous.
15. The Commissioner further submitted that should the application be granted and conditions not imposed, public disorder or disturbance would be likely to result, or as to any other matter relevant to the public interest.
16. Accordingly, the Commissioner's recommendations included the imposition of trading conditions relating to closed circuit television (CCTV), security/crowd controllers, advertising of liquor on the external areas of the proposed premises, drink standards, food, noise restrictions, and drink standards.

Determination

17. In accordance with s 38 of the Act, the onus is on the applicant to satisfy the licensing authority that the grant of the application is in the public interest. In this regard, the licensing authority, however constituted, makes its determination on the balance of probabilities.
18. In considering the public interest, the licensing authority needs to consider both the positive and negative social, economic and health impacts, and exercise a discretionary value judgement as to whether the application should be granted (refer section 19 of the *Interpretation Act 1994 and Parliamentary Debates, WA Parliament*,

Vol 409, page 6342; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241).

19. In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:

The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.

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.

20. In determining whether an application should be granted “in the public interest” consideration must be given to the objects of the Act as specified in s 5 of the Act.

21. 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.

22. 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.

23. The licensing authority may also take into consideration the matters set out in s 38(4) of the Act.

24. Pursuant to s 33 of the Act, the licensing authority has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest, but must deal with an application on its own merits within the scope of the Act (refer *Woolworths Ltd v Director of liquor Licensing* [2012] WASC; *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).

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25. The applicant seeks the conditional grant of a tavern licence pursuant to s 41 of the Act in respect the proposed premises to meet the requirements of consumers for liquor namely “craft beer” and related services.
26. In summary, the applicant submitted that the proposed premises will:
- cater for the requirements of consumers in the locality for liquor, in particular, exclusive “craft beer” products;
 - have a dedicated tasting area in the bottle shop;
 - conduct tastings and educational sessions of “craft beer” products from time to time;
 - conduct events where beer will be matched with food and compared with other liquor products;
 - have food available at all times;
 - offer a range of cheeses, cold meats and other take-away food items in the packaged liquor area, for take-away sale to complement packaged liquor purchases;
 - not (intends) provide live amplified music to be played; and
 - offer non-alcoholic drinks, including a high-quality coffee service and coffee will be available for take-away.
27. The Commissioner submitted that the application, if granted, and conditions not imposed public disorder or disturbance would be likely to result. In this regard, the Commissioner as an intervener to the application carries no burden of proof (per *Greaves J. Gull Petroleum (WA) Pty Ltd (1998) LLC No. 13/98*).
28. The Commissioner also submitted that if the application is granted, conditions should be imposed and suggested possible trading conditions, for consideration, which would assist to minimise the impact the grant of the licence would have on the amenity of the area.
29. In considering all the information presented, I am satisfied that the applicant has discharged its onus under s 38(2) of the Act; and that the grant of the application would in keeping with the objects contained in ss 5(1)(c) and 5(2)(a) of the Act.
30. Also, on the basis of the evidence before me, I conclude that there is no public interest issue or reason, for consideration, as to why the application should be refused.
31. Accordingly, I am prepared to exercise my discretion under s 33 of the Act to grant the application.
32. However, before doing so, I must consider the representations of the Commissioner and the licensing authority’s premises inspector as to the how the licence should be conditioned and will come into effect on the conditional grant of the licence being confirmed; and the conditions which must be complied with, by the applicant, in the construction of the proposed tavern.

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33. In regard to trading conditions, the Act already imposes specific responsibilities and obligations on licensees; and licensees and managers must ensure that the business conducted under a liquor licence complies with the requirements of the Act; any specific trading conditions of the licence; and the Director of Liquor Licensing's ("the Director") policies.
34. In this case, the applicant seeks the grant of a tavern licence. In accordance with s 41 of the Act, the holder of a tavern licence is authorised to sell and supply liquor for consumption on the licensed premises and packaged liquor for consumption off the licensed premises. In accordance with the Director's policies general conditions are imposed regarding the type of entertainment (persons being immodestly or indecently dressed) that be conducted on licensed premises; and to minimise harm or ill-health due to the use of liquor.
35. Also, regulation 11(1b)(a) of the *Liquor Control Regulations 1989* ("the Regulations") requires that floor plans, of the licensed premises show the uses of each room. In this regard, the plans lodged describe the uses of some of the rooms as "Storage", "Cellar", "Keg Store", "Area/Store", "Private Office", "Function Area", "Private Eating Area" "Drinking/Eating Areas" "Storage/Loading" and "Bottle Shop". In this case, that part of the proposed licensed premises described as "Bottle Shop" includes an area with a tasting table.
36. However, it is worthy to note that the Act and the regulations do not specify the type or the kind of liquor authorised to be sold by the holder of a tavern licence. Therefore, while I note the trading conditions suggested by the applicant in its PIA, the trading conditions suggested do not, in my opinion, in any material way reflect the overall tenor of the applicant's intended manner of trade, namely as a provider of "Craft Beer" products and the related services, such as conducting tastings and educational sessions of "craft beer" products; to conduct events where beer will be matched with food; offer a range of cheeses, cold meats and other take-away food items; and not to provide live amplified music.
37. In this regard, I agree with the Commissioner's submission that some of the applicant's recurring statements regarding its intended manner of trade, that is, indicating that the venue will offer a unique service, may be slightly ambiguous. In particular, unless specific trading conditions are imposed, the applicant as licensee or any future licensee (if the licence is transferred to another party) has no obligation to conduct the business under the tavern licence in the manner presented to me, by the applicant, in its PIA.
38. The applicant in responding to the Commissioner's intervention and the Director of Liquor Licensing's "Schedule of Requirements dated 1 May 2017" lodged comprehensive submissions opposing some of the suggested trading conditions including:
- the requirement for crowd controllers to be engaged;
 - the prohibition of advertising on the external parts of the proposed premises;

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- the requirement for “substantial” food to be available, at all times;
 - the prohibition of live amplified music;
 - dress standard condition; and
 - that the consumption of liquor in the “Botte Shop” component of the proposed premises, other than by way of tastings, is prohibited.
39. While, I acknowledge the applicant’s submissions in respect of possible trading conditions, I am of the view that it is also relevant, in this case, to take into consideration the conditions imposed by the Town of Cambridge. In particular, those conditions which relate to the manner of the business that may be conducted at the proposed licensed premises. In this regard, it is worth noting that the local authority considers the proposed “Bottle Shop” component of the proposed licensed premises as ‘Shop’ and not as a ‘Tavern’ which is incorrect under the Act. Under the Act, the whole of the proposed licensed premises will be the subject of the tavern licence.
40. In my view, relevant trading conditions imposed by the Town of Cambridge, include:
- The maximum number of patrons permitted within the ‘Tavern’ component not to exceed 165 on the ground floor and 42 on the first floor ‘mezzanine’ function area.
 - The maximum number of seats permitted for patrons within the ‘Tavern’ component (excluding first floor function area) not to exceed 84 at any one time, as indicated on the approved plans.
 - The maximum number of staff for the ‘Tavern’ and ‘Shop’ not to exceed 16 at any one time.
 - Operating hours for the ‘Tavern’ component, and the service of alcohol, are to be 11.30 a.m. to midnight (Monday – Sunday) inclusive of public holidays.
 - Operating hours for the ‘Shop’ component are to be 10 a.m. to 9 p.m. Monday to Sunday, inclusive of public holidays.
 - Food being available to patrons of the ‘Tavern’ at all times during trading hours.
 - No live music permitted at any time during operation of the ‘Tavern’.
 - The premises is to comply with the provisions of the Environmental Protection (Noise) Regulations 1997. Specific attention is drawn to the recommendations outlined within the submitted Environmental Noise Report, prepared by Gabriels Environmental Design and dated 20 May 2016, in this regard.
41. Therefore, in considering the conditions to be imposed, while I have taken into consideration the view of the parties, and I am of the view that some suggested conditions do not need to be imposed, at this time, conditions which reflect the tenor of the applicant’s intended manner of trade; some of the restrictions imposed by the local authority; and to minimise the impact that the grant of the licence may have on the amenity of the locality, should be imposed.

42. Accordingly, as the applicant has complied with all necessary statutory criteria requirements and conditions precedent to the application being granted, the application for a tavern licence is conditionally granted subject to the following conditions:

CONDITIONAL GRANT

- (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 24 March 2017;
- (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements dated 1 May 2017 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;
- (f) the applicant seeking confirmation of the grant on or before **20 July 2018** pursuant to s 62(4)(c) of the Act;

WHEN THE LICENCE COMMENCES OPERATION IT WILL BE SUBJECT TO THE FOLLOWING CONDITIONS:-

TRADING HOURS

The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.

TRADING CONDITIONS

1. The licensee is authorised to sell and supply liquor in accordance with the provisions of s 41 of the Act as it relates to a tavern licence.
2. The maximum number of patrons that may be accommodated on that part of the licensed premises referred to as 'Tavern' component on the ground floor and described on the plans as "Private Eating Area" "Drinking/Eating Areas" and "Entrance Area", at any one time, must not exceed 165 patrons.
3. The maximum number of patrons that may be accommodated on the mezzanine part of the licensed premises and described on the plans as "Landing Area" and "Function Area", at any one time, must not exceed 42 patrons.

4. The ground floor of licensed premises must be set up with tables or fixed structures used as tables and chairs to accommodate dining patrons, other than for prearranged private functions or special events.
5. During permitted trading hours, the operating hours for the 'Tavern' component, and the service of alcohol, are restricted to be from 11.30 a.m. to midnight, Monday to Sunday, inclusive of public holidays.
6. During permitted trading hours, the operating hours for the "Bottle Shop" component are restricted to be from 10 a.m. to 9 p.m. Monday to Sunday, inclusive of public holidays.
7. Food shall be available to purchase by patrons during all trading hours of the 'Tavern', except for private pre-arranged functions or special events.
8. Music played on the licensed premises must be background in nature only. No subwoofers to be used on the premises.
9. Bi-fold windows and entry doors shall be shut at 10 p.m. (entry doors can be open for short periods to allow patrons to enter/depart premises)
10. Live music, is prohibited.
11. Noise emanating from the licensed premises must not exceed that permitted under the *Environmental Protection (Noise) Regulations 1997*.
12. The consumption of liquor in that part of the licensed premises described on the plans as "Bottle Shop" and "Tasting Table", other than by way of tasting, is prohibited.
13. The self-serving of liquor by patrons, for the purpose of tasting, is prohibited. Tasting must be conducted under the full responsibility of an approved manager or an employee of the licensee.
14. The licensee is required to provide a retail (deli style) food service offering cheeses, cold meats and other take-away food items for take-away sale to complement its packaged liquor sales.
15. The licensee is required to provide a range of "Craft Beer", as presented in its Public Interest Assessment, for consumption on and off the licensed premises.
16. Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available during all trading hours.
17. The licensee shall not promote drinks which offer liquor by virtue of their 'emotive' titles such as, but not limited to 'laybacks', 'shooters', 'test tubes', 'jelly shots', 'blasters', or 'bombs'.

18. A closed-circuit television video (“CCTV”) surveillance system, able to identify individuals and showing times and dates must be in place and operational. The CCTV system must comply with the requirements as identified in the Director’s Policy ‘Safety and Security at Licensed Premises’. It is expected that the system will provide and record continuous images of the entrances and exits to the premises during the normal trading hours and until one (1) hour after trading ceases. Images recorded via the CCTV system must be retained for, at least, twenty-eight (28) days (or such other period as the Director of Liquor Licensing specifies) and must be made available for viewing or removal by the Police or other persons authorised by the Director.

ENTERTAINMENT CONDITION

(a) 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:

(i) be immodestly or indecently dressed on the licensed premises, and/or

(ii) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.

(b) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:

(i) 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 film or computer game or “Category 1 – Restricted” or “Category 2 – Restricted” publication, or extract therefrom; or

(ii) 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

(iii) 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.

(c) In this condition “licensed premises” includes any premises, place or area:

(i) which is appurtenant to the licensed premises, or

(ii) 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.

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.

LICENCE FEES

Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the issue of the licence.

43. 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.
44. This matter has been determined by me under delegation pursuant to s 15 of the Act.

**TRADING MAY NOT COMMENCE UNDER THIS LICENCE
WITHOUT THE PRIOR WRITTEN APPROVAL OF THIS OFFICE.**



Eric Romato
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING