

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: MELLEN PROMOTIONS THEATRE PTY LTD

PREMISES: THE PICCADILLY

PREMISES ADDRESS: 700 - 704 HAY STREET MALL PERTH WA 6000

APPLICATION ID: A701138976

NATURE OF APPLICATION: APPLICATION FOR THE CONDITIONAL GRANT OF A SPECIAL FACILITY LICENCE

DATE OF DETERMINATION: 20 May 2020

Introduction

1. On 14 February 2020, an application was lodged by Mellen Promotions Theatre Pty Ltd (the applicant) for the conditional grant of a special facility licence in respect of premises to be situated at 700 – 704 Hay Street Mall, Perth and to be known as The Piccadilly.
2. The application was made pursuant to ss 46, 62 and 68 of the *Liquor Control Act 1988* (the Act) and more specifically, the applicant seeks a special facility licence for the prescribed purposes of “Theatre or cinema” and “Reception or function centre”, in accordance with r 9A(4) and r 9A(5) of the *Liquor Control Regulations 1989* (the regulations).
3. The application was processed in accordance with instructions issued by the Director of Liquor Licensing (the Director). No objections were lodged. However, pursuant to s 69 of the Act, the Chief Health Officer (the CHO) lodged a notice of intervention.
4. By letter dated 9 April 2020, a document exchange process was initiated between the parties. Each party was afforded the opportunity to lodge all evidence and closing submissions to be taken into consideration in the determination of the application.
5. Pursuant to ss 13 and 16 of the Act, the application will be determined on the papers. The submissions and the evidence of the parties to these proceedings are briefly summarised below.

Submissions of the applicant

6. The applicant seeks the grant of a special facility licence in accordance with s 46 of the Act, for two specific purposes; namely for the purpose prescribed in r 9A(4) of the regulations as “Theatre or cinema”; and for the purpose prescribed in r 9A(5) of the regulations as “Reception or function centre” for premises situated at 700 – 704 Hay Street Mall, Perth.
7. The applicant submitted that it proposes a sophisticated venue which will be used for a variety of purposes including:

- Musical Theatre;
 - Comedy Acts;
 - Music concerts;
 - Kid's Shows/Matinees;
 - Classical Theatre;
 - Ballet; and
 - Perth International Arts Festival.
8. The proposed licensed premises will comprise 4 levels, namely the ground level, level 1, level 2 and level 3. The proposed licensed premises will include two bars, one located on level one (the downstairs bar) and the other on level 2 (the upstairs bar).
 9. The applicant proposes to provide an ancillary liquor service to complement the requirements of persons attending or participating in shows and events held at the venue. In this regard, it was submitted that typically the bars will open 2 hours before an event or show and close one hour after the event or the show.
 10. Therefore, patrons will be attracted to the venue by reason of the performers, attractions or the functions conducted thereon and not primarily because of the availability of liquor.
 11. It was submitted that the principal persons involved in the applicant company are established and experienced operators in conducting and managing events, including managing licensed premises.
 12. The applicant's Public Interest Assessment (PIA) included the applicant's details and background; history of the site; intended manner of trade; and addressed the matters contained in s 38(4) of the Act. It was submitted that the use of the premises as a licensed cinema and function centre will not impact adversely on the amenity of the locality.
 13. To demonstrate consumer support and the requirements for the licence, the applicant submitted that it has consulted with some of the local residents and businesses in the Perth CBD who completed an on line survey, lodged various articles, witness questionnaires and letters of support.

Submissions of the CHO

14. The CHO intervened in the application to make representations in accordance with s 69(8a)(b) of the Act. The CHO made representations that:
 - the venue is large, with up to 1,100 patrons permitted at any one time, and alcohol will be a key service on offer;
 - the premises will offer a range of entertainment catering to families, including children and young people;
 - the applicant seeks to licence the entire venue and allow unaccompanied juveniles to attend the venue during all trading hours (6:00am to 1:00am);

- there are harm and ill-health implications with unaccompanied juveniles being permitted at the venue, and allowing adults to consume alcohol during family/child-focused performances and shows;
 - adult alcohol consumption during child-focused entertainment can create a favourable association for children between alcohol and the entertainment. This can increase a child's risk of harm by influencing their attitudes towards alcohol and future drinking behaviours;
 - unaccompanied children attending the venue will be exiting into a locality within which violence consistently occurs, particularly in night time hours; and
 - if granted, it is suggested harm minimisation conditions be placed on the licence, to reduce the risk of alcohol-related harm to children and young people, both now and in the future.
15. 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 exposure to adults consuming liquor on the licensed premises and on exiting the premises, the juveniles will be in a locality within which violence consistently occurs.
16. As a harm minimisation approach, the CHO suggested trading conditions as follows:
- Liquor may not be sold, supplied or consumed at child-focused performances (i.e. children's shows/matinees).
 - No unaccompanied juveniles are permitted at the premises past 8 p.m. on any day.
 - Food is to be available at all times.
17. In conclusion the CHO submitted:
- There are harm and ill-health concerns in respect to the presence of juveniles at The Piccadilly and the availability and visibility of alcohol to children and young people at the venue.
 - The inclusion of alcohol in relation to child-focused entertainment is not supportive of efforts to reduce the risky drinking culture in the community.
 - The intervention provides information and evidence in support of the number of suggested harm minimisation conditions to be placed on the licence.
 - It is understood 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

18. The CHO reiterated her grounds of concerns and the suggested trading conditions to be imposed on the licence as an important harm minimisation approach.
19. The applicant in its submissions opposed the imposition of the following trading conditions:
- Liquor may not be sold, supplied or consumed at child-focused performances (i.e. children's shows/matinees).

- No unaccompanied juveniles are permitted at the premises past 8 p.m. on any day.
20. In respect of the suggested condition regarding children-focused performances the applicant submitted *"Whilst some shows could be clearly and easily classified as children's shows, the distinction may not always be obvious"* and *"Matinees are not purely for juveniles, matinees are very often targeted at adults, including retirees."*
 21. In respect of unaccompanied juveniles being prohibited after 8 p.m. the applicant submitted *"The applicant does not wish this condition to be imposed."*
 22. In its submissions the applicant reiterated its intended manner of trade at the proposed licensed premises, the fact the anticipated volume of liquor sales and consumption of liquor will be relatively small and submitted that it has considered very carefully the issue surrounding juveniles being on the licensed premises and the management of the proposed licensed premises.

Determination

23. Section 46(1) of the Act provides that the licensing authority shall not grant a special facility licence except for a prescribed purpose.
24. Regulation 9A(4) of the regulations provides:

"A special facility licence may be granted for the purpose of allowing the sale of liquor at a theatre or cinema to persons attending a performance or firm at the theatre or cinema"
25. Regulation 9A(5) of the regulations provides:

"A special facility licence may be granted for the purpose of allowing the sale of liquor at a reception or function centre (being premises primarily used as a venue for functions and receptions) to persons attending a reception or function at the centre."
26. Regulations 9A(4) and 9A(5) 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. In this regard, a special facility licence may be granted for more than one purpose.
27. In this case, the applicant seeks approval to sell liquor and supply liquor for consumption on the proposed licensed premises to persons attending the screening of a film, a performance, a reception or a function.
28. As the applicant is seeking a licence of a type to which s 38(1)(a) of the Act, does not apply and the Director has not decided in accordance with s 38(1)(c) of the Act that the provisions of s 38(2) of the Act should apply, there is no onus on the applicant to satisfy the licensing authority that the grant of the application is in the public interest.

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29. However while the applicant bears no burden to satisfy the licensing authority that the grant of the application is 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 is 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).
30. 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.
31. 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.
32. The applicant seeks a special facility licence to provide persons attending the venue with the option to purchase and consume liquor should they wish to do so. The proposed premises, with an estimated fit out budget of \$4m, is part of the overall \$13m redevelopment of The Piccadilly arcade situated in the Hay Street City Mall and will be able to accommodate up to 1,100 patrons.
33. The proposed premises will cover 4 levels and comprise function rooms, kitchen facilities and auditoriums for the screening of films and the conducting of live acts.
34. The CHO intervened in the application for the purpose of making representations which seek the imposition of trading conditions, on the licence, as a harm minimisation approach regarding juveniles resorting to The Piccadilly. In this regard, the CHO, as intervenor, carries no burden of proof (per Greaves J. *Gull Petroleum (WA) Pty Ltd (1998) LLC No. 13/98*).
35. In responding to the representations of the CHO, the applicant while agreeing with the suggested trading condition to provide food, opposed the imposition of the suggested trading conditions surrounding juveniles.
36. In considering this matter, I have taken 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 regulations 9A(4) and 9A(5) of the regulations.

- The Act sets out the circumstances under which juveniles may enter and remain on licensed premises.
 - The Director's policy regarding juveniles *"Juveniles present on licensed premises for reasons other than work/training policy."*
 - The Director's policy regarding juvenile functions conducted on licensed premises in accordance with s 126B(3) of the Act includes *"..., due to an increase in anti-social behaviour occurring in the vicinity of the central Perth CBD, including Northbridge, the Director of Liquor Licensing has determined that it is not in the public interest to approve functions in licensed premises that attract juveniles to those areas."*
 - The Director's decision dated 20 July 2018 in which the Director, in accordance with s 120(1)(e) of the Act, permitted juveniles to enter and remain on the licensed premises of Palace Cinemas Raine Square, situated at 300 Murray Street, Perth subject to *"the juvenile is there for the purpose of viewing a film or performance and must be the holder of a valid ticket on the day"*; and *"an employee of the licensee must check each cinema every 15 minutes to ensure compliance with the Act"*.
 - The special facility licence in respect of the licensed premises known as Palace Cinemas Raine Square, situated at 300 Murray Street, Perth was granted on 13 June 2018 in accordance with regulation 9A(4) of the regulations, namely "Theatre or cinema".
37. On the basis of the information before me I am satisfied that the grant of the application is 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 there is no ground to consider why the application should be refused, in the public interest.
38. Therefore, I am prepared to exercise my discretion under s 33 of the Act and grant the application for the purposes sought.
39. Also, in considering the suggested trading conditions of the applicant and the CHO, I am of the opinion, that it is appropriate to impose trading conditions which reflect the requirements of the Act, the tenor of the application and the Director's policies.
40. Accordingly, as I am satisfied that the applicant has complied with all the necessary statutory criteria, requirements and conditions precedent to the application being granted, pursuant to s 46(3) of the Act and in accordance with regulations 9A(4) and 9A(5) of the regulations, the application for a special facility licence is conditionally granted for the prescribed purposes of "Theatre or cinema" and "Reception or function centre" subject to the following:
- CONDITIONAL GRANT
- (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 14 February 2020;

(d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements dated 4 March 2020 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;

(f) the applicant seeking confirmation of the grant on or before 19 May 2021 pursuant to s 62(4)(c) of the Act;

WHEN THE LICENCE COMMENCES OPERATION IT WILL BE SUBJECT TO THE FOLLOWING CONDITIONS: -

TRADING HOURS

Pursuant to section 98C of the Act the permitted trading hours are:

1. Monday to Sunday from 6 a.m. to 1 a.m. the following day.
2. No trading is permitted before noon on ANZAC Day.

TRADING CONDITIONS

1. Pursuant to s 46(3) of the Act and r 9A(4) and r 9A(5) of the regulations, this licence is granted for the prescribed purposes of "Theatre or cinema" and "Reception or function centre".
2. During the permitted trading hours, the licensee is authorised to sell and supply liquor, for consumption on the licensed premises:
 - (a) to persons who are attending a performance or the screening of a film and who possess a ticket that is valid for the performance or film screening at The Piccadilly on that day, for two hour before the commencement of that performance or film; during the performance or the film itself and for one hour after the conclusion of the performance or film.
 - (b) to persons attending a *bona fide* pre-arranged reception or function (as defined by s 3 of the Act) at the licensed premises.
3. The sale and supply of packaged liquor for consumption off the licensed premises, is prohibited.
4. Food is to be available during the trading hours, with orders for meals taken up to 1 hour before closing.

5. Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available during all trading hours.
6. The licensee shall not promote drinks which offer liquor by virtue of their 'emotive' titles such as, but not limited to 'laybacks', 'shooters', 'test tubes', 'jelly shots', 'blasters', or 'bombs'.
7. The number of patrons that may be accommodated on the licensed premises, at any one time, will be imposed on the confirmation of the conditional grant in accordance with the public building certificate issued by the City of Perth.
8. Pursuant to section 120(1)(e) of the Act, unaccompanied juveniles are permitted to enter and remain on the licensed premises where the juvenile is present on the licensed premises for the purpose of attending a performance or film and who possess a ticket that is valid for the performance or film screening at The Piccadilly on that day; and if juveniles are present, an employee of the licensee must check each cinema every 15 minutes to ensure compliance with the Act.
9. A closed-circuit television video (CCTV) surveillance system, able to identify individuals and showing times and dates must be in place and operational. The CCTV system must comply with the requirements as identified in the Director's Policy 'Safety and Security at Licensed Premises'. It is expected that the system will provide and record continuous images of the entrances and exits to the premises during the normal trading hours and until one (1) hour after trading ceases. Images recorded via the CCTV system must be retained for, at least, twenty-eight (28) days (or such other period as the Director of Liquor Licensing specifies) and must be made available for viewing or removal by the Police or other persons authorised by the Director.

The recorded vision when viewed or removed must include:

- i) Time/date stamp.
- ii) Camera location.
- iii) Camera identifier.
- iv) Watermarking or method of verifying the original image for authenticity ensuring tamper prevention.

The details of any incident must be recorded in the Incident Register for the licensed premises.

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.

LICENCE FEES

Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the issue of the licence.

41. Pursuant to s 116(3) of the Act, the premises' name The Piccadilly is approved. The licensee, on confirmation of this conditional grant, shall not subsequently conduct business at the licensed premises under any other name, without the prior approval of the Director of Liquor Licensing.
42. 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.
43. This matter has been determined by me under delegation pursuant to s 15 of the Act.

**TRADING MAY NOT COMMENCE UNDER THIS LICENCE
WITHOUT THE PRIOR WRITTEN APPROVAL OF THIS OFFICE.**



Eric Romato
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING