

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

**APPLICANT:** JK (SA) INVESTMENTS PTY LTD AND EUROPA (SA) PTY LTD

**PREMISES:** OYSTER BAR ELIZABETH QUAY

**PREMISES ADDRESS:** LEVEL 1 & 2 STATION PARK BUILDING, 21 GEOFFREY BOLTON AVENUE, ELIZABETH QUAY

**APPLICATION ID:** A000228731

**NATURE OF APPLICATION:** CONDITIONAL GRANT OF A TAVERN RESTRICTED LICENCE

**DATE OF DETERMINATION:** 02 JUNE 2017

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### **Introduction**

- 1 This is an application by JK (SA) Investments Pty Ltd and Europa (SA) Pty Ltd (the applicants) for the conditional grant of a tavern restricted licence in respect of premises to be known as Oyster Bar Elizabeth Quay and located on levels 1 and 2, Station Park Building, 21 Geoffrey Bolton Avenue, Elizabeth Quay. The application is made pursuant to ss 41 and 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 the Chief Health Officer (CHO) lodged a notice of intervention as permitted under s 69 of the Act.
- 3 In accordance with the provisions of ss 13 and 16 of the Act, the application will be determined on the written material submitted by the parties. The evidence and submissions of the parties are briefly summarised as follows.

### **The case for the applicant**

- 4 The proposed premises will be situated in the north-western corner of the development with views of Elizabeth Quay and the Swan River. Level one of the premises will have a relaxed restaurant style atmosphere during the day and transform into a sophisticated inner city bar at night while the upper level will be more akin to a rooftop bar with patrons largely in an outdoor balcony space.
- 5 It was submitted that the applicants have a long standing proven track record in the hospitality industry, with similar venues in Mandurah, Darwin and Adelaide. The proposed premises will have a major focus on food, and in particular oysters from around Australia. Accompanying the food will be a range of wines from boutique local vineyards carefully designed to balance and complement the food. The pairing of

Western Australian white wine varieties and fresh Western Australian seafood, particularly oysters, will be a feature of the venue.

- 6 The applicant submitted a detailed Public Interest Assessment (PIA) to support its application. The PIA provided details on:
- the intended manner of trade;
  - likely profile of patrons;
  - the physical layout of the premises;
  - nature, character and social profile of the local community;
  - the positive recreational, cultural, employment and tourism benefits;
  - likely impact on the amenity of the local community; and
  - generally addressed the matters set out in s 5 and s 38(4) of the Act.
- 7 In summary, it was submitted by the applicants that Oyster Bar Elizabeth Quay is designed to appeal to the wide range of patrons that visit Elizabeth Quay, including local and international tourists, CBD workers, families and city visitors. The venue will have a high-quality fit-out consistent with the applicants' desire to make Oyster Bar Elizabeth Quay a premier West Australian hospitality facility befitting its pre-eminent location.

#### **Intervention from the Chief Health Officer**

- 8 The CHO intervened in the application to make representations and submissions on the following issues:
- the proposed premises will be a two-storey tavern restricted licence in Elizabeth Quay and research has identified that tavern licences can be a high-risk licence type for harm;
  - Elizabeth Quay is an entertainment district attracting a large volume of people. An opportunity exists to minimise alcohol-related harm in this emerging locality; and
  - if the licence is granted, conditions consistent with the applicants' proposed manner of trade would be an important harm minimisation approach.
- 9 It was submitted by the CHO that measures, which aim to minimise the potential negative impact of alcohol-related harm in the locality, are important considerations. Harm minimisation conditions will support Elizabeth Quay to maintain its image as a premium tourist destination that caters for large volumes of people visiting the locality. Consequently, the CHO recommended conditions relating to the availability of food, seating, non-alcoholic drink products and responsible service practices.

#### **Determination**

- 10 Elizabeth Quay is a \$2.6billion project designed to reconnect the city with the Swan River and will be one of the State's top tourist and events destinations. The provision of hospitality services to cater to visitors to the area is an important component of the project.

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- 11 In this context, the applicant proposes to establish a high-quality hospitality premises designed to complement other facilities within the Elizabeth Quay project. Set over two levels, patrons will have views of Elizabeth Quay and the Swan River. The premises will be moderate in size and food will be a major focus of the venue.
- 12 The onus falls upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest: s 38(2).
- 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 I have considered the applicants' evidence and submissions, particularly in view of the nature and scale of the Elizabeth Quay project and the benefits to the State to be realised from this development. I am of the view that the grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act. I find that the positive benefits of the application outweigh any potential risks, which can be mitigated through the imposition of appropriate conditions as recommended by the CHO or by standard conditions normally imposed by this authority.
- 17 I therefore conclude that the applicant has discharged its onus under s 38(2) of the Act and the grant of the application is in the public interest.

- 18 Consequently, I am satisfied that the applicant has complied with all the statutory requirements and conditions precedent to the application being granted, and a tavern restricted 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 XX;
  - (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 June 2018 (12 months from the date of the decision) pursuant to s 62(4)(c) of the Act.

- 19 On confirmation of the conditional grant, the following conditions will be imposed on the licence:

Trading hours

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

Trading conditions

- 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 restricted licence.
- The sale of packaged liquor for consumption off the premises is prohibited.
- Food must be available at all times during trading hours.
- The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing. Specifically, the video surveillance system must:
  - comply with the “Safety and Security at Licensed Premises” policy as amended;
  - record continuous images on any day that the venue trades from the commencement of trade until 1 hour after trading ceases; and

- retain recorded images for a period of twenty-eight (28) days available for viewing or removal upon request by police or other persons authorised by the Director.
- The maximum number of patrons permitted on each level of the premises shall not exceed 50 at any one time.
- Seating for a minimum of 50% of patron numbers is required on each level except during a private pre-arranged function.
- 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'.
- Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available at all times.
- Pursuant to s 104 of the Act, the profit sharing arrangement between the licensee and the Metropolitan Redevelopment Authority is approved.

#### Dress standards – Outlaw Motorcycle Gangs

The following dress standard applies during the permitted trading hours:

Jackets or any other clothing or accessory, or any clearly visible body marking, bearing patches or insignia of any Outlaw Motor Cycle Gangs not limited to, but including, the following listed Outlaw Motor Cycle Gangs, are not permitted to be worn or to be visible on the licensed premises:

- (i) Coffin Cheaters;
- (ii) Club Deroes;
- (iii) Gods Garbage;
- (iv) Gypsy Jokers;
- (iv) Outlaws;
- (v) Finks;
- (vi) Rebels;
- (vii) Comancheroes;
- (ix) Hell's Angels;
- (x) Rock Machine; and
- (xi) Mongols.

A notice is to be displayed at all entrance to the licensed area/event reflecting this condition.

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 publication, film or computer game 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,

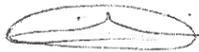
but does not include any part of the premises which is reserved for the private use of the licensee, manager or employees of the licensee and to which the public does not have access.

Compliance with harm minimisation policy

The licensee is to have a 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

- Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
  - The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 20 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.
- 21 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