

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: STARWEST INVESTMENTS PTY LTD

PREMISES: HAMPTONS @ CITY BEACH

PREMISES ADDRESS: TENANCY A, 179 CHALLENGER PARADE, CITY BEACH

APPLICATION ID: A000057325

NATURE OF APPLICATION: APPLICATION FOR CONDITIONAL GRANT OF A
TAVERN RESTRICTED LICENCE

DATE OF DETERMINATION: 17 SEPTEMBER 2015

Introduction

1. This is an application by Starwest Investments Pty Ltd (“the Applicant”) for the conditional grant of a tavern restricted licence for premises to be known as *Hamptons @ City Beach* and situated at Tenancy A, 179 Challenger Parade, City Beach.
2. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (“the Act”) and was advertised for comment in accordance with instructions issued by the Director of Liquor Licensing (“the Director”), which resulted in the lodgement of:
 - (a) a notice of objection, pursuant to the provisions of s 73(2) of the Act, by Lionel Keith Johnson and Kingsley Wayne Dixon (“the Objector”), residents of the locality; and
 - (b) a notice of intervention, pursuant to the provisions of s 69 of the Act, by the Commissioner of Police (“the Commissioner”).
3. To give effect to the provisions of s 16 of the Act, a document exchange was initiated between the parties in order to ensure that each party was given a reasonable opportunity to present its case.
4. Pursuant to ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties.
5. Additionally, although not a party to these proceedings, Mr Brett Jackson, Director Projects, Town of Cambridge, wrote to the Director on 7 April 2015 to advise that the City of Cambridge has an interest in the proposed premises, not only because it is the relevant Local Government Authority, but also as the Landlord of the proposed premises.
6. Accordingly, it was submitted that:

“In recognition of any potential conflict that could be perceived due to the dual role that the Town plays, it was important that the applicant understood as early as possible the issues surrounding any conditions of a liquor license that the Town would like to see imposed.

As such, our lease with Starwest Investments contains conditions under which they must obey with regards to the serving of liquor...

The Town... seeks to reinforce its intent that consumption of alcohol prior to 11 am will only be permissible ancillary to the serving of a meal. The application from Starwest does not appear to be clear in this regard. We understand in further discussions that the intent from Starwest was to restrict beverages prior to 11 am to sparkling wine only (including champagne). This is consistent with our thoughts on the matter.”¹

Submissions of the Applicant

7. In order to support its application, the Applicant lodged a number of submissions, including a Public Interest Assessment (“PIA”), in which it was confirmed that the proposed premises is to be located at the new City Beach Food and Beverage Precinct, which was proposed as part of an \$18 million investment in City Beach that will create new public facilities for recreational, commercial/hospitality and retail purposes.
8. The proposed redevelopment undertaken by the Town of Cambridge, includes:
 - (a) development of a new surf club building;
 - (b) improvements to the foreshore area to enhance passive recreation opportunities; and
 - (c) construction of three buildings of various sizes, to be leased to high quality hospitality operators, in order to “grow the quality, variety and capability of hospitality on the foreshore.”
9. The Applicant further submitted that the premises will be surrounded by bushland parks, parking spaces and the ocean.
10. It was also submitted by the Applicant that its application was motivated by the vision of the Town of Cambridge to create a food and beverage precinct for residents and visitors on the “prestigious City Beach with absolute beach front views.” As such, the Applicant’s aim is to “create a gastronomic waterfront food and beverage experience with panoramic ocean views for local residents and visitors who patronise the area.”

¹ A copy of the correspondence from the Town of Cambridge and the relevant conditions were served on the Applicant (by way of its representative in these proceedings), who was also given the opportunity to comment on some of the relevant conditions as part of the document exchange process.

11. The Applicant further submitted that:

“The proposed Hamptons @ City Beach will be the flagship of the three exceptional food and beverage premises with panoramic ocean front aspects which will have a stunning, absolute, beachfront location with expansive ocean views.”

12. The Applicant also indicated that the premises will be open for breakfast, lunch and dinner and will target a wide variety of clientele, including catering for:

- (a) a casual dining experience for families;
- (b) couples seeking a light meal; and
- (c) social gatherings.

13. In relation to the set up and layout of the proposed premises, the Applicant proposed that there will be the following three main patron areas:

- (a) *Bubbles*, which is the proposed lounge area and a place for locals to gather together and socialise in comfort, with large screen TVs showing CNN/Foxtel news, some sports channels and may also host small functions and events;
- (b) *Crumbs*, which will be the proposed premises dining area, where patrons may have a “meal with a view”; and
- (c) two extensive al fresco areas on the Northern and Western sides of the premises.

14. The Applicant submitted that entertainment at the proposed premises is envisioned to be in the form of pre-recorded background music, a two piece band in the al fresco area on Sunday afternoons, an occasional three piece band, as well as live entertainment, such as a DJ performing at weddings.

15. The Applicant submitted that in considering both the positive and negative potential impacts of the grant of the application on the amenity of the locality, it identified a number of probable positive impacts, including:

- (a) the addition of another licensed food and beverage option to the City Beach hospitality precinct; and
- (b) the premises will be a low risk venue.

16. As such, the Applicant submitted that the grant of the licence would not materially change the locality in any noticeable way and as a consequence, will have very little potential negative impact on the locality.

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17. Although no potentially negative impacts were identified by the Applicant, it submitted the following measures to minimise offence, disturbance or inconvenience, including:
- (a) the installation of a CCTV system;
 - (b) the provision of quality meals being a main focus of the business and the main attraction for patrons;
 - (c) that beer, spirits or cocktails will not be offered for sale or supply in jugs;
 - (d) there will be no advertising of liquor products on the exterior of the building; and
 - (e) patrons will be encouraged to be aware of the rights of neighbours and others who reside or work in the locality, especially when leaving the venue.
18. The Applicant's PIA also considered how the grant of the application will forward the Act's objects as prescribed in s 5, as well as those matters prescribed in s 38(3) of the Act.
19. In this regard, in order to establish that the grant of the application will cater to the requirements of consumers, the Applicant submitted two witness petitions and 52 witness questionnaires.
20. In conclusion, the Applicant submitted that there are no premises currently operational, either within a 500 metre radius of the proposed premises, or within the wider locality, that operate in a manner similar to the proposed tavern restricted licence.

Representations of the Commissioner

21. The representations of the Commissioner relate to the:
- (a) grant of the licence resulting in public disorder or disturbance and other matters relevant to the public interest; and
 - (b) mitigation of such potentialities through the imposition of trading conditions, after having regard to the class of licence applied for and the location of the premises.
22. While the Commissioner acknowledged the intent of the application and the harm minimisation strategies proposed by the Applicant, representations were made that it is in the public interest to ensure that the proposed premises trades in a manner that will minimise disturbance or public disorder and complement the primary objects of the Act.
23. Furthermore, with reference to *Vandeleur v Delbra Pty Ltd* [1998] 45 SASR 156, the Commissioner asserted that no matter how well a licensed premises is conducted, it will negatively impact on the amenity of the area in which it is located, given that licensed premises inherently give rise to noisy recreational activities and revelry with patrons exiting from the premises, often late at night, in groups and in high spirits, with anti-social behaviour being a probable by-product.

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24. After evaluating the Applicant's evidence and submissions, the Commissioner submitted that without the imposition of conditions on the licence to ensure that the Applicant trades in accordance with the manner of trade outlined in its PIA, it may deviate away from its intentions and pose a higher risk in terms of harm or negative impact on the locality.
25. Accordingly, the Commissioner recommended that the licence, if granted, should be subject to conditions relating to:
- (a) restrictive trading hours and a requirement that the sale of alcohol prior to 11 a.m. on any day must be ancillary to the provisions of food by the licensee;
 - (b) the installation and maintenance of a CCTV system in compliance with the Director of Liquor Licensing's *Safety and Security at Licensed Premises* policy;
 - (c) the prohibition of live entertainment in the form of electronic "Disc Jockey" music performances;
 - (d) the provision of food while the premises is trading;
 - (e) the provision of a specified number of seating available for the use of patrons;
 - (f) the observance of a maximum patron accommodation number designated by the Town of Cambridge or the Director;
 - (g) a prohibition on the sale and supply of liquor in such a way that would encourage rapid consumption of liquor (e.g. but not limited to; unadulterated spirits or liqueur in a shot glass) or drinks known as 'laybacks', 'shooters', 'slammers', 'test tubes', 'jelly shots', 'blasters' or 'bombs' or any other emotive title;
 - (h) no energy drinks being mixed with liquor or sold in any other form on the premises; and
 - (i) the imposition of a dress standard to prohibit entry to the proposed premises by persons wearing jackets or any other clothing or accessory, or any clearly visible body markings, bearing patches or insignia of specified Outlaw Motor Cycle Gangs.

Submissions of the Objector

26. The grounds of objection relied upon by the Objector are that:
- (a) the grant of the application would not be in the public interest (refer s 74(1)(a) of the Act) because it will bring a drinking element to a family beachfront;
 - (b) if the application were granted, undue offence, annoyance, disturbance or inconvenience would be likely to occur to person in or travelling to or from an existing or proposed place of worship, hospital or school (refer s 74(1)(g)(i) of the Act) as a result of:

- (i) unrestricted drinking for long hours to a local area noted for its family environment and passive recreational benefits and serenity;
 - (ii) exposing nearby residents to late hour drinking on a beachfront; and
- (c) if the application were granted, the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be situated would in some other way be lessened (refer s 74(1)(g)(ii) of the Act) due to the establishment of what will be a “sports” tavern, which will diminish the value of the City Beach Precinct and its passive enjoyment by family groups.

Further submissions

27. Following the document exchange initiated by the licensing authority, only the Applicant lodged further submissions.
28. In these submissions dated 26 June 2015, the Applicant responded to both the objection and intervention. In relation to the notice of objection, the Applicant submitted that no evidence has been lodged by the Objector to substantiate its objections, which are also very short on detail. The Applicant further submitted that the Objector does not appear to have considered its stated style of operation, as set out in its PIA; and that the objection would appear “to be based on some preconceived notion that all taverns are sports bars.”
29. In relation to the notice of intervention, the Applicant considered each of the conditions recommended by the Commissioner and submitted that:
- (a) it does not accept the reduced trading hours proposed by the Commissioner and asserted that it seeks to rely upon the prescribed trading hours in s 98(1) of the Act, given that the premises will be a “very special beach side hospitality venue, with wonderful ocean views” and therefore it is expected that people will want to use the venue at all times of the day;
 - (b) it does not agree with the suggested prohibition of entertainment in the form of Disc Jockeys given:
 - (i) that, as clearly stated in its PIA, the Applicant intends that DJs are only to be in attendance at the licensed premises to present music at weddings and other such functions, such as 60th birthdays, 25th wedding anniversaries and retirements, etc; and
 - (ii) the Applicant’s commitment to ensuring that any hired DJ will not play house, electronic or rave type music; and
 - (c) while food will be available, it would be unreasonable to require that patrons must consume a meal in order to have a drink before 11 a.m. in the morning and after 11 p.m. at night.

30. All other trading conditions recommended by the Commissioner were accepted by the Applicant.

Determination

31. An applicant for the grant of a tavern restricted licence must, pursuant to section 38(2) of the Act, satisfy the licensing authority that granting the application is in the public interest. The Act as a whole establishes a regime for the control and regulation of the sale, supply and consumption of liquor; and does not proceed on the basis that there is any presumption in favour of the grant of a licence, but rather the reverse: that an applicant must demonstrate that it is in the public interest that the application should succeed (refer *Woolworths Ltd -v- Director of Liquor Licensing* [2012] WASC 384).
32. 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).
33. The licensing authority should, when determining whether the grant of an application is in the public interest (refer s 38(4)), consider both the positive and negative social, economic and health impacts that the grant of the application will have on the community (refer s 19 of the *Interpretation Act 1994* and Parliamentary Debates, WA Parliament, Vol 409, p 6342). In this regard, advancing the objects of the Act as set out in s 5, is a mandatory public interest consideration (refer *Palace Securities supra*).
34. In my view, the application is inextricably linked to the establishment of the Town of Cambridge’s new City Beach Food and Beverage Precinct, an \$18 million investment in City Beach that will create new facilities for the public of recreational, commercial/hospitality and retail purposes. Accordingly, it is my view that the grant of the licence will promote one of the primary objects of the Act, namely object 5(1)(c), which relates to catering to the requirements of consumers for liquor and related services. Furthermore, the evidence also suggests that object 5(2)(a) is also relevant, which relates to facilitating the use and development of licensed facilities reflecting the diversity of consumers in the State.
35. Given the level of redevelopment at City Beach by the Town of Cambridge, I consider that the Objector’s grounds of objection and analysis of the City Beach environment to be somewhat at odds with the large scale nature and scope of the Commercial Development, which the Town of Cambridge asserts will create:
- (a) better amenity at City Beach through the development of a choice of food and beverage outlets that will be open to customers all year round; and

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- (b) a landscaped environment with elevated views of the beach and ocean to promote the area as family friendly with open space for picnics, leisure activities and passive recreation.
36. While the rules of evidence do not apply (refer s 16(7)) to proceedings before the licensing authority, decisions must be made on the balance of probabilities and be based on the evidence placed before it. The evidence needs to be relevant, reliable and logically probative to assist the licensing authority to assess the probability of the existence of the facts asserted in each case (refer *Harold Thomas James Blakeley v Director of Liquor Licensing* (LC44 of 2010)).
37. In proceedings before the licensing authority, the onus is placed on an objector to establish the validity of any objection. In the circumstances of this matter, I consider that the Objector has not provided any evidence to assist me in assessing the probability of the facts asserted. As such, I have determined that the Objector has not discharged its burden under s 73(10) of the Act.
38. In relation to the representations made by the Commissioner, it is important to appreciate that as an intervener, the Commissioner carries no burden of proof (see Greaves J, *Gull Petroleum (WA) Pty Ltd* (1998) LLC No. 13/98), but rather provides submissions and evidence in order to assist the licensing authority in making an informed decision.
39. However, while I have noted the Applicant's expressed concerns regarding some of the conditions proposed by the Commissioner, it has nonetheless already agreed with the Town of Cambridge to implement similar conditions as part of its lease agreement of the proposed premises.
40. Therefore, after considering:
- (a) that the Applicant has acceded to most of the recommendations contained in the Commissioner's intervention;
 - (b) the Applicant's submissions regarding the conditions proposed by the Commissioner that it does not agree with; and
 - (c) the liquor licensing conditions adopted by the Town of Cambridge for the City Beach Commercial Precinct, which the Applicant must comply with as tenant of the Premises,

I am satisfied that the applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted and that the grant of the application is in the public interest.

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41. Accordingly, the licence is conditionally granted, subject to the following conditions:
- (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 16 February 2015;
 - (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director 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 16 September 2016, pursuant to s 62(4)(c) of the Act.
42. As the Applicant agreed with the imposition of a maximum accommodation number as a condition of the licence, the conditional grant is also subject to the Applicant's confirmation of the maximum accommodation number, as designated by the Town of Cambridge.
43. On the confirmation of the grant, the following conditions will be imposed on the issue of the licence:
- (a) Trading hours

The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.
 - (b) Trading conditions
 - (i) 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.
 - (ii) During the permitted trading hours specified above:
 - (1) the licensee is authorised to sell and supply liquor for consumption on the licensed premises; and
 - (2) liquor shall not be sold or supplied before 11 a.m. unless it is consumed ancillary to a meal.
 - (iii) The sale of packaged liquor for consumption off the licensed premises is prohibited.

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- (iv) At least 50 per cent of the enclosed patron floor space (excluding kitchen, back of house areas and public toilets) shall be provided with tables and chairs at all times the premises is open, which cannot be rearranged to create dance floors or the like. (This does not preclude the remaining 50% of the fully enclosed patron floor space being temporarily re-arranged to create open floor space).
 - (v) The premises' kitchen must be open at all times the premises are trading, and meals from the full a-la-carte menu must be available during normal lunch and dinner dining hours, and lighter style food must be available at all other times the premises are open, until the last 30 minutes of trade.
 - (vi) The licensee shall not promote or sell drinks which offer liquor by virtue of their 'emotive' titles such as (but not exclusive to) 'laybacks', 'shooters', 'slammers', 'test tubes' and 'blasters'.
 - (vii) Beer, spirits or cocktails will not be offered for sale or supply in jugs.
 - (viii) There will be no advertising of liquor products on the exterior of the building.
 - (ix) 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.
 - (x) Any entertainment or music at the premises must be background in nature only, and at a level sufficient to allow normal conversation to occur.
 - (xi) Live entertainment is restricted to acoustic and small groups with no drums.
 - (xii) Any amplification systems must be directed through a centralised control system and have sound limiting devices to control volume levels.
 - (xiii) Amplified music would be permissible in open air dining areas but must cease in these areas by 9 p.m.
 - (xiv) A CCTV system is to be installed and maintained in compliance with the Director's Safety and Security at Licensed Premises policy
- (c) Dress Standards - Outlaw Motorcycle Gangs
- (i) The following dress standard applies during the permitted trading hours:
 - (3) 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:

- (a) Coffin Cheaters
- (b) Club Deroes;
- (c) Gods Garbage;
- (d) Gypsy Jokers;
- (e) Outlaws;
- (f) Finks;
- (g) Rebels;
- (h) Comancheroes;
- (i) Hell's Angels;
- (j) Rock Machine;
- (k) Mongols and
- (l) Lone Wolf.

- (ii) A notice is to be displayed at all entrance to the licensed area/event reflecting this condition.

(d) 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.

(e) 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.

(f) Profit Sharing Authorised

Pursuant to s 104 of the Act, the turnover rental arrangements entered into by the licensee, Starwest Investments Pty Ltd, and the owner, Town of Cambridge, as contained in the Lease agreement lodged with the licensing authority on 16 February 2015, are approved.

General

44. Pursuant to s 127(2) of the Act, the prescribed licence fee is payable prior to the operation of the licence.
45. The Applicant is reminded that trading may not commence without the prior written approval of the licensing authority.
46. 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.
47. 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