

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

**APPLICANT:** HIPPOCAMPUS MEMORABLE DRINKS PTY LTD

**PREMISES:** HIPPOCAMPUS METROPOLITAN DISTILLERY

**PREMISES ADDRESS:** 19 GORDON STREET WEST PERTH

**APPLICATION ID:** A000056890

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

**DATE OF DETERMINATION:** 29 MAY 2015

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### **Introduction**

- 1 On 13 June 2014, an application was lodged by Hippocampus Memorable Drinks Pty Ltd (the applicant) for the conditional grant of a tavern licence for premises to be known as Hippocampus Metropolitan Distillery and located at 19 Gordon Street, West 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. Pursuant to ss 73 and 74 of the Act, objections to grant of the application were lodged by:
  - Hasan Ehdeyhed
  - Yinhez He
  - Bradley Abbot
  - Dr Rishi Kotecha
  - Timothy Bradsmith
  - Ruth Cahill
  - William Brooks
  - Deborah Moltoni
  - Sean Quartermaine
  - All Night Long Pty Ltd (licensee of Liquor Barons Perth)
  - Guat Lay Soh
- 3 The Commissioner of Police (Commissioner) initially lodged an objection to the application; however, the Commissioner subsequently withdrew his objection and in its place, pursuant to s 69 of the Act, lodged a Notice of Intervention.
- 4 In accordance with ss 13 and 16 of the Act, the application will be determined on the papers. The evidence and submissions of the parties are briefly summarised as follows.

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**Submissions on behalf of the applicant**

- 5 According to the applicant, the proposed Hippocampus Metropolitan Distillery will be a unique urban small scale distillery producing artisan spirits from Australian sourced ingredients. If the application is approved, visitors and consumers will be able to visit the premises and see firsthand how spirits are made by a professionally qualified distiller and taste and purchase these spirits in a variety of formats.
- 6 The applicant currently operates the business pursuant to a producer's licence granted in January 2015, however, limitations associated with that licence are preventing the applicant from meeting the requirements of the public and being able to showcase the spirits produced in the normal manner intended, which involves the consumption of the product. Also, the applicant cannot maximise the potential of the premises under the producer's licence. The applicant therefore seeks a tavern licence to replace the producer's licence.
- 7 The liquor proposed to be offered at the venue will mostly be comprised of the applicant's own range of small batch spirits which it produces itself from local ingredients. Patrons will be able to enjoy a tasting or a full drink at the distillery and also have the benefit of being able to purchase the products to take home. Part of the patron experience will be the ability to view the distilling facilities and be educated about the distilling process from start to finish.
- 7 It was submitted by the applicant that the proposed tavern will be a small, intimate venue accommodating no more than 50 patrons at any one time, with food and seating being provided for patrons. The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA provided details on:
- the antecedents of the directors of the applicant company, who are very experienced and well respected in the hospitality industry;
  - the proposed manner of trade under the licence;
  - the locality surrounding the proposed premises;
  - the likely impact on the amenity of the area; and
  - the applicant's harm minimisation strategies.
- 7 The applicant's PIA also contained various public questionnaires, survey material and letters of support.
- 8 To ensure that the premises operate in the manner proposed and does not negatively impact on the community, the applicant proposed the following conditions for imposition on the licence, if granted:
- the licensee must maintain a spirit distillery at the premises;

- only liquor produced by the applicant is permitted to be sold as packaged liquor;
- the sale of packaged liquor is prohibited after 8 p.m.;
- low strength liquor and non-alcoholic drink options must be available at all times;
- food is to be available at all times during trading hours;
- seating for at least 24 patrons must be available at all times except for private, pre-arranged functions; and
- the licensee must maintain a CCTV system.

9 Consequently, it was submitted by the applicant that the proposed business will not be anything like a pub style venue or other traditional stand-up bar facility. The size, style of operation, focus on distilling, products and other features combine to create a bespoke licensed hospitality encounter. The Hippocampus Metropolitan Distillery will offer the public a very special opportunity to experience a unique Perth product and venue in the bustling and easily accessible Perth CBD.

### **Submissions by the objectors**

#### *Hasan Ehdeyhed*

10 According to Mr Ehdeyhed the grant of the application is not in the public interest because the proposed premises will be located in a high density residential area and this is likely to result in an increase in noise and anti-social behaviour which will negatively impact on the amenity of the locality. Mr Ehdeyhed submitted that the operation of a tavern in the area will only increase the existing problems because:

- there has been a significant increase in noise and anti-social behaviour since the opening of the Gordon Street Garage restaurant;
- there has been an increase in graffiti in the area;
- there has been an increase in break-ins and damage to property; and
- there is insufficient parking in the area, especially Gordon Street and Coolgardie Street due to the Gordon Street Garage, Harbour Town and the Perth Arena.

#### *Yinhuz He*

11 It was submitted that the grant of the application will increase the existing anti-social behaviour in the area.

#### *Bradley Abbot*

12 Mr Abbott is a partner in a Chartered Accounting business located approximately 150 metres from the applicant's premises. According to Mr Abbott, the operation of the existing *Gordon Street Garage* premises negatively impacts on the amenity of the

surrounding area due to increased traffic, which diminishes parking for his staff and clients, patron noise, as well as noise from staff of the *Gordon Street Garage* utilising the bins at the rear of the restaurant. It was submitted that any increase in vehicular traffic, which may result from the grant of this application, will further diminish available parking in the area which will have a flow on effect of decreasing client access and harming his business. Mr Abbott claims that when he has arrived at work on weekends, his private parking bays are often occupied by patrons of the *Gordon Street Garage* or *Harbour Town*.

- 13 Mr Abbott also claims that when he arrives at work there is sometimes vomit on the front doorstep of his business. Consequently, it was submitted by Mr Abbott that a fully operating tavern in the area will only compound these existing problems.

*Dr Rishi Kotecha*

- 14 Dr Kotecha submitted that the grant of the application would increase and encourage alcohol-fuelled behaviour and problems in West Perth, affecting residents, businesses and hospitals in the locality.

*Timothy Bradsmith*

- 15 Mr Bradsmith is a lighting engineer who often works at the Perth Arena and parks his car several blocks from the Arena. He is concerned that if the application is granted it will be harder for him to find parking in the area or when he is walking to and from his car via Gordon Street, people who have been consuming alcohol may be misbehaving or acting in a threatening manner. Already he has seen people affected by alcohol or other substances in the area.

*Ruth Cahill*

- 16 Ms Cahill is a registered nurse with 24 years experience specialising in Mental Health. Ms Cahill is concerned that the grant of the application will contribute to undue harm and increase the burden on the police, ambulance, triage, youth support services and the mental health system. Ms Cahill also submits that there is a lack of transport options in the area and the foot path outside the proposed premises is steep by pedestrian standards and would present a risk to people during wet weather, particularly if they have been consuming alcohol.

*William Brooks*

- 17 Mr Brooks often attends meetings in West Perth and parks in and around Gordon Street. It is currently difficult to find parking and a further tavern in the area will make this worse. According to Mr Brooks there are already ample establishments in West Perth that provide liquor beverages and food and a further tavern is not required. Mr Books is of the view that the applicant's current producer's licence should suffice.

*Deborah Moltoni*

- 18 Ms Moltoni owns an apartment which is a short distance from Gordon Street. Ms Moltoni has experienced people in the area who appear to be visibly affected by substances and, with limited transport options in the area, she is concerned that people drinking at the proposed tavern will hang around making noise and a nuisance of themselves or walk to the train station, which is next to where she lives.

*Sean Quartermaine*

- 19 Mr Quartermaine lives in Coolgardie Street, West Perth and has witnessed the problems associated with alcohol when drunks from the CBD walk up Murray Street looking for transport on a Saturday or Sunday night. He has witnessed confrontations with taxi drivers, damage to property, domestic issues and damage to his residential complex. According to Mr Quartermaine, assault rates in the CBD have exploded since the creation of small bars throughout the city and the proposed venue will simply serve as another stepping stone for many of the people who currently create problems in the residential area.

*All Night Long Pty Ltd*

- 20 All Night Long Pty Ltd is the licensee of Liquor Barons Perth City, located next to the applicant's proposed tavern. It was submitted that there are a number of licensed venues within walking distance of the proposed tavern capable of selling packaged liquor and the applicant has undertaken no analysis of the liquor products available at these premises. According to this objector, the evidence presented by the applicant is not compelling and should be given no weight by the licensing authority. Also, it was asserted that the applicant has not had sufficient regard to the impacts and effects that spirits may have of consumers and therefore the grant of the application may contribute to alcohol-related harm.
- 21 Consequently, it was submitted that the application is based upon general assertions not supported by evidence and the application was motivated by self interest, not the public interest.

*Guat Soh*

- 22 This objector is the owner of an apartment at 611 Murray Street, West Perth and does not wish to expose their tenants to anti-social behaviour and noise which may result from the grant of the application.

**Submissions on behalf of the Commissioner of police**

- 23 The Commissioner intervened for the purpose of making representations regarding trading conditions that might be imposed if the application is granted. The Commissioner is not opposed to the approval of the application, however it was submitted that, in order to preserve the current good nature of the locality and to minimise any potential harm, the imposition of trading conditions is necessary.

- 24 The Commissioner supported the conditions proposed by the applicant as being constructive towards minimising any negative impact that the premises may have on the local community. In addition to those conditions, the Commissioner recommended conditions relating to trading hours; music that can be played at the venue; and responsible server practices.

### Determination

- 25 The applicant currently has a producer's licence for the subject premises, however, due to the limitations of that licence, the applicant now seeks a tavern licence in order to provide an enhanced hospitality experience to its patrons. The applicant is primarily a producer of artisan spirits and the business to be conducted under the licence will have a strong focus on liquor produced by the applicant for consumption on the premises, and as packaged liquor for consumption off the premises. The proposed tavern will be a small intimate venue catering for no more than 50 patrons at any one time. Food will be available at all times during trading hours. Patrons will be able to view the distilling facilities and see firsthand how the spirits are made.
- 26 Section 38(2) of the Act imposes a positive obligation upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest. The expression 'in the public interest' is not defined under the Act, but imports a discretionary value judgement 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).
- 27 In its determinations, the licensing authority is bound to take into account the objects of the Act which are set out in s 5 (refer *Woolworths v Director of Liquor Licensing* (2013) 45 WAR 446).
- 28 The primary objects of the Act are:
- a) to regulate the sale, supply and consumption of liquor;
  - b) to minimize harm caused to people, or any group of people, due to the use of liquor; and
  - c) 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.
- 29 The secondary objects of the Act are:
- a) 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;

[(b) and (c) deleted]

d) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and

e) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

30 The licensing authority is also entitled (but not bound) to take in to account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.

31 The applicant submitted a PIA to support its application, which included public questionnaires, a public survey and various letters of support. The applicant submitted that the grant of the application will provide the public, and tourists, with a unique experience and the size and style of operation of the venue, together with relevant conditions on the licence, will ensure that the business conducted under the licence does not negatively impact on the amenity of the surrounding neighbourhood.

32 There were a number of objections to the grant of the application, mainly from local residents. These objectors raise similar concerns that the grant of the application may exacerbate the existing problems in the area relating to anti-social behaviour and lack of parking.

33 Pursuant to s 73(10) of the Act, the burden of establishing the validity of any objection lies on the objector. Whilst I accept that the concerns of the resident objectors are genuinely held and the locality may experience some alcohol-related problems, I am nonetheless, of the view that the residents' concerns about the potential negative impact of the proposed tavern are largely speculative, and not supported by any probative evidence. The proposed tavern is very small by industry standards and is unlikely to unduly contribute to the existing levels of alcohol-related harm in the area, or unduly contribute to traffic and parking problems.

34 The objection by All Night Long Pty Ltd (the licensee of Liquor Barons Perth) would appear to be nothing more than an attempt to restrict competition and protect its market share and there is nothing of substance in its grounds of objections and supporting material, particularly in light of the evidence submitted by the applicant which indicates that a representative of the objector contacted the applicant and indicated that it would support the application if conditions were imposed on the licence and a written agreement to this effect executed between the parties.

35 I therefore find that the objectors have failed make out their grounds of objection and discharge their onus as required under s 73(10) of the Act.

36 The Commissioner intervened to make representations regarding conditions that should be imposed on the licence, if granted. The applicant has essentially agreed to those conditions.

- 37 Consequently, in consideration of the evidence submitted, I am satisfied that the grant of the application would be consistent primary object 5(1)(c) of the Act, and the secondary object of facilitating the use and development of licensed facilities reflecting the diversity of the requirements of consumers (object 5(2)(a)). However, another primary object of the Act is to minimise alcohol-related harm in the community. There is no evidence before me to indicate that the area in which the premises is to operate is overburdened with alcohol-related harm above what might normally be expected in the community or the risks associated with the grant of the application could not be minimised through the imposition of appropriate conditions.
- 38 I am therefore satisfied that the grant of the application is in the public interest as required under s 38(2) of the Act. In determining the appropriate conditions for the licence I have been guided by the applicant's submissions and concessions.
- 39 The tavern licence will be subject to the following conditions:

Trading hours

Monday to Thursday	11 a.m. to 9 p.m.
Friday and Saturday	11 a.m. to 10 p.m.
Sunday	11 a.m. to 9 p.m.

On Christmas Day and Good Friday liquor may only be sold ancillary to a meal supplied by the licensee.

On ANZAC Day – no trading before 12 noon.

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.
- Only liquor produced by the licensee is permitted to be sold as packaged liquor for consumption off the premises.
- The sale of packaged liquor is prohibited after 8 p.m.
- The licensee must maintain a spirit producing distillery at the premises.
- The licensee must have and maintain a CCTV system compliant with the policies of the Director of Liquor Licensing.
- Food is to be available during all trading hours.
- No more than 50 patrons are permitted on the licensed premises at any one time.
- Seating for at least 24 patrons will be available at all times except for private pre-arrange functions.



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- Any recorded music or live entertainment (restricted to acoustic solo or duo acts) must be background in nature only, sufficient to allow normal conversation to occur.
  - Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available at all times.
  - 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'.
  - 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.
  - 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:
    - Coffin Cheaters;
    - Club Deroes;
    - Gods Garbage;
    - Gypsy Jokers;
    - Outlaws;
    - Finks;
    - Rebels;
    - Comancheroes;
    - Hell's Angels;
    - Rock Machine; and
    - Mongols.
    - Lone Wolf
    - Bandidoes

#### 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:

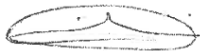
- (i) be immodestly or indecently dressed on the licensed premises, and/or
  - (ii) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
- (b) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited 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.

40 The conditional grant of the tavern licence is 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 13 June 2014;
- 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 29 May 2016 pursuant to s 62(4)(c) of the Act.
- 41 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 42 Producer's licence 6180149378 is surrendered from the date of this decision.
- 43 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.
- 44 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