

DECISION OF DIRECTOR OF LIQUOR LICENSING

MATTER: APPLICATION FOR CONDITIONAL GRANT OF A TAVERN RESTRICTED LICENCE

APPLICATION ID: A000231147

PARTIES: HAPPY HEART PTY LTD (THE APPLICANT)
CHIEF HEALTH OFFICER (FIRST INTERVENER)
COMMISSIONER OF POLICE (SECOND INTERVENER)

PREMISES: THE RECHABITE
224 WILLIAM STREET, NORTHBRIDGE

DECISION OF: B. SNELL
DEPUTY DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DECISION: 21 AUGUST 2017

1. On 31 March 2017, an application was made by Happy Heart Pty Ltd (the Applicant) to the Director of Liquor Licensing (the Director), for the conditional grant of a tavern restricted licence for premises to be known as *The Rechabite* and situated at 224 William Street, Northbridge. The application was made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* ("the Act").
2. Pursuant to the provisions of section 17(1)(d) of the Act, the Applicant is represented by Hospitality Total Services (Aus) Pty Ltd in these proceedings.¹
3. The application was advertised in accordance with instructions issued by the Director, which lead to notices of intervention being lodged by the Chief Health Officer (the First Intervener) and the Commissioner of Police (the Second Intervener).
4. On 30 June 2017, the parties were advised that, pursuant to ss 13 and 16 of the Act:
 - (a) a document exchange would take place so that each party would be given a reasonable opportunity to present its case; and
 - (b) the application would be determined on the basis of their written submissions.
5. As this is an administrative decision and not a judicial one, rather than referring in detail to the entirety of the evidence before me, I will set out what I consider to be the relevant material facts. I will also outline the process of my reasoning from consideration of those material facts to conclusion. Where there has been a conflict in submissions that has been significant to the outcome, I will set out the differing positions advanced by the parties and provide reasons why I have preferred one position of another.²

¹ Any reference in this determination to the submissions of "the Applicant" is also a reference to the submissions of its representative.

² In accordance with the observations of Martin CJ in *Hancock -v- Director of Public Health* [2008] WASC

6. The notice of application was supported by a Public Interest Assessment and other submissions, including a Certificate of Local Planning Authority issued by the Metropolitan Redevelopment Authority (the MRA), which explained that:

“Development Approval for a Theatre/Performance Venue and Associated Uses was granted for the site by the Minister for Planning on 16 September 2016. The details of the liquor licence provided by the applicant are consistent with the development approval.

The adaptive use of the State Heritage listed Rechabites Hall is the final piece of the MRA’s William Street urban renewal project...

The proposal by Happy Heart Pty Ltd will see the currently vacant Rechabites Hall brought back to life with theatre, live music, dining and entertainment. The directors of Happy Heart Pty Ltd have substantial experience in investing and revitalising significant heritage buildings as well as being the group behind delivering the highly successful Fringe World festival to Perth.”

7. These factors are confirmed in the Applicant’s PIA, which stated that *The Rechabite* will be redeveloped on the basis of a shared passion for art, music, culture and hospitality by the Applicant’s directors and to provide a diverse range of licensed entertainment and associated amenity to consumers. The PIA also explained that the multi-level premises will include the following spaces:

(c) The Basement:

- (i) This area will provide a versatile underground multi-use performance space, inspired by the back streets of Berlin, Glasgow and the East Village in New York City. Operating in conjunction with the Performance Hall, the basement will allow for multiple performance and entertainment offerings to happen concurrently throughout the complex, while also providing for a more intimate setting for performances that do not require a large platform or stage environment.

(d) Food Court:

- (i) This area will span the entire ground floor footprint from William Street through to the rear laneway, as a new take on the classic food court and will offer an exciting and contemporary mix of four street food outlets together with a bar.
- (ii) Both indoor and outdoor seating will be provided and the Food Court will open seven days. Food and beverage purchased from the Food Court will be able to be consumed throughout the premises.
- (iii) The Food Court will have a capacity of up to 350 persons, and all meals will be served in biodegradable packaging, with seating for patrons on a mix of chairs and stools.

224, these reasons are “not to be construed minutely and finely with an eye keenly attuned to the perception of error.”

- (iv) The Applicant further explained that the Food Court will be a contemporary take on a multi-outlet food court and bar, serving a range of specialty 'street food' from individual outlets, where food will be supplied by council approved and certified, food operators, who will have the infrastructure to do the bulk of their preparation and cooking off site and then assemble and serve from *The Rechabite*. However, the sale and supply of liquor in the Food Court will be solely undertaken by Applicant.
- (e) Performance Hall:
- (i) The Performance Hall will be the heart of *The Rechabite*, providing a mid-sized creative, innovative and flexible performance space for a multitude of performance, artistic and entertainment (ranging from intimate theatre to bold cabaret, live music and festival events), as well as cultural events, workshops and sessions for a diverse range of patrons to enjoy.
 - (ii) During the day, it is anticipated that the Performance Hall will host workshops by local, national and international artists and organisations, holistic wellness activities and training, cultural awareness and education classes/seminars and a range of other activities.
 - (iii) Evenings and nights will bring new and exciting performance genres to Perth on a permanent basis, providing a venue for festival style acts, such as cabaret, circus, burlesque, theatre, dance, art, cinema and all manner of live shows and events.
 - (iv) At full capacity, the Performance Hall will hold 570 patrons and will have flexible seating/viewing arrangements, to accommodate both individuals and groups and to maximise the audiences viewing pleasure, although many of the performances or events in the Performance Hall will be ticketed events, with patrons being required to purchase tickets prior to the event or at the door.
 - (v) Additionally, the Applicant also submitted that the Performance Hall will also be available to hire for private functions and events, including weddings, engagements, corporate and cultural events, photography and art exhibitions.
- (f) Roof Deck:
- (i) The Roof Deck will provide an open-air space for patrons to enjoy views of Perth and Northbridge and also operate as an outdoor break-out area for patrons attending performances.
 - (ii) The Roof Deck will provide a range of seating options for patrons, with some standing areas available for patrons to mingle and socialise while taking in the rooftop views. The maximum capacity of the Roof Deck will be 130 patrons at any one time.

- (iii) The Roof Deck space will be open daily till 12 midnight subject to patron demand, and will also cater to private functions and events as required.
8. Additionally, during the conservation/refurbishment works, the Applicant submitted that a customised projection tower will be installed in the fleche of *The Recharge* to include several high powered digital projectors that will cover the walls of surrounding architecture with custom static and moving projection artworks.
 9. The Applicant also submitted that the multi-use premises, if approved, will provide a year-round event and entertainment space for theatre and live performance that is generally only seen during one off and short run festivals and that will be able to accommodate small, medium and larger audiences. Because of this, it was also submitted that the proposed premises will assist in nurturing the development and growth of local, home grown talent within the arts community of Western Australia, particularly by providing a venue for organisations that are not readily able to access other performance spaces.
 10. To demonstrate that there is strong support from the community and that the grant of the application would be in the public interest, the Applicant lodged 514 Consumer Surveys, together with numerous letters of support, with many from arts-based organisations.
 11. The Applicant's PIA also provided information on the surrounding locality, demographics of the locality; outlet density and generally addressed those matters prescribed in ss 5 and 38(4) of the Act.
 12. While noting that the Northbridge locality has a high concentration of licensed premises for dining and entertainment, the Applicant submitted that none of those premises will provide the kind of mixed-use, food and beverage, entertainment, performance, cultural and arts amenity that will be provided at *The Recharge*.
 13. Further, to minimise alcohol-related harm or ill-health, the Applicant also identified the following conditions, for inclusion on the licence, if granted:
 - (a) a CCTV surveillance system will be in place and operational, that is compliant with the requirements identified in the Director's *Safety and Security at Licensed Premises* policy;
 - (b) licensed crowd controllers will sometimes be engaged at the proposed premises;
 - (c) a dress standard will be adopted at the proposed premises to prohibit entry by persons wearing clothing, accessories or displaying clearly visible body markings, bearing the patch or insignia of any outlaw motorcycle gang; and
 - (d) observance of the Director's standard Entertainment Condition, which prohibits any person from being immodestly or indecently dressed on the licensed premises.

14. The First Intervener made representations regarding the potential for this application to cause harm or ill-health to people, or any group of people, due to the use of liquor, and the minimisation of that harm, with the specific grounds for intervention based on the following:
- (a) the Applicant is applying for a tavern restricted licence and research has identified taverns as a higher-risk licence type for harm;
 - (b) the licensed area is proposed to be approximately 1,326m², with a capacity of 1,450 patrons and research demonstrates that larger venues are associated with an increased risk of harm;
 - (c) WA Police data show there are existing levels of alcohol-related harm occurring in the locality of *The Rechabite*; and
 - (d) if the licence is granted, the placement of harm minimisation conditions on the licence, largely consistent with the applicants intended manner of trade, would be an important harm minimisation approach.
15. Accordingly, conditions recommended by the First Intervener included that a specified amount of seating should be provided throughout the premises.
16. The intervention by the Second Intervener made representations regarding possible trading conditions to reduce the likelihood of offence, annoyance and/or disturbance and to minimise any potential harm which may be caused by the premises.
17. In this regard, the Second Intervener noted that the proposed premises is situated opposite the *Brass Monkey*, another large licensed premises in the main centre of Northbridge, which is a locality that is susceptible to high levels of alcohol-related harm. The Second Intervener submitted that the Applicant would not be immune from those levels of harm.
18. The Second Intervener also submitted data sourced from the WA Police Incident Management System and Computer Aided Dispatch data, to assert that any increase in the availability of alcohol, unless suitably conditioned, would be likely to have a significant impact on alcohol-related harm.
19. Accordingly, in addition to the conditions volunteered by the Applicant and recommended by the First Intervener, the Second Intervener also recommended trading conditions relating to the Applicant's undertaking to engage Crowd Controllers licensed under the *Security and Related Activities (Control) Act 1996*.
20. In response to the representations of the Interveners, the Applicant relevantly submitted that:
- (a) given the multi-use nature of the proposed premises, and the variety of entertainment, performance, arts and cultural events to be hosted there, the maximum capacity of 1,450 persons will only be realised during peak operating times;

- (b) due to the diverse range of entertainment to be offered, the sale of liquor under the tavern licence will not be the primary focus of *The Rechabite*, but rather, patrons will resort to the premises predominantly to enjoy diverse entertainment (e.g. musical performances, theatrical cultural performances, art exhibitions etc.) with the provision of food and liquor to be provided to cater to the contemporary requirements of patrons;
 - (c) notwithstanding that a great deal of flexibility is required to host the proposed entertainment, arts, cultural and social events outlined in the PIA for The Basement and Performance Hall, the Applicant undertook to provide some seating in the Food Court and Roof Deck;
 - (d) drink options, which contain light and mid-strength alcohol content as well as a range of non-alcoholic drink options would be available for purchase at all times; and
 - (e) further clarified its commitment to engage crowd controllers on busy Friday and Saturday nights to ensure the safety and security of both its patrons, staff and the locality in which the premises will be operating.
21. In submissions dated 17 July 2017, the First Intervener maintained the submissions made in the notice of intervention and the Applicant, in submissions dated 31 July 2017, indicated that it was prepared to accept the following modifications to its proposed trading conditions, as recommended by the First Intervener:
- (a) food will be available when the premises is open to the general public until half hour before close; and
 - (b) further clarified its commitment to provide seating for up to 50% of the Food Court and the Roof Deck, except when hosting a pre-booked private function or event.
22. In relation to the First Interveners concerns regarding the size of the premises and the potential to accommodate large numbers of patrons, the Applicant submitted that the maximum capacity of the Performance Hall and The Basement will be set by the relevant government authority after all the redevelopment works have been completed. However, in respect of
- (a) the Performance Hall, it was anticipated to be no more than 500 patrons; and
 - (b) The Basement, no more than 400 patrons.
23. To further understand the proposed uses of The Basement and Performance Hall, I sought information from the Applicant, as part of the document exchange process, on the circumstances in which it proposes to sell and supply liquor, or permit the consumption of liquor, in those parts of the proposed licensed premises known as Performance Hall and The Basement.

24. In response to my enquiries, the Applicant submitted a letter from Mr Marcus Canning, one of the directors of Happy Hearts Pty Ltd, who provided the following information about the programming across *The Rechabite* and the intent of the Applicant in meeting the contemporary requirements of consumers:

“The multi-levels of the venue are designed for maximum diverse cultural usage. On one day the Hall might have a travelling exhibition of international documentary photographs on display whilst in the basement some young local bands are rehearsing and workshopping with a visiting theatre maker in the development of a new work.

That night a French trapeze artist working with a German cabaret singer might be the headliner in the Hall and their performance requires the audience to be standing in the round, whilst in the basement a new fusion jazz band from New Orleans is performing who want the audience to all be seated. The next day, the Hall is being used for a yoga class followed by a seniors swing dance workshop then a neu-folk band from Japan that night whilst the basement is being used for a gaming convention where new apps are being developed and the program includes a performance by a live electronic music duo from Berlin who use motion detection body wear and VR helmets in their performance whilst they are suspended from the roof.

That’s a two day snapshot – you can understand why any condition imposing any kind of fixed % seating plan for basement and hall are problematic but appropriate for ground and roof!

Also important to note is that these spaces are designed so they can be shut off when not in use and being set up for next program, and opened up when there is cultural programming being presented to the public.

Unlike a regular ‘pub’ with tavern licence... The Rechabite is a destination designed for people to come to engage in a cultural offering of some description.”

25. Further, it was also submitted that *The Rechabite* will be closer to the grandeur and professional maturity of a Spiegeltent at Fringe World Festival than a venue that primarily services younger markets.
26. In relation to set seating numbers, the Applicant also noted that “the Performance Hall could provide a venue for events such as art/photography/sculpture exhibition, which would not be possible with an enforceable seating condition, given the nature of those types of exhibitions.”
27. In my view, there are several clear public interest matters associated with the granting of this application. First, the use of the premises will preserve the significant heritage value of an iconic building and restore all three levels so that consumers will have access to a world class, diverse and multi-use entertainment venue.
28. Secondly, the grant of the licence will facilitate the development of a Theatre/Performance venue, as approved by the Minister for Planning.

29. Thirdly, the multi-use premises, if approved, will provide a year-round event and entertainment space for theatre and live performance that is generally only seen during one off and short run festivals, and that can accommodate small, medium and larger audiences. Further, The Rechabite will also deliver a much-needed space for the development and growth of local, home grown talent within the arts community of Western Australia.
30. When considering the public interest, I must also consider matters that are relevant to the primary and secondary objects of the Act as prescribed in s 5 of the Act. In this regard, the primary objects of the Act are to:
- (a) regulate the sale, supply and consumption of liquor (s 5(1)(a) of the Act); and
 - (b) minimise harm caused to people, or any group of people, due to the use of liquor (s 5 (1)(b) of the Act); and
 - (c) 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 (s 5(1)(c) of the Act).
31. The secondary objects of the Act are to:
- (a) 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 (s 5(2)(a) of the Act);
 - (b) provide adequate controls over, and over the persons, directly or indirectly involved in the sale, disposal and consumption of liquor (s 5(2)(d) of the Act); and
 - (c) to provide a flexible system, with little formality or technicality as may be practicable, for the administration of the Act (s 5(2)(e) of the Act).
32. While the provisions of the Act place an evidentiary onus on the Applicant to establish that the grant of the licence is in the public interest³ and advances the objects of the Act, Interveners carry no onus to establish their assertions of fact or opinion.⁴
33. In my view, the grant of the application will advance the primary object of the Act relating to catering to the requirements of consumers for liquor and related services and also the secondary object that relates to facilitating the use and development of licensed premises, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State.
34. Notwithstanding this, the minimisation of harm or ill-health to people, or any group of people, due to the use of liquor, is a primary object of the Act and the impact of the proposed premises on the amenity of the locality in which the proposed premises is to be situated, is also a matter to which I may have regard when determining whether the grant of the application is in the public interest.

³ *Liquor Control Act 1988* (WA): s 38(2).

⁴ *Re Gull Liquor, Gingers' Roadhouse Upper Swan* (1999) 20 SR (WA) 321, 323 (Greaves J).

35. Accordingly, in my view the proposed premises will operate in a manner that advances object 5(1)(b) of the Act and will be in the public interest, subject to:
- (a) the trading conditions volunteered by the Applicant; and
 - (b) trading conditions consistent with those recommended by the Interveners.
36. I consider that the application has progressed as a high art and cultural facility, with the proposed premises presented as a multi-use venue for year-round event and entertainment space, particularly for theatre and live performance. As such, I was particularly interested in how The Basement and Performance Hall would be utilised by the Applicant in the absence of relevant events or performances, particularly in terms of whether those areas would be used for the playing of pre-recorded music over a sound system or presented personally by a person employed or engaged by the Applicant to do so. However, nothing in the Applicant's submissions have indicated that this will be the case. In this regard, while I have noted that the PIA makes some reference to the playing of recorded music, based on the information before me, I have inferred that this will relate to the Food Court.
37. While I do not propose to impose conditions on the licence relating to the operation of a Theatre/Performance Venue in line with the Applicant's Development Approval, the Applicant is nonetheless advised that, consistent with the information presented in its PIA and other submissions, the provision of a multi-use venue that will provide a year-round event and entertainment space for theatre and live performance must be the predominant feature of the premises.
38. Further, as part of the Applicant's PIA, I note that it volunteered to abide by the Director's standard Entertainment Condition which is commonly imposed on hotel licences (including the subcategories of tavern, tavern restricted, hotel restricted and small bar) and while I accept that submission, I would remind the Applicant that there is a possibility that some burlesque, cabaret or dramatic acts may infringe the entertainment condition. In these circumstances, it would be open to the Applicant to seek a one-off variation of the Entertainment Condition, which would then be considered on its merits, taking into account the public interest.⁵
39. Notwithstanding the Applicant's undertaking to provide licenced crowd controllers on busy Friday and Saturday nights, given the size of the premises and its location in an area that is susceptible to high levels of alcohol-related harm, I consider that the public interest favours the engagement of licensed crowd controllers on each Friday and Saturday night.
40. Finally, in consideration of the provision of food being supplied in the Food Court by third parties (i.e. council approved and certified food operators), the Applicant is advised that relevant approvals may be required pursuant to ss 102 and 119A of the Act, prior to the operation of the licence.

⁵ *Liquor Control Act 1988 (WA): s 33.*

41. Therefore, after consideration of all the information before me from the parties, I am 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.
42. Accordingly, the licence is conditionally granted, subject to the following conditions:
- (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 concept plans and specifications lodged on 31 March 2017 with no variation, unless specifically required or approved by the Director;
 - (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;
 - (f) a maximum accommodation certificate from the relevant local government authority being lodged before the operation of the licence; and
 - (g) the Applicant seeking confirmation of the grant on or before **20 August 2018** pursuant to s 62(4)(c) of the Act.
43. The following conditions will be imposed on the issue of the licence:
- (a) Trading Hours:
 - (i) The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.
 - (b) Trading Conditions:
 - (i) 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.
 - (ii) During the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises.
 - (iii) The sale of packaged liquor for consumption off the licensed premises is prohibited.
 - (iv) Food must be available during trading hours.
 - (v) The premises to provide seating for at least 175 persons in The Food Court and 65 persons on the Rooftop Deck.

- (vi) The licensee is to provide non-alcoholic and low-alcohol liquor products during all trading hours.
- (vii) The licensee shall not promote, advertise or employ incentives which encourage the excessive consumption of liquor by virtue of their 'emotive' titles such as (but not exclusive to) 'laybacks', 'shooters', 'slammers', 'test tubes' and 'blasters'.
- (viii) Any music or entertainment on the roof deck is to be at a level to allow normal conversation to occur.
- (ix) A video surveillance system must be in place and operational. The system must comply with the minimum requirements identified and be maintained in accordance with the Director's Safety and Security at Licensed Premises policy.
- (x) On Friday and Saturday nights, crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed at a ratio of two crowd controllers for the first 150 patrons, and one crowd controller for each additional 150 patrons or part thereof.
- (xi) These crowd controllers (licensed under the *Securities and Related Activities (Control) Act 1996*), are required to be present to monitor the licensed premises and the behaviour of patrons arriving and departing the premises from 8 p.m. (or the time of opening the premises if after 8 p.m.), until 30 minutes after trading ceases.
- (c) Dress Standards - Outlaw Motorcycle Gangs:
- (i) The following dress standard applies during the permitted trading hours:
- (1) 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:
- Coffin Cheaters;
 - Club Deroes;
 - Gods Garbage;
 - Gypsy Jokers;
 - Outlaws;
 - Finks;
 - Rebels;
 - Comancheroes;
 - Hell's Angels;
 - Rock Machine;
 - Mongols;
 - Lone Wolf;
 - Bandidos; and
 - Brothers 4 Life.

- (ii) A notice is to be displayed at all entrances to the licensed area/event reflecting this condition.
- (d) 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:
 - (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 “R 18+”, “X 18+” or “RC” classified film or computer game or “Category 1 – Restricted” or “Category 2 – Restricted” publication, or extract therefrom; or
 - (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.
- (e) Compliance with Harm Minimisation Policy:
- (i) 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.
44. Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.

45. The Applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
46. 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.
47. This matter has been determined by me under delegation pursuant to s 15 of the Act.



DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING