

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: WHITFORDS CLEANSKINS PTY LTD

PREMISES: WA CLEANSKIN CELLARS @ WHITFORDS

PREMISES ADDRESS: SHOP 236 WHITFORD CITY SHOPPING CENTRE, CNR WHITFORDS AND MARMION AVENUE HILLARYS

APPLICATION ID: A000222622

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 10 MARCH 2017

Introduction

- 1 Whitfords Cleanskins Pty Ltd (the applicant) has lodged an application for the conditional grant of a liquor store licence for premises to be known as WA Cleanskins Cellars @ Whitfords and located at Shop 236, Whitford City Shopping Centre, Corner Whitfords Avenue and Marmion Avenue, Hillarys. The application is made pursuant to ss 47 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 or interventions to the grant of the application.
- 3 The application will be determined on the written material lodged by the applicant as permitted under ss 13 and 16 of the Act.

Brief summary of the applicant's evidence and submissions

- 4 According to the applicant, the Whitford City Shopping Centre is undergoing a significant redevelopment. The applicant seeks to establish a relatively small liquor store of approximately 63m² on level 1 of the redeveloped Centre. The proposed liquor store will offer approximately 100 lines of cleanskin wine products that are not readily available in the locality. The proposed range of wine on offer will include red, white, sparkling and fortified wines.
- 5 The directors of the applicant company, Mr Steven Cloughley and his wife Marie, operate a number of Cleanskin Cellars liquor stores across the metropolitan area.
- 6 According to the applicant, the proposed business will have a focus on providing quality cleanskin wines at a reasonable and value for money price, with a focus of local WA and Australian producers. Patrons will be able to taste the wine prior to purchase. The applicant also proposes to establish a "Wine Club" that will invite members to "Wine Tastings" and other events and offer a personalised label service for customers.

- 7 It was submitted that the proposed liquor store will provide an additional amenity in line with the major redevelopment of the shopping centre and afford users of the shopping centre the ability to purchase clean skin wines at the same time as undertaking other shopping at the Centre.
- 8 The applicant submitted a Public Interest Assessment (PIA) together with 119 consumer surveys and various letters of support. The PIA provided information on the proposed manner of trade at the premises, the demographic profile of the locality and addressed the matters set out in s 5 and 38(4) of the Act.

Determination

- 9 This is an uncontested application to establish a relatively small liquor store in the Whitford City Shopping Centre, which is undergoing a major redevelopment. The proposed store will offer a large range of cleanskin wines, which are not readily available in the locality, and provide customers with additional services such as the opportunity to taste any wine prior to purchase, a wine club and personalised labelling. The proposed business will cater to local residents and visitors to the shopping centre.
- 10 Although the application is uncontested, there is no presumption in favour of the grant of the application. Section 38(2) of the Act places a burden on an applicant for the grant of a liquor store licence to satisfy the licensing authority that the grant of the application is in the public interest. An applicant must therefore adduce sufficient evidence to discharge this burden.
- 11 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O'Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- 12 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).
- 13 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.

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- 14 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.
- 15 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.
- 16 I have considered the applicant's evidence and submissions and I am of the view that the business to be conducted under the licence would be catering to the requirements of consumers for liquor and related services as contemplated under object 5(1)(c) of the Act, and the grant of the application would also be in the proper development of the liquor and tourism industries in the State. The applicant's survey data reflects good support for the services to be provided under the licence and therefore the grant of the application would also facilitate the use and development of licensed facilities reflecting the diversity of consumers (object 5(2)(a) of the Act).
- 17 The applicant will only be selling cleanskin wines and not other mainstream liquor products such as full strength beer and spirits. The locality surrounding the proposed liquor store is not disadvantaged in terms of its socio-economic status and therefore I am satisfied that the grant of the application will not pose an unacceptable risk to the health and well-being of the community, and therefore the grant of the application is not at odds with the harm minimisation object of the Act.
- 18 In weighing and balancing the evidence presented by the applicant, I am satisfied the applicant has discharged its onus under s 38(2) and the grant of the application is in the public interest.
- 19 Consequently, I am satisfied the applicant has complied with all of the statutory requirements and conditions precedent to the application being granted, and a liquor store licence is conditionally granted to the applicant subject to the following:
- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
 - (b) compliance with the *Local Government Act 1960*, *Health Act 1911* and any written law relating to the sewerage and drainage of these premise;
 - (c) all work being completed within 12 months in accordance with the plans and specifications dated 20 December 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 9 March 2018 pursuant to s 62(4)(c) of the Act.

Conditions to be imposed on the issue of the licence

Trading Hours

The permitted trading hours are those prescribed in s 98D of the Act.

Trading

The licensee is authorised to sell and supply cleanskin wine only as packaged liquor in accordance with the provisions of s 47 of the Act.

Pursuant to s 104 the profit sharing arrangement with the landlord in respect of turnover rent is approved.

Tasting Condition

Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:

- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
- (b) Tastings cannot be supplied to juveniles.
- (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
- (d) Compliance with the Food Act 2008 at all times.
- (e) Tastings per sample must not exceed the following measures:
 - (i) Wine – 50 mls
- (f) Free drinking water must be made available at all times that samples of liquor are available for tasting.

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.

- 20 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 21 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 22 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