

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: KU DE TA PERTH PTY LTD

PREMISES: KU DE TA PERTH

PREMISES ADDRESS: 306 RIVERSIDE DRIVE, EAST PERTH

APPLICATION ID: A000195375

NATURE OF APPLICATION: CONDITIONAL GRANT OF A TAVERN RESTRICTED LICENCE

DATE OF DETERMINATION: 22 JULY 2016

Introduction

- 1 This is an application by Ku De Ta Perth Pty Ltd (the applicant) for the conditional grant of a tavern restricted licence for premises to be located at 306 Riverside Drive, East Perth and to be known as Ku De Ta Perth. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 There were no objections to the grant of the application, however, pursuant to s 69 of the Act, the Executive Director Public Health (EDPH) and the Commissioner of Police (the Commissioner) lodged notices on intervention.
- 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 to establish licensed premises, trading under a tavern restricted licence, at the Point Fraser Recreational Reserve, within the new development known as "On the Point", which is an \$18 million tourism and hospitality development on the Swan River foreshore at the eastern gateway to the city. According to the applicant, the proposed tavern, which will have an overall capacity of 850 patrons, will have the following features:
 - a fine dining restaurant facing east, allowing for views over the Swan river;
 - a bar area set over the river;
 - a lounge area (as part of the bar area); and
 - an alfresco area on the boardwalk.
- 5 It was submitted by the applicant that Ku De Ta Perth marks the first expansion outside of Bali for the world famous Ku De Ta brand which defines itself as a "lifestyle

destination centred around food and beverage in a magical setting.” Many Western Australians and international tourists are familiar with the picturesque Bali beachfront destination Ku De Ta which is renowned for its sunsets as much as its upscale cocktails and gastronomic creations. The applicant’s aim is to create a similar venue, ‘Bali on the Swan”, enabling residents and visitors to Perth to experience the luxury of fine food and beverages in a spectacular setting without having to travel overseas.

- 6 The applicant lodged a Public Interest Assessment (PIA) to support its application. The PIA contained information on the applicant’s proposed manner of trade, the likely benefits to the community if the application is granted, the potential impact on the amenity of the surrounding area and addressed the matters set out in s 38(4) of the Act. The applicant also submitted 44 witness questionnaires.
- 7 In summary, it was submitted by the applicant that the proposed tavern will attract visitors to the Perth riverfront and will become a significant tourist attraction. The venue, which will have a prime waterfront location, will provide a unique recreational experience for patrons featuring 270 degree views over the river and a spectacular westward vista of sunsets over Kings Park and the Narrows Bridge.

The interventions

- 8 Both the EDPH and the Commissioner intervened to make representations regarding the risk of alcohol-related harm or ill-health specific to the application and sought the imposition of various conditions on the licence to mitigate those risks if the application was approved.

Determination

- 9 The onus is upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest (s 38(2)). 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).
- 10 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;
- 11 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

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- 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.
- 12 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.
- 13 The proposed tavern is to be part of a new tourism and hospitality development on the Swan River foreshore, at the eastern gateway to the city. I have considered the applicant's PIA and accompanying evidence and submissions, and I am of the view that the grant of the application would cater to the requirements of consumers for liquor and related services, and the grant of the application would promote the proper development of the liquor industry, the tourism industry and other hospitality industries in the State, as contemplated under object 5(1)(c) of the Act. I also believe the grant of the application would facilitate the use and development of licensed facilities reflecting the diversity of consumer requirements (refer object 5(2)(a) of the Act).
- 14 There is nothing in the evidence before me to suggest that the grant of the application would adversely impact on the amenity of the surrounding area or unacceptably contribute to alcohol-related harm in the community. I therefore find 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.
- 15 The only remaining issue for consideration is how the licence should be conditioned in light of the interventions from the EDPH and the Commissioner. The proposed conditions are generally consistent with the applicant's proposed manner of trade as submitted in its PIA. The applicant accepts that most of the proposed conditions are appropriate with some minor amendments. In framing the conditions of the licence, I have taken into consideration the views expressed by the parties.
- 16 Consequently, I am satisfied that the applicant has complied with all of the statutory requirements and conditions precedent to the application being granted, and 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 12 February 2016;
- (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 July 2017 (12 months from the date of the decision) pursuant to s 62(4)(c) of the Act.

17 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 850 or such lesser number imposed by the local government authority.
- Seating is to be provided for a minimum of 425 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.
- The licensee must install and operate an identification scanning machine which is to operate each Friday and Saturday from 10 p.m. for that part of the premises which incorporates the Main Bar, Champagne Bar and West Bar.
- 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 8 p.m. (or the time of opening the premises if after 8 p.m.) each Friday and Saturday until 30 minutes after closing for that part of the premises which incorporates the Main Bar, Champagne Bar and West Bar.

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,

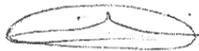
but does not include any part of the premises which is reserved for the private use of the licensee, manager or employees of the licensee and to which the public does not have access.

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.
- 18 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.
- 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