

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: FUNDAY INVESTMENTS PTY LTD

INTERVENOR: CHIEF HEALTH OFFICER

PREMISES: PERTH'S OUTBACK SPLASH

PREMISES ADDRESS: 1635 NEAVES ROAD BULLSBROOK WA 6084

APPLICATION ID: A440872670

MATTER: APPLICATION FOR THE GRANT OF A SPECIAL FACILITY LICENCE – TOURISM

DATE OF DETERMINATION: 30 APRIL 2020

DATE OF REASONS: 8 JUNE 2020

Introduction

1. On 16 September 2019, Funday Investments Pty Ltd (the applicant) lodged an application for the grant of a special facility licence in respect of premises situated at 1635 Neaves Road, Bullsbrook and to be known as Perth's Outback Splash.
2. The application was made pursuant to ss 46, and 68 of the *Liquor Control Act 1988* (the Act) and more specifically the applicant sought the grant of a special facility (Tourism) licence in accordance with r 9A(7) of *Liquor Regulations 1989* (the regulations).
3. The application was processed in accordance with instructions issued by the Director and while no objections were lodged, a notice of intervention was lodged by the Chief Health Officer (the CHO), pursuant to s 69 of the Act.
4. The application was referred to me for determination, under delegation, pursuant to s 15 of the Act.
5. In view of the intervention lodged, a document exchange process was initiated between the parties. By letter dated 20 March 2020, each party was afforded the opportunity to lodge any further evidence and submissions to be taken into consideration in the determination of the application.
6. Pursuant to ss 13 and 16 of the Act, the application was determined, on the papers, and after consideration of the information presented, I was satisfied that:
 - the applicant had discharged its onus under s 38(2) of the Act, that the grant of the application was in the public interest;
 - the applicant failed to discharge its onus under the Act, in respect of that part of the application regarding possible special events and functions;
 - in view of the intended manner of trade and the layout of the proposed premises, the grant of a special facility licence was appropriate; and

- the grant of the application was unlikely to result in a degree of harm or ill-health to people or to any group of people, in the locality, which may be regarded to be unacceptable.
7. Accordingly, a notice of decision dated 30 April 2020, was issued to the parties pursuant to s 18AA of the Act, in which the application was granted, and the special facility licence was issued subject to the following conditions:

“TRADING HOURS

Pursuant to section 98C of the Act the licensee is authorised to sell and supply liquor Monday to Sunday from 10 a.m. to 12 midnight.

Trading on Christmas Day, Good Friday or before noon on ANZAC DAY, is prohibited.

TRADING CONDITIONS

1. *Pursuant to s 46(3) of the Act and r 9A(7), r 9A(8) and r 9A(9) of the regulations, this licence is granted for the prescribed purpose of “Tourism” authorising the sale and supply of liquor for consumption on the licensed premises to persons likely to be attracted to, or present at Perth’s Outback Splash.*
2. *The predominant purpose of these premises must, at all times, remain as an amusement and tourist venue with the provisions of games and activities such as waterslides, mazes, mini golf and etc. Therefore, the manner of trade and the premises must reflect these purposes.*
3. *The sale of packaged liquor for consumption off the licensed premises is prohibited.*
4. *Food must be available during trading hours.*
5. *All music and entertainment provided on the licensed premises must be provided at background levels that allow normal conversation to occur.*
6. *All liquor is to be dispensed in single use disposable cups or cans. The disposable of liquor in glass or the use of glassware is prohibited.*
7. *The licensee shall promote drinks which offer liquor by virtue of their ‘emotive’ titles such as, but not limited to ‘laybacks’, ‘test tubes’, ‘shots’, ‘jelly shots’, ‘blasters’, or ‘bombs’.*
8. *Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available at all times.*
9. *Pursuant to s 120(1)(e) of the Act, unaccompanied juveniles are permitted to enter and remain on the licensed premises until 5 p.m.*
10. *The maximum number of persons (excluding responsible persons and authorised officers) that may be accommodated on the licensed premises, at any one time, must not exceed 1,500 persons.*

11. *A CCTV video surveillance system must be in place and operational. The system must comply with the minimum requirements identified and be maintained in accordance with the Director's 'Safety and Security at Licensed Premises' policy.*
12. *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).*

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 film or computer game or "Category 1 – Restricted" or "Category 2 – Restricted" publication, 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 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.”

8. By email dated 7 May 2020, the CHO requested written reasons for the notice of decision in accordance with s 18AA(4) of the Act.
9. Accordingly, the submissions and the evidence of the parties to these proceedings are briefly summarised below and my reasons follow.

Submissions of the applicant

10. The applicant sought the grant of a special facility licence in accordance with s 46 of the Act, for the specific purpose prescribed in r 9A(7) of the regulations as “Tourism”; for premises situated at 1635 Neaves Road, Bullsbrook.
11. The applicant submitted that the premises to which the application related is one of Perth’s most established amusement and tourist venues. The venue offers guests of all ages a wide variety of games, activities and experiences.
12. The proposed licensed premises comprises the entire park area of approximately 55,970m². However multiple areas throughout the park will be unlicensed including the water slides, mazes and other features.
13. The applicant proposes to provide an ancillary liquor service to meet the requirements of persons attending venue for liquor, and the liquor is to be sold and supplied at service counters situated within the park in cans or disposable cups.
14. The applicant’s Public Interest Assessment (PIA) included the applicant’s details and background; intended manner of trade; support for the application and addressed the matters contained in s 38(4) of the Act. A letter of support was also lodged by the Chief Executive Officer of Tourism Council Western Australia.

Submissions of the CHO

15. The CHO intervened in the application to make representations in accordance with s 69(8a)(b) of the Act. The CHO made representations that:
 - Perth’s Outback Splash is an amusement venue that is highly attractive to families, including children and young people;
 - alcohol will have a prominent profile at Perth’s Outback Splash given the entire premises is intended to be licensed;
 - there are child safety concerns regarding juveniles interacting with adults under the influence of alcohol;
 - there are child safety concerns regarding parental alcohol consumption and/or potential lack of parental supervision around amusement facilities, including water slides;

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- children and young people are at-risk group for alcohol-related harm. There are harm and ill-health implications with unaccompanied juveniles permitted at the venue and the applicant's intention to allow adults to drink alcohol through the entire premises; and
 - the exposure of children and young people to the sale and consumption of adults drinking in the context of child-focused leisure activities can create a favourable association between the two for children. This can increase their risk of harm by influencing their attitudes towards alcohol and future drinking behaviours.
16. The CHO's representations focused on the potential risk of harm and ill-health to children and young people being on the licensed premises, their interaction with adults who may be under the influence of alcohol and their exposure to adults consuming liquor on the licensed premises.
17. As a harm minimisation approach, the CHO suggested trading conditions as follows:
- Liquor may only be sold, supplied and consumed at the Iguana Café to persons who are seated at a table, ancillary to a meal, with the exception of pre-booked functions and events.
 - A pop-up bar is limited to pre-booked special events and is to be positioned away from child-focused amusements. 9(a) a designed pop-up area is to be clearly controlled and marked so as to delineate it from other areas and from people not attending that event.
 - Alcohol products are not permitted to be visible behind the serving counter at the premises.
 - Liquor advertising at the premises may only take the form of modest signage which informs the public of product pricing at point of sale.
 - Low alcohol liquor and non-alcoholic drinks will be available to purchase during all trading hours.
 - No liquor to be sold or supplied by virtue of their 'emotive' titles and known as 'laybacks', 'shots', 'shooter', 'test tubes', 'jelly shots', 'blasters' or 'bombs'.
 - Food is to be available at all times.
18. In conclusion the CHO submitted:
- There are harm and safety risks associated with the applicant's proposal to licence the entire venue, particularly for children and young people.
 - It is acknowledged that it is the decision of the Director to grant or refuse a licence, as is the placement of any conditions on the licence.

Closing submissions of the parties to proceedings

19. The applicant in its submissions lodged in response to the CHO's intervention highlighted its management plan, staff training and strategies to ensure compliance with the Act, particularly with regard to juveniles who may enter and remain on the licensed premises.
20. The CHO did not lodge any further information or representations.

Determination

21. Section 46(1) of the Act provides that the licensing authority shall not grant a special facility licence except for a prescribed purpose.
22. Regulation 9A(7) of the regulations provides:

“A special facility licence may be granted for the purpose of allowing the sale of liquor to persons likely to be attracted to, or present at, a place that, in the opinion of the licensing authority, is or will become –

 - (a) An attraction for tourist; or*
 - (b) A facility that enhances the State’s tourist industry.”*
23. Regulation 9A(7) of the regulations provide the scope and the purpose for which a special facility licence may be granted. Section 46(3) of the Act provides that if a special facility licence is granted, it must be granted on such terms and conditions as are necessary to ensure that the licence is used, only for the prescribed purpose for which it is granted.
24. In this case, the applicant sought approval to sell liquor and supply liquor for consumption on the proposed licensed premises to persons attracted to the venue by reasons of the activities provided at the amusement park.
25. As the applicant was seeking a licence of a type to which s 38(1)(a) of the Act, does not apply and the Director did not decide in accordance with s 38(1)(c) of the Act that the provisions of s 38(2) of the Act should apply, there was, in fact, no onus on the applicant to satisfy the licensing authority that the grant of the application was in the public interest.
26. However while the applicant had no burden to satisfy the licensing authority that the grant of the application was in the public interest, pursuant to s 33 of the Act, the licensing authority has an absolute discretion to grant or refuse an application under the Act on any ground, or for any reason, that the licensing authority considers in the public interest, provided that the application was dealt with on its merits within the scope of the Act (refer *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC; and *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).
27. The primary objects of the Act, as set out in s 5 are:
 - to regulate the sale, supply and consumption of liquor;
 - to minimize 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.
28. The secondary objects as set out in s 5(2) 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 persons directly or indirectly involved in, the sale, disposal and consumption of liquor; to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act; and to encourage responsible

attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interest of the community.

29. The applicant sought a special facility licence to provide persons attracted to the amusement park with the option to purchase and consume liquor should they wish to do so.
30. The proposed premises comprise most of the amusement park of approximately 55,970 m², which may accommodate up to 1,500 patrons. The applicant proposed to sell and supply liquor in cans or disposable cups from food and beverage service counters located throughout the amusement park. Multiple areas throughout the amusement park such as the water slides, the mazes and other features remain unlicensed.
31. The CHO intervened in the application for the purpose of making representations which recommended the imposition of trading conditions, on the licence, as a harm minimisation approach regarding juveniles resorting to the amusement park. In this regard, the CHO, as intervenor, carried no burden of proof (per Greaves J. *Gull Petroleum (WA) Pty Ltd (1998) LLC No. 13/98*).
32. In responding to the representations of the CHO, the applicant reiterated its management plan, staff training and its strategies to ensure compliance with the Act regarding juveniles.
33. In considering this matter, I took into account the information presented and had regard to the following:
 - A special facility licence cannot be granted except for a prescribed purpose. In this case, in accordance with regulation 9A(7) of the regulations.
 - The layout and size of the proposed licensed premises.
 - The applicant's intended manner of trade, that is, that the liquor sold and supplied is an ancillary service to the principal purpose of the amusement park.
 - The Act sets out the circumstances under which juveniles may enter and remain on licensed premises.
 - The provisions of s 121 of the Act regarding offences as to juveniles in particular s 121(2) of the Act which provides-
"A licensee, and any other person by whom liquor is sold or supplied there, who permits a juvenile to consume liquor on the licensed premises, whether or not that liquor was sold or supplied there, commits an offence.
Penalty:
(a) For the licensee or a manager, a fine of \$10 000;
(b) For anyone else, a fine of \$4 000.
 - The provisions of s 167(3) of the Act which provide that an infringement notice may be issued by an authorised officers for a modified penalty of 10% of the maximum fine for breaches of s 121(2) of Act i.e. a \$1,000 infringement to the licensee and/or manager and \$400 to any bar staff.
 - The Director's policy "*Juveniles present on licensed premises for reasons other than work/training policy.*".

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34. On the basis of the information before me I was satisfied that the grant of the application was consistent with objects contained in s 5(1)(c) of the Act, to cater for the requirements of consumers for liquor and related services, and s 5(2) of the Act to facilitate the use and development of licensed premises reflecting the diversity of the requirements of consumers and that there was no ground to consider, in the public interest, why the application should be refused.
35. Therefore, I was prepared to exercise my discretion under s 33 of the Act and grant the application for the purpose sought.
36. In considering the suggested trading conditions of the CHO, I concluded that by prohibiting unaccompanied juveniles from being on the licensed premises after 5 p.m. (unaccompanied juveniles being allowed only to enter and remain on the licensed premises during day light hours) was sufficient to enable the licensee and its staff to ensure compliance with the requirements of the Act.
37. 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.



Eric Romato
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING
8 June 2020