

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

**APPLICANT:** HARVEY RIVER ESTATE PTY LTD

**PREMISES:** FISHBONE CELLAR

**PREMISES ADDRESS:** LOT 3923 HARMANS MILL ROAD, WILYABRUP

**APPLICATION ID:** A000184206

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

**DATE OF DETERMINATION:** 22 SEPTEMBER 2015

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### **Introduction**

- 1 Harvey River Estate Pty Ltd (the applicant) has lodged an application for the conditional grant of a tavern licence for premises to be known as Fishbone Cellar and located at Lot 3924 Harmans Mill Road, Wilyabrup. The application is made pursuant to s 41 and s 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 application.
- 3 Pursuant to s 13 and s 16 of the Act, the application will be determined on the written materials lodged by the applicant.

### **The applicant's submissions**

- 4 The applicant proposes to establish a tavern on Harmans Mill Road, Wilyabrup opposite the renowned Margaret River Chocolate Company, in the heart of the Margaret River Wine Region. Margaret River is a popular tourist destination that has a focus on (local) regional food and beverage.
- 5 The applicant, who has operated the Harvey River Estate Winery and Cellar Door since 2000, has recently purchased 165 acres on Harmans Mill Road, Wilyabrup and is seeking to create a unique cellar door experience. Grapes from this property will be used for the production of wine.
- 6 The proposed tavern will have a focus on locally produced alcoholic beverages together with a local seafood based menu for both dine-in or take-away. A unique feature of the premises will be the local fresh salmon and sushi that will be available for purchase. Meals can be enjoyed on the veranda or in the cellar door, or to take home with a bottle of wine for a perfect night in. Alongside the freshest seafood, will also be local preserves, spices and other general produce. Non-alcoholic beverages, including tea and coffee will also be available throughout the day.

- 7 The applicant submitted a Public Interest Assessment (PIA) to support its application, which included consumer questionnaires and various letters of support. The PIA provided information on the locality in which the premises is to be located, community consultation and the likely impact on the amenity of the area.
- 8 According to the applicant, it is committed to operating an establishment that adds to the amenity in the locality by catering to the requirements of consumers, whilst also implementing strategies to ensure that the operation of the proposed premises does not negatively impact on the local community. This will be achieved by offering a menu and style of food and manner of trade that supports the local tourism, hospitality and liquor industry. It is also proposed that the premises will have limited trading hours, operating from 9 a.m. to 5 p.m. Monday to Saturday and from 10 a.m. to 5 p.m. on Sundays, with no trading on Christmas Day, Good Friday or ANZAC Day.
- 9 It was submitted by the applicant that Margaret River Wine Region is the largest tourist area in Western Australia outside Perth, and that the continued development of food, beverage and accommodation businesses in the locality will promote the ongoing tourism attractions of the South West.

### **Determination**

- 10 An applicant for the grant of a tavern licence must satisfy the licensing authority that the grant of the application is in the public interest (refer s 38(2) of the Act).
- 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 the licensing authority is 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.
- 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 There is no presumption in favour of the grant of an application; rather the opposite applies where an applicant must adduce sufficient evidence to discharge its onus under the Act. The applicant has submitted a PIA together with supporting evidence and submissions. Having considered the applicant's evidence, I find that the grant of the application would be catering to the requirements of consumers for liquor and related services; would facilitate the use and development of licensed premises reflecting the diversity of consumers; and would be promoting the tourism industry in the State, consistent with objects 5(1)(c) and 5(2)(a) of the Act. In terms of the harm minimisation object of the Act (5(1)(b)), I am of the view the grant of the application would not present an unacceptable risk to the community.
- 17 Therefore, taking into consideration both the positive and negative social, economic and health impacts that the grant of the application will have on the community, I am satisfied that the grant of the application is in the public interest, as required under section 38(2) of the Act and that the applicant has complied with all other statutory requirements and conditions precedent to the application being granted, 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 31 July 2015;
  - (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 **21 September 2016** (12 months from the date of the decision) pursuant to s 62(4)(c) of the Act.

18 In respect of trading conditions relevant to the operation of the licence, the standard conditions for a licence of this nature will be imposed together with other basic conditions to support the harm minimisation object of the Act or conditions consistent with the applicant's PIA. Therefore, 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 9 a.m. to 5 p.m.

Sunday 10 a.m. to 5 p.m.

No trading is permitted on Christmas Day, Good Friday or 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 licence.
- During the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises and as packaged liquor for consumption off the licensed premises.
- 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.
- Any music played at the premises is to be background in nature, sufficient to allow normal conversation to occur.
- The maximum number of people permitted on the licensed premises at any one time shall not exceed 125 or such lesser number imposed by the local government authority.
- 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.

#### 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.

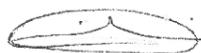
#### Compliance with harm minimisation policy

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.

19 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