

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: MARIAKITA PTY LTD

PREMISES: DEGANI CAFE KINGS SQUARE

PREMISES ADDRESS: SHOP 3.2 KINGS SQUARE, 10 TELETHON AVENUE
PERTH

APPLICATION ID: A000215583

NATURE OF APPLICATION: CONDITIONAL GRANT OF A TAVERN RESTRICTED
LICENCE

DATE OF DETERMINATION: 7 MARCH 2017

Introduction

- 1 This is an application by Mariakita Pty Ltd (the applicant) for the conditional grant of a tavern restricted licence for premises to be known as Degani Cafe Kings Square and located at shop 3.2 Kings Square, 10 Telethon Avenue, Perth. 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 Commissioner of Police (the Commissioner) lodged a notice of intervention pursuant to s 69 of the Act.
- 3 The application will be determined on the written material lodged by the parties, as permitted under ss 13 and 16 of the Act. The evidence and submissions of the parties are briefly summarised as follows.

The case for the applicant

- 4 The proposed premises will be located at Kings Square, which is part of the commercial precinct within the \$5.2 billion Perth City Link development. It was submitted that Kings Square is a purpose built commercial/ retail/ dining and entertainment precinct, bounded by Wellington Street to the south, Roe street to the north, Mitchell Freeway to the west and the horseshoe bridge to the east.
- 5 According to the applicant, at the heart of Kings Square will be a vibrant plaza known as The Hub, which will offer office workers, residents and visitors a central meeting place. The Hub will incorporate bars, restaurants and cafes and cater to on-site workers and attract patrons from the greater Perth and Northbridge areas.
- 6 The proposed premises will be the first of the Degani franchise in Perth. There are over eighty similar Degani premises operating in Victoria and Queensland and the proposed premises will have a strong emphasis on meals and fine coffee, but will also

have the flexibility to provide important licensed services to its clientele, with a combination of restaurant, bar and function uses. The premises will feature:

- a ground floor banquette and dining area;
- a mezzanine level which will provide dining services and/or a space for small functions; and
- an alfresco area, overlooking the plaza, which will also provide dining services.

7 The applicant submitted a Public Interest Assessment (PIA) to support its application together with various witness questionnaires. The PIA provided information on the applicant's proposed manner of trade, demographic profile of the locality, outlet density and addressed the matters set out in s 5 and s 38(4) of the Act.

The intervention

8 The Commissioner intervened to provide information to assist in the determination of the application and recommend various conditions for the licence which might assist in mitigating any direct or indirect contributing influence the licence may have on increasing crime and alcohol-related harm in the surrounding locality.

9 The Commissioner provided data on the existing level of alcohol-related harm in the area surrounding the proposed premises. Alcohol was a contributing factor in 41 recent sexual assaults, 124 domestic assaults, 429 non-domestic assaults and 99 instances of threatening behaviour. The Commissioner noted that harm caused due to the use of liquor is not limited to those patrons frequenting the premises, but has an effect on the immediate locality as well as the broader community.

10 Whilst acknowledging that there appears to be a degree of support from the public for the grant of the application, the Commissioner submitted that minimising alcohol-harm may be achieved by good management practices and sound trading conditions as proposed in the intervention. The Commissioner also submitted that appropriate trading conditions will ensure the applicant adheres to its intended manner of trade as described in the PIA.

11 Consequently, the Commissioner recommended conditions relating to the provision of meals, responsible server practices, CCTV, dress standards and security.

Determination

12 The Perth City Link project is a significant development for the City. This development is designed to *"link the city centre and Northbridge with a multi-functional, vibrant and active urban environment that embraces the city's lifestyle and character, and distinctly reflects Perth's 21st century aspirations"* (Perth City Link Design Guidelines). The applicant's uncontroverted evidence is that when complete, the Perth City Link will provide 1,650 new apartments catering for a residential population of approximately

3,000 people and create 244,000 square metres of office/retail space for 13,500 new workers.

- 13 The applicant proposes to establish a moderately sized licensed facility with a strong emphasis on food and dining to cater to the requirements of the existing and future residents, workers and visitors to the area.
- 14 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).
- 15 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).
- 16 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.
- 17 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.
- 18 I have considered the applicant's evidence and submissions and weighed this against the evidence provided by the Commissioner in respect of the existing level of alcohol-related harm in the locality of the proposed premises. In my view, particularly taking into consideration the nature and scale of the Perth City Link development and the benefits to be realised from this development, the grant of the application would be consistent with the objects of the Act. I also note that the premises are moderate in size, accommodating a maximum of 100 patrons. Consequently, I find that the positive aspects of the application outweigh the potential risks. 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.

- 19 However, I accept the Commissioner's submission that the imposition of appropriate conditions will help mitigate the risks of the premises exacerbating the existing alcohol-related harm in the locality. In this regard, the applicant has indicated that it agrees to a number of proposed conditions, but not all, and I accept, given the relatively small size of the venue that not all of the conditions suggested by the Commissioner are necessary. I also note that the Metropolitan Redevelopment Authority has imposed a number of restrictions on the premises as part of its planning approval.
- 20 Consequently, I am satisfied that the applicant has complied with all of 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 premise;
 - (c) all work being completed within 12 months in accordance with the plans and specifications dated 4 October 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 6 March 2018 (12 months from the date of the decision) pursuant to s 62(4)(c) of the Act.
 - (g) Submit a fully executed lease.
- 21 On confirmation of the conditional grant, the following conditions will be imposed on the licence:

Trading hours

The permitted trading hours are:

Monday to Saturday: 6.00 a.m. to 11 p.m.

Sunday: 10 a.m. to 11 p.m.

On Good Friday from 12 noon to 10 p.m. but only for liquor sold ancillary to a meal.

No trading is permitted before 12 noon on ANZAC Day.

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.
- Any music or entertainment is to be low level acoustic music or low amplification pre-recorded music, allowing normal levels of conversation to be heard.
- 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 “Minimum Standards – Closed Circuit Television (CCTV) Security System” 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 the ground floor level shall not exceed 50 at any one time and the maximum number of patrons permitted on the mezzanine level shall not exceed 50 at any one time.
- The premises are to be set up with tables and chairs, except on the mezzanine level when hosting pre-arranged functions.
- 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.
- No liquor is to be supplied mixed with energy drinks (for the purposes of this condition “energy drink” has the same meaning as formulated caffeinated beverage within the Australia New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater).
- Delivery and collection of supplies including bottles, kegs and other such bulky goods and the emptying of bottles into external bins is not to occur outside the hours of 7 a.m. to 7 p.m. any day of the week.

- Pursuant to s 104 of the Act, the following profit sharing arrangements are approved:
 - turn over rent in accordance with the letter dated 19 August 2016 and the related lease; and
 - payment to the franchisor in accordance with the letter dated 19 August 2016 and the related franchise agreement.

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.

22 The applicant also lodged an application for an extended trading permit pursuant to s 60(4)(h) at the Act for the alfresco area of the premises. This application is approved subject to the following:

- The permit area is the area outlined in yellow on plans dated 4 October 2016.
- No entertainment or amplified music is to occur in the permit area.

- There is to be no more than 15 chairs, 3 tables and 3 umbrellas in the permit area.
- 23 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.
- 24 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