

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: JIGGY PTY LTD

OTHER PARTIES: CHIEF HEALTH OFFICER (INTERVENER)
COMMISSIONER OF POLICE (INTERVENER)

PREMISES: THE SHOE BAR & CAFE

PREMISES ADDRESS: YAGAN SQUARE, 378 WELLINGTON STREET, PERTH

APPLICATION ID: A000220061

MATTER: APPLICATION FOR CONDITIONAL GRANT OF A TAVERN
RESTRICTED LICENCE

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 21 AUGUST 2017

Introduction

- 1 This is an application by Jiggy Pty Ltd (the applicant) for the conditional grant of tavern restricted licence for premises to be known as The Shoe Bar and Café and located at Yagan Square, 378 Wellington Street, Perth. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 There were no objections to the grant of the application, however pursuant to s 69 of the Act, notices of intervention were lodged by the Chief Health Officer (CHO) and the Commissioner of Police (the Commissioner).
- 3 The application will be determined on the written submissions lodged by the parties as permitted under ss 13 and 16 of the Act. Further, this decision has been prepared, and should be read, in the context of a high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.¹

The applicant's proposal

- 4 The proposed licensed premises will be a split-level food and drinks venue located on the ground and mezzanine levels of the Market Hall Plaza in Yagan Square. The tenancy will be over two levels but effectively work as two venues in one. The ground floor will be operated as a café/bistro and the first-floor level will be more of a bar/bistro. The mezzanine level will include an outdoor area of 100m².
- 5 Yagan Square is part of the Metropolitan Redevelopment Authority's Perth City Link development which will link the Perth CBD and Northbridge. It was submitted that Yagan Square will be one of the city's most popular community, meeting and celebration places,

¹ Refer s 16(7) of the Act.

seeing the return of food markets, community and city life to the heart of the CBD. Yagan Square will be divided into five key public areas:

- *The Market Hall* – this will be a traditional large market space, featuring local produce, such as seafood, meats, fruit and vegetables and seasonal produce;
- *Market Hall Plaza* – located south of the Market Hall, this will be a flexible urban space accommodating six ground floor tenancies along a pedestrian route focusing on commuter trade and grab and go offerings. This space will also host a range of temporary events and retail activity.
- *Horseshoe Lane* – located at ground level sheltered by the Horseshoe Bridge, it will host a bar/restaurant across two levels.
- *The Meeting Place* – located on the upper level, it will provide a flexible space with seating, performing and social spaces.
- *The Lawn* – natural space for social activities and gatherings.

6 According to the applicant, the proposed licensed premises will cater for approximately 300 patrons and the venue will have a focus on food and evolve throughout the day; providing breakfast, morning tea, lunch, afternoon tea, after work drinks and dinner.

7 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA provided details on the proposed manner of trade, the nature and character of the locality in which the premises will be located, target market, existing rates of alcohol-related harm in the area, potential impact on at-risk groups in the area and the applicant's harm minimisation strategies.

8 The applicant engaged MacroPlan Dimasi to prepare an analysis of the trade area of Yagan Square. It was submitted that Yagan Square will be a major entertainment precinct for Perth City and it will service a wide variety of consumers, including:

- CBD workers;
- local and wider metropolitan residents;
- tourists and visitors from intrastate, interstate and overseas; and
- students, in specific locations.

9 According to the applicant, the high-profile location of Yagan Square within the Perth CBD, together with its proposed composition and its adjacency to the Perth Train Station and Busport, will ensure that the development will effectively serve all of the identified customer segments.

10 The applicant provided the results of a community survey conducted by Thinkfield. This survey indicated strong community support for the grant of the application and likely usage of the premises.

11 It was submitted by the applicant that Yagan Square and the proposed premises will drastically improve the amenity of the locality by providing a high-quality meeting and dining place in the CBD. It was further submitted that Yagan Square has been designed in a way that will showcase the culture and landscape of Western Australia.

The interventions

The Chief Health officer

- 12 The CHO intervened in the application to make representations regarding the minimisation of harm or ill-health that may result from the granting of the application. The CHO provided evidence and submissions on the following issues:
- research has identified that tavern licences can be a higher risk licence type for harm;
 - there are existing levels of alcohol-related violence in the locality; and
 - Yagan Square is heralded to become an entertainment district attracting a large volume of people. An opportunity exists to minimise alcohol-related harm in this emerging area.
- 13 Consequently, the CHO recommended that if the licence is granted, conditions consistent with the applicant's proposed manner of trade would be an important harm minimisation approach.

The Commissioner of Police

- 14 The Commissioner intervened to recommend trading conditions that will assist to minimise the consequential harms and anti-social behaviours attributed to premises of this nature and ensure the manner in which the applicant proposes to trade is adhered to, should the application be granted.
- 15 In this context, the Commissioner provided evidence and data on the:
- existing outlet density in the locality;
 - existing crime in the area; and
 - at-risk groups in the area.
- 16 The Commissioner submitted that the locality surrounding the proposed premises is suffering from a high level of alcohol-related harm, crime and anti-social behaviour and any risk of increase in the level of harm may be deemed unacceptable. Therefore, in order to minimise this potential risk, the Commissioner submitted that it is important that appropriate conditions are imposed on the licence. The Commissioner recommended conditions relating to security, CCTV, drink standards, noise, seating and dress standards.

Legislative and legal framework

- 17 In determining this application, I have been guided by the following legal principles.
- 18 An applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest.² An applicant must therefore adduce sufficient evidence to discharge this burden.

² Refer s 38(2) of the Act.

- 19 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.³
- 20 An intervener carries no onus to establish their assertions of fact or opinion⁴, however, pursuant to s 73(10) of the Act the burden of establishing the validity of any objection lies on the objector.
- 21 The factual matters which I am bound to consider 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 5.⁵
- 22 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.
- 23 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.
- 24 The licensing authority is also entitled (but not bound) to consider the factual matters set out in s 38(4) of the Act as part of the public interest considerations.⁶
- 25 In the conduct of proceedings under the Act, the licensing authority is to act according to equity, good conscience and the substantial merits of the case. The licensing authority should also act without undue formality, is not bound by the rules of evidence and makes its determination on the balance of probabilities.⁷
- 26 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case.⁸ However, it is a matter for the

³ ***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).

⁴ ***Re Gull Liquor*** (1999) 20 SR (WA) 321).

⁵ ***Woolworths Pty Ltd v Director of Liquor Licensing*** [2013] WASCA 227).

⁶ ***Woolworths Pty Ltd v Director of Liquor Licensing*** [2013] WASCA 227).

⁷ Refer s 16 of the Act

⁸ ***Executive Director of Health v Lily Creek International Pty Ltd & Ors*** [2000] WASCA 258).

licensing authority to decide what weight to give to the competing interests and other relevant considerations.⁹

- 27 Section 33(1) provides that the licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest.

Determination

- 28 Yagan Square is part of the Perth City Link development being undertaken by the Metropolitan Development Authority. The Perth City Link project is a major and significant development for the city, connecting Perth's CBD with Northbridge. The vision for Yagan Square is to showcase Western Australia's heritage, produce, environment and culture and it will offer a range of experiences for residents and tourists.
- 29 The applicant proposes to establish a food focused venue split over two levels in Yagan Square. The ground floor of the premises will operate as a café/bistro and the first floor will be more of a bar/bistro. The applicant only proposes to sell liquor for consumption on the premises and does not seek to sell packaged liquor.
- 30 To discharge its onus under s 38(2) of the Act, the applicant lodged a detailed PIA together with various commissioned reports. In carrying out its functions, the licensing authority must have regard to the objects of the Act. When consideration is given to the totality of the evidence presented by the applicant, I am of the view that the grant of the application will cater to the requirements of consumers for liquor and related services whilst promoting the proper development of the liquor and tourism industries in the State.¹⁰ The grant of the application will also facilitate the use and development of licensed facilities reflecting the diversity of the requirements of consumers.¹¹
- 31 There are however other objects of the Act that need to be considered when determining an application. Object 5(1)(a) is to regulate the sale, supply and consumption of liquor and object 5(1)(b) is directed towards minimising alcohol-related harm in the community, however, it should be observed that this is not about preventing harm absolutely.¹²
- 32 The interveners have provided evidence that the locality surrounding the proposed premises presently experiences high rates of alcohol-related harm and there are at-risk groups in the area. To minimise the potential risks associated with the grant of the application the interveners have recommended various conditions for the licence.
- 33 The applicant has acknowledged the concerns of the interveners and agrees that appropriate trading conditions will mitigate the risks posed by the operation of the premises in an area that experiences elevated rates of alcohol-related harm. Consequently, the applicant has worked with the interveners to develop suitable conditions for the licence to achieve a satisfactory harm minimisation outcome.

⁹ *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356.

¹⁰ Object 5(1)(c) of the Act.

¹¹ Object 5(2)(a) of the Act.

¹² *Lily Creek* supra.

- 34 Where conflict arises between the minimisation of harm or ill-health, on the one hand, and the need to achieve one or more of the other objects of the Act, the licensing authority must undertake a weighing and balancing exercise¹³, however, the weight to be given to the competing interests and other relevant considerations is a matter for the licensing authority to decide.¹⁴
- 35 In weighing and balancing the competing interests in this case, I find that the grant of the application would be in the public interest as required under s 38(2) of the Act. The importance of the Perth City Link project, which incorporates Yagan Square, to the growth and development of the City and the broader impact for the State in terms of tourism are important factors that weigh in favour of the grant of the application.
- 36 I have also taken into consideration the submissions of the applicant and the interveners that appropriate conditions will mitigate many of the risks associated with the operation of the premises in this locality.
- 37 Consequently, 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 22 November 2016;
 - (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 **20 August 2018** pursuant to s 62(4)(c) of the Act.
- 38 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.

¹³ *Lily Creek* supra.

¹⁴ *Hermal Pty Ltd* supra.

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 premise is prohibited.
- Food must be available at all times during trading.
- The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing.
- The maximum number of patrons permitted on the licensed premises (including any area approved under an extended area permit) shall not exceed 300 or such lesser number approved by the relevant local government authority.
- Seating is to be provided for a minimum of 150 patrons except when hosting pre-arranged functions.
- Seating must be provided at all times in the ground floor alfresco area.
- No live music shall be played in the ground floor alfresco area.
- Liquor sold or supplied for consumption on the premises must only be sold in unsealed containers.
- 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.
- Promotions, advertising or incentives which encourage cheap or discounted liquor or which encourage excessive consumption are prohibited.

Noise Management

- Noise limiters are to be installed on the in-house speaker system.
- All music at the premises is to be played through the in-house system.
- The occupants of any noise sensitive premises within 450 metres are to be advised of the venue's opening hours and provided with appropriate management contact details, including the names and phone numbers of responsible staff.
- The licensee is to ensure that somebody is always available to receive complaints and maintain a complaints log. The complaints log should document the date and time of any complaint, the contact details of the complainant, the reasons for the complaint and any actions taken to resolve the complaint. The complaints log is to be made available for inspection upon demand by an authorised officer.

Security Requirements

- Crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996* or approved managers exempt under the *Securities and Related Activities (Control) Act 1996* are to be employed each Friday night at a ratio of two (2) personnel for the first 100 patrons, and one person for each additional 100 patrons or

part thereof from 7 p.m. (or the time of opening the premises if after 7 p.m.), until 30 minutes after trading ceases.

- Approved managers are not to exceed 50% of the required security numbers.
- Only managers approved under s 102B of the *Liquor Control Act 1988* are permitted to perform the role of security (temporary managers appointed under s 100(3) of the *Liquor Control Act 1988* or persons disqualified from holding a Crowd Control licence are not permitted).
- The primary duties of the additional managers are to be the function prescribed by s 35(1) of the *Security and Related Activities (Control) Act 1996* and on patron behaviour and RSA practices. They are not to undertake other general duties of an approved manager (i.e. serving behind the bar, administrative duties, etc).
- The additional managers engaged under this condition are to be easily identified by way of increased visibility attire which clearly identifies the approved manager performing the functions outlined above (i.e. vest or other attire).
- The licensee is to maintain a management roster which identifies which approved managers have been assigned to crowd controller/RSA duties under this condition on any given day or night and this roster must be available for inspection upon demand by an authorised officer.

Approval under s 104

Pursuant to s 104 of the Act, the application for profit sharing between the applicant 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;
- (v) Outlaws;
- (vi) Finks;
- (vii) Rebels;
- (viii) Comancheroes;
- (ix) Hell's Angels;
- (x) Rock Machine;
- (xi) Mongols;
- (xii) Lone Wolf; and

(xiii) Bandidos.

A notice is to be displayed at all entrances to the licensed areas 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.

Extended Trading Permit

The application for an extended trading permit under s 60(4)(h) of the Act is approved subject to the following conditions:

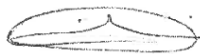
- The ground level area is to be set up with seating at all times.
- No live music shall be played in the ground level area.
- The permit area is the area outlined in yellow on plans dated 22 November 2016.
- Compliance with any conditions imposed by the relevant authority having control over the permit area.
- Trading in the permit area is authorised during the permitted hours under the licence except on Good Friday, when trading in the permit area is prohibited.
- The permit is granted for a period of 10 years provided the licensee has the on-going consent for the use of the area from the relevant authority having control over the permit area.

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.

39 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.

40 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