

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

**APPLICANT:** THE RICH FIELD NEXT CHAPTER PTY LTD

**PREMISES:** ISLE OF VOYAGE ELIZABETH QUAY

**PREMISES ADDRESS:** FLORENCE HUMMERSTON BUILDING ELIZABETH QUAY PERTH

**APPLICATION ID:** A000190002

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

**DATE OF DETERMINATION:** 22 APRIL 2016

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### **Introduction**

- 1 This is an application by The Rich Field Next Chapter Pty Ltd (the applicant) for the conditional grant of a tavern restricted licence for premises to be known as Isle of Voyage Elizabeth Quay and located at the Florence Hummerston Building, Elizabeth Quay. 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, pursuant to s 69 of the Act, Notices of Intervention were lodged by the Executive Director Public Health (The EDPH) and the Commissioner of Police (the Commissioner).
- 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 applicant's evidence and submissions**

- 4 The applicant seeks a tavern restricted licence for premises to be located in the historic Florence Hummerston Kiosk, which is being reconstructed upon the island located in the centre of the Elizabeth Quay development in the Perth CBD. The proposed tavern will be a multi-use licensed facility that will become a destination point and tourist attraction in its own right.
- 5 The proposed venue will incorporate a ground level floor area of 300sqm and alfresco area of 362sqm. The applicant's vision for the venue is to provide Elizabeth Quay with vibrant, multi-use premises that will offer the following services:
  - cafe/restaurant – all day dining from light snacks to meals with full restaurant service;
  - liquor services;

- kiosk – quick service items and takeaway, including coffee, sandwiches, salads and soft drinks (i.e. non-alcoholic drinks only); and
  - function venue, catering to small and large groups.
- 6 According to the applicant, in order to meet the needs of the varied group of patrons that the venue will attract (i.e. inner city residents, city workers and professionals, tourists and visitors and business owners and corporate clients), the venue will provide a wide variety of food and beverage offerings throughout the day and evening for patrons to enjoy.
- 7 The proposed premises will also be able to cater for a variety of different styles of functions including birthdays, weddings and corporate events. Depending on the size of the function group and the customer's needs, functions may be held either inside or in the licensed alfresco area.
- 8 The applicant submitted a Public Interest Assessment (PIA) which provided information on the applicant's proposed manner of trade; the antecedents of the applicant; data on the locality surrounding the proposed licensed premises; history and background to the development; the Metropolitan Redevelopment Authority's vision for Elizabeth Quay; and various legal submissions. The applicant also addressed the matters set out in s 38(4) of the Act.
- 9 In conclusion, the applicant submitted that the grant of the application was in the public interest because:
- the grant will not result in harm or ill-health due to the consumption of liquor;
  - there will be no adverse impact upon the amenity of the locality;
  - the granting of the application will enhance the amenity of Elizabeth Quay and the locality in general;
  - the granting of the application will add to the diversity and attractions at Elizabeth Quay and generally within the locality, supporting the activation of the City and attracting visitors to the Perth CBD;
  - the application is in line with the visions of the relevant planning and tourism authorities for the locality; and
  - the grant will not result in any anti-social behaviour, noise or disturbance through the operation of the venue.

### **The interveners' evidence and submissions**

#### *The Executive Director Public Health*

- 10 The EDPH intervened in the application to make representations regarding the minimisation of harm or ill-health caused to people, or any group of people, due to the use of liquor which might result from the grant of the application. The grounds for the intervention were premised on the following:

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- the applicant is applying for a larger format premises under a tavern restricted licence, and research has identified taverns as a higher risk premises for harm;
  - Elizabeth Quay is heralded to become a premier tourism and entertainment district attracting a large volume of people. An opportunity exists to minimise alcohol-related harm in this emerging locality; and
  - if the licence is granted, conditions consistent with the applicant's proposed manner of trade would be an important harm minimisation approach.
- 11 The EDPH submitted that research has established that tavern licences, by their nature, can be higher-risk licence type for harm. This research has demonstrated that, as a function of the quantity of liquor sold, there is an association between different liquor licence types and varying degrees of risk for serious alcohol-related harm. This research provides evidence linking hotels/taverns to a higher risk for assaults, drink-driving and road crashes. Given the size of the proposed venue, there is the potential for it to accommodate a larger patron capacity and larger venues can pose a greater risk of harm, both in relation to activity inside a venue and once patrons leave. A larger patron capacity means greater numbers of people consuming alcohol in an area, and makes it more difficult for staff to effectively monitor the consumption of alcohol by patrons to prevent risk factors, such as drunkenness.
- 12 According to the EDPH, the Elizabeth Quay development will offer a range of services, facilities and entertainment events to attract local, interstate and international patrons, including a number of licensed premises. It is important to consider the potential impact that large numbers of alcohol affected people leaving a venue, to mix with others, may have on alcohol-related harm in the locality and a negative image which may result. Studies have found that the clustering of licensed premises in entertainment areas may influence harms by their capacity to draw large numbers of people together for sustained periods of time. It was therefore submitted by the EDPH that measures which aim to minimise the potential negative impact of alcohol-related harm in the locality are important considerations. Harm minimisation conditions will support Elizabeth Quay to maintain its image as a premium tourist destination that caters for large volumes of people visiting the locality. The EDPH recommended consideration of the following conditions:
- food is to be available at all times;
  - the premises should have a minimum amount of seating, with the exception of pre-booked functions or events;
  - music played should be at a level that permits conversation to occur;
  - low alcohol liquor and non-alcoholic drinks to be available during all hours of trade;
  - no liquor is to be sold or supplied by virtue of their 'emotive' title and known as 'laybacks', 'shots', 'shooters', 'test tubes', 'jelly shots', 'blasters', and 'bombs'; and
  - no liquor is to be supplied mixed with energy drinks.

*The Commissioner of police*

- 13 Similar to the EDPH, the Commissioner intervened to make representations regarding the risks associated with the grant of the application and recommend the imposition of various conditions on the licence, if granted, to minimise those risks.
- 14 According to the Commissioner, it is appropriate to impose conditions to ensure compliance with the Act, mitigate any potential harm and reduce the potential for the operation of the premises to cause disturbance and/or amenity issues. In this regard, the Commissioner recommended conditions relating to the provision of food, availability of low alcohol and non-alcoholic drinks, security, seating and responsible server practices.
- 15 In respect of security requirements, the Commissioner noted the applicant's intent to utilise staff to provide RSA, security and (presumably) identification checks for suspected juveniles. The commissioner submitted that the utilisation of crowd controllers for security would be a more significant harm minimisation strategy, enabling staff to focus on their primary roles. Crowd controllers are specifically utilised in licensed venues for the purpose of monitoring and maintaining the good order of the premises. In circumstances where refusals or removals are required, crowd controllers are trained specifically for their role in a non-confrontational and professional manner. They are also equipped to deal with those instances of aggression where physical intervention is required, unlike general staff or approved managers. Consequently, the Commissioner recommended crowd controllers are engaged each Friday and Saturday night from 5 p.m.
- 16 According to the Commissioner, he has outlined a number of conditions which will assist the licensee to manage the premises in such a way as to minimise harm to patrons who will resort to the premises and locality in general. By creating a concentration of licensed premises in an area without some form of minimal standards ratified, will increase the likelihood of harm caused to people due to the use of liquor.

**Determination**

- 17 The applicant seeks a tavern restricted licence for premises to be located within the Elizabeth Quay development. The proposed premises will provide a range of services to visitors to the area, including dining, liquor services, function facilities, takeaway food and non-alcoholic drinks. I have observed in a previous decision that the Elizabeth Quay project is an important initiative to revitalise the city centre, reconnecting the city with the Swan River, and will provide a range of new hotels, office buildings, retail outlets and places to eat and drink.
- 18 The applicant bears an onus, under s 38(2) of the Act, to satisfy the licensing authority that the grant of the application is in the public interest. In other words, there is no presumption in favour of the grant of an application and each application must be determined on its merits (refer s 16) based upon the evidence adduced by the parties.

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- 19 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).
- 20 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.
- 21 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.
- 22 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.
- 23 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.
- 24 The applicant submitted a detailed PIA and accompanying submissions to demonstrate that the grant of the application is in the public interest. I have carefully considered this material and I am satisfied that the grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act. The services and facilities to be provided by the applicant will cater to the diverse requirements of consumers visiting Elizabeth Quay and will assist in the proper development of the tourism industry in the State.
- 25 The interveners have sought the imposition of various conditions on the licence in order to mitigate the potential risks associated with the operation of the venue. The conditions proposed by the interveners are similar to the conditions suggested by the

applicant in its PIA. The applicant is therefore generally agreeable to these conditions with the exception of a condition requiring security personnel. The applicant submitted that it intends to engage crowd controllers if and when they are required and any such requirement will be determined once the venue commences trading. According to the applicant, Elizabeth Quay is not an established entertainment precinct, but rather, a new development and there are no available indicators of alcohol-related harm and/or ill-health associated with the operation of the Quay. The applicant opined that:

- the Act is quite clear in that the management of a licensed venue is the responsibility of the licensee in conjunction with the approved managers;
- the persons in the position of responsibility within the applicant company are experienced licensees and are well aware of their obligations under the Act; and
- the decision of when, where and how crowd controllers will be utilised, is a decision that rests with the licensee, and, will be determined based upon the licensee's requirements at particular times and trading periods.

26 However, the applicant submitted that if a condition requiring crowd controllers is considered necessary, a starting time of 8 p.m. would be more appropriate than the recommended starting time of 5 p.m.

27 Research does establish that taverns can be a higher-risk licence type for harm. Also, there is the potential for persons who have been drinking at other establishments in the CBD to migrate to the proposed tavern to continue drinking and this is more likely to occur on a Friday evening. Therefore in consideration of the information submitted, I am of the view that crowd controllers should only be mandated on Fridays and from 5 p.m. This condition can be reviewed after the premises have been trading for a reasonable period. This condition is also consistent with the condition imposed on another similar premise in the area.

28 The applicant also sought a change to the standard wording of the Dress Standard condition relating to OMCG's. In my view, the standard wording of the condition as it applies to most other licensed venues is preferred.

29 With the imposition of these conditions, I am satisfied that the proposed premises can operate in a manner consistent with good order and propriety. Therefore, in terms of the harm minimisation object of the Act (object 5(1)(b)), there is nothing in the evidence before to conclude that the grant of the application poses an unacceptable risk to the community. I am therefore satisfied 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.

30 Consequently, having complied with all the necessary statutory requirements and conditions precedent to the application being granted, 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 19 November 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) The applicant lodging an executed lease for the premises to evidence compliance with s 37(5) of the Act.
- (f) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- (g) the applicant seeking confirmation of the grant on or before **22 April 2017** (12 months from the date of the decision) pursuant to s 62(4)(c) of the Act.

31 On confirmation of the conditional grant, the following conditions will be imposed on the licence:

Trading hours

The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.

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 played at the premises is to be at a level that permits conversation to occur.
- The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing.
- The maximum number of patrons permitted on the licensed premises at any one time shall not exceed 250 or such lesser number imposed by the local government authority.

- Seating is to be provided for a minimum of 80 patrons, except 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).
- Crowd controllers (licensed under the *Securities and Related Activities (Control) Act 1996*) are to be employed at a ratio of two crowd controllers for the first 100 patrons, and one crowd controller for each additional 100 patrons or part thereof, from 5 p.m. (or the time of opening the premises if after 5 p.m.) each Friday until 30 minutes after closing.

#### 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.
- 32 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.
- 33 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