

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: FAIRWAYS & GREENS PTY LTD

PREMISES: FAIRWAYS AND GREENS

PREMISES ADDRESS: UNIT 1/44 WINTON ROAD, JOONDALUP

APPLICATION ID: A000187454

NATURE OF APPLICATION: APPLICATION FOR GRANT OF A SPECIAL FACILITY LICENCE

DATE OF DETERMINATION: 19 NOVEMBER 2015

1. On 16 June 2015, an application was lodged by Fairways & Greens Pty Ltd (“the Applicant”), for the grant of a special facility licence, for the prescribed purpose of an amusement venue, in respect of premises to be known as *Fairways and Greens* and situated at Unit 1/44 Winton Road, Joondalup.
2. The application is made pursuant to s 46 of the *Liquor Control Act 1988* (“the Act”) and r 9A(18) of the *Liquor Control Regulations 1989* (“the regulations”) and was advertised in accordance with instructions issued by the Director of Liquor Licensing (“the Director”), which resulted in a notice of intervention being lodged by the Executive Director Public Health (“EDPH”).
3. Pursuant to ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties.
4. According to the Applicant’s Public Interest Assessment (“PIA”), the licence is sought to provide hospitality services to persons attending the amusement venue for the purposes of playing simulated golf.
5. The proposed licensed premises is located in a light commercial area and has a total area of approximately 393 metres squared, consisting of:
 - (a) a putting green;
 - (b) sand trap;
 - (c) four tee-off bays;
 - (d) a kitchen; and
 - (e) toilet facilities.
6. The maximum number of patrons that can be accommodated on the premises is 30.

7. In order to establish that the grant of the licence will cater to the requirements of consumers for liquor and related services, the Applicant lodged 39 letters of support from nearby businesses and feedback from 119 patrons.
8. Currently, hospitality services are provided by the Applicant to its patrons by way of light food and non-alcohol beverages (i.e. coffee, cool drinks and water) and while the Applicant submitted that the predominate focus of the business will remain the provision of amusement in the form of simulated golf, it also submitted that the City of Joondalup has issued it with a Food Certificate under the *Food Act 2008*, which allows it to provide food at the premises.
9. Accordingly, the Applicant stated that its customers are either golfers or supporters of golf and do not attend the premises specifically or solely to consume beverages or purchase food. Therefore the Applicant submitted that:

“As part of the proper development of the hospitality industry, it is the view that the granting of the licence will satisfy the public interest need on the basis that the venue will cater for customers that prefer to have for example, a cold beer or a glass of wine.”
10. The Applicant also submitted that seating and tables are provided for approximately 50 per cent of patrons at all times.
11. In relation to juveniles, the Applicant submitted that it is amenable to the imposition of a condition on the licence to prohibit unaccompanied juveniles from entering or remaining on the licensed premises.
12. The Applicant also lodged submissions, pursuant to the provisions of s46 of the Act, in which it briefly examined why no other licence type could achieve the purposes for which the special facility licence is sought.
13. Although there was no information contained within the PIA about the Applicant catering to child focused events/activities at the proposed licensed premises; the notice of intervention included representations that the EDPH had had discussions with the Applicant (on 8 July 2015) in which it had advised that it may consider hosting children’s golf clinics, “which would likely be scheduled before 11 a.m. as to not overlap with alcohol service times.”
14. The EDPH also explained that, by way of email dated 14 July 2015, the Applicant had further advised that although the premises is not geared towards the ‘child party market’, if it does elect to host a child’s party, it would do so responsibly.
15. As a result, the EDPH was concerned that alcohol could be available at *Fairways and Green* while child focussed activities or events are being held there, which would be undesirable, given that children and young people are identified as an at-risk group for alcohol-related harm.

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16. Accordingly, the EDPH recommended that consideration be given by the licensing authority to imposing conditions on the licence, if granted, to:
- (a) restrict the sale and supply of liquor from taking place before 11 a.m.;
 - (b) prohibit the sale, supply and consumption of liquor on the licensed premises at any time when the premises is being predominantly used for junior sport/activities or any other junior event;
 - (c) prohibit unaccompanied juveniles from entering and remaining on the licensed premises;
 - (d) require that seating be provided for 50 per cent of the Applicant's patrons (i.e. 15 patrons);
 - (e) require that food is available for purchase during all trading hours; and
 - (f) require that low-strength beer and non-alcoholic beverages be made available for purchase during all trading hours.
17. In undated submissions lodged on 4 August 2015, the Applicant informally responded to the notice of intervention and agreed to all conditions, excepting the condition relating to the proposed prohibition on the sale, supply and consumption of liquor in connection with junior sport/activities or any other junior event.
18. However, regardless of the views of the parties, I am concerned with their submissions regarding juveniles on licensed premises. The Act's provisions relating to the circumstances when juveniles are permitted on licensed premises are fairly clear. In this regard, I draw the parties' attention to s 121(4) of the Act, which provides that where a juvenile enters or remains on any part of licensed premises —
- (a) the licensee;
 - (b) any employee or agent of the licensee who permits the juvenile to enter or remain on that part of the licensed premises; and
 - (c) the juvenile,
- each commit an offence and are subject to a range of prescribed penalties.
19. However, I note that there are some notable exceptions to this prohibition, including:
- (a) s 120(1) of the Act, which lists a number of circumstances where the prohibition does not apply, but which do not include a special facility licence granted for the prescribed purpose of an amusement venue; and
 - (b) the provisions of s 121(5) of the Act, which only apply where a juvenile is accompanied and supervised by a responsible adult (i.e. a parent, step-parent, spouse, de facto partner or other person in *loco parentis* to the juvenile) and

would not therefore be applicable to unaccompanied juveniles attending an event. In these circumstances, the licensee, its relevant staff and the juvenile in question would all be in breach of the Act.

20. Consequently, after considering the information before me in this matter, I am not prepared to condition the licence in a manner that would authorise the Applicant to host events on licensed premises that specifically cater to unaccompanied juveniles. However, in this respect, the Applicant is advised that where licensees choose to hold functions solely for the provision of entertainment for juveniles, s 126A of the Act specifically provides for licensees to apply to the Director for approval, notwithstanding that such applications must be considered on their merits and the licensee must apply in each instance.
21. As a result of my findings in regard to this matter, I do not consider it necessary to amend the Applicant's proposed trading hours in the manner recommended by the EDPH.
22. Furthermore, given the general prohibition on unaccompanied juveniles being present on licensed premises in s 121(4) of the Act, I also consider that it would be superfluous to condition the licence, if granted, in an attempt to somehow further prohibit unaccompanied juveniles from entering and/or being present on the licensed premises.
23. I likewise hold concerns about the Applicant hosting private functions at the premises, including "Bucks Nights" with adult entertainment, as highlighted in the EDPH's intervention. In this regard, I take the opportunity to remind the Applicant that it has sought the grant of a special facility licence for the prescribed purpose of an amusement venue and as such:
 - (a) the primary purpose of these premises must at all times remain the playing of simulated golf; and
 - (b) persons must not attend the licensed premises primarily to party or partake in adult entertainment and/or the consumption of liquor.
24. Accordingly, in these circumstances, I also consider it appropriate and in the public interest to impose the Director's standard "Entertainment Condition" on the licence.
25. Furthermore, notwithstanding that the Applicant has sought to trade on Christmas Day and Good Friday, I do not consider it appropriate, given that the Act generally provides that liquor may only be sold or supplied on licensed premises ancillary to a meal supplied by the licensee on those days. In this regard, I do not consider that the 'light food' proposed by the Applicant would constitute a meal for the purposes of the Act (see definition of "meal" in s 3 of the Act).
26. Therefore, after considering the Applicant's submissions and subject to my abovementioned findings regarding:

- (a) juveniles on licensed premises;
- (b) the hosting of parties on the licensed premises; and
- (c) trading under the licence on Christmas Day and Good Friday,

I am satisfied that no other licence category could achieve the purposed for which the special facility licence is sought. I am also satisfied that the Applicant has demonstrated that the proposed business to be conducted under the licence meets the purposes for which a special facility licence may be granted, particularly as an "amusement venue", consistent with the purposes prescribed in r 9A(19)(a).

27. Accordingly, the licence is granted, subject to the following conditions:

(a) Trading Hours:

- (i) The follow permitted trading hours are specified for the purposes of s 98C of the Act:
 - (1) Monday to Saturday, from 10 a.m. to 10 p.m.;
 - (2) Sunday, from 10 a.m. to 5 p.m.; and
 - (3) no trading is permitted on Christmas Day, Good Friday or before noon on Anzac Day.

(b) Trading Conditions:

- (i) Pursuant to s 46(3) of the Act and r 9A(18) and (19) of the regulations, this licence is granted for the prescribed purpose of allowing the sale of liquor at an amusement venue to patrons at the venue.
- (ii) The primary purpose of these premises must at all times remain on the playing of simulated golf. Therefore, the manner of trade and the layout of the premises must reflect this purpose.
- (iii) During the permitted trading hours, the licensee is authorised to sell and supply liquor, for consumption on the premises only, to people who are at the premises for the purpose of playing or viewing simulated golf.
- (iv) The sale and supply of packaged liquor for consumption off the licensed premises is prohibited.
- (v) The maximum number of patrons permitted entry to the premises is 30.
- (vi) Seating must be provided for at least 15 patrons at all times, except when there is a pre-booked function, at which the seating arrangements may be re-arranged to accommodate the particular requirements of the function.
- (vii) Food must be available during trading hours.

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- (viii) The licensee must provide drink options that contain low alcohol content as well as a range of non-alcoholic drinks.
- (ix) The continuation of this special facility licence will be reviewed by the Director of Liquor Licensing if at any time in the future the licence is to be transferred to another party. The purpose of that review is to determine whether the licence is to be used for the reasons for which it was granted (s 46(3) of the Act refers).
- (c) 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 classified "R 18+", "X 18+" or "RC" classified publication, film or computer game 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.

(d) Compliance with Harm Minimisation Policy

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.

28. Pursuant to s 127(2) of the Act, the prescribed licence fee is payable prior to the operation of the licence. I am satisfied that the licence fee has been paid.
29. The licensed premises are defined as the area outlined in red on the plans attached and dated 12 June 2015. A copy of that plan is to be retained on the premises and produced to any authorised officer if required.
30. Pursuant to s 116(3) of the Act, the premises' trading name of *Fairways and Greens* is approved. The licensee shall not subsequently conduct business at the licensed premises under any other trading name, without the prior approval of the Director of Liquor Licensing.
31. The applicant must ensure that the signage required under s 116(5) of the Act is displayed on the licensed premises within 14 days of the date of this decision.
32. Additionally, pursuant to s 116(4) of the Act, the licensee must ensure a copy of the licence is displayed in a readily legible condition and in a conspicuous position in the licensed premises.
33. 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.
34. This matter has been determined by me under delegation pursuant to s 15 of the Act.



Brett Snell

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING