

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

**APPLICANT:** MARNI INVESTMENTS PTY LTD AND BROAD HORIZONS PTY LTD

**PREMISES:** TOUCAN CLUB

**PREMISES ADDRESS:** 7 SMART STREET, MANDURAH

**NATURE OF MATTER:** IMPOSITION OF CONDITIONS PURSUANT TO SECTION 64 OF THE ACT

**DATE OF DETERMINATION:** 18 NOVEMBER 2016

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### **Background**

- 1 Marni Investments Pty Ltd and Broad Horizons Pty Ltd are the licensees of the Toucan Club, which operates under a nightclub licence at 7 Smart Street, Mandurah.
- 2 Aledi Pty Ltd and Handanhay Pty Ltd are the licensees of the Players Bar, which operates under a nightclub licence at 25 Mandurah Terrace, Mandurah.
- 3 The Toucan Club and Players Bar are effectively owned in a partnership of trusts by Mr Joseph Cocci and Mr Denis Broad.
- 4 On 28 August 2016, I received two reports from Detective Superintendent James Migro of the Licensing Enforcement Division of the WA Police relating to the conduct of the business under each licence. According to the reports, police have actively engaged with the licensees and management of the premises in an effort to seek self-regulation and remedy issues arising from the current manner of trade; however such engagement had so far resulted in minimal change in the way in which the premises operate.
- 5 The reports from the police provided information on:
  - Outlaw Motor Cycle Gangs (OMCG) members entering the premises without being scanned;
  - assaults in the premises;
  - disorderly and anti-social behaviour in and around the premises;
  - patron intoxication;
  - breach of the Act and licence conditions;
  - an approved manager of the premises being prosecuted for failing to provide CCTV footage to police to assist with an investigation of an assault at the venue; and

- patrons throwing items from the balcony onto people below.
- 6 Further, the police reports stated that:
- from 1 January 2015 to 23 August 2016 there have been 40 calls for police assistance at the Toucan Club and 79 calls for police assistance at the Players Bar; and
  - from 1 January 2015 to 20 August 2016 there were 65 crime incidents recorded as occurring at the Toucan Club and 53 at the Players Bar, relating to serious assaults, damage, theft, hindering police and drug possession.
- 7 As a consequence of the police reports, I formed the tentative view that the licensed premises were not being managed in a manner consistent with the public interest and it would be appropriate to impose certain restrictive conditions on the licences in order to remedy the problems identified by the police.
- 8 Although each premise is operated by separate licensee companies, each company is effectively controlled by the same persons. Therefore, for ease of reference, I will refer to the licensees collectively as “the licensee” and to the premises collectively as “the premises”.

#### **Show cause notice**

- 9 Section 64(2a) of the *Liquor Control Act 1988* (the Act) provides that if the licensing authority proposes to impose a condition on a licence, the licensing authority may, by notice in writing, require the licensee to show cause why the condition should not be imposed.
- 10 On 2 September 2016, I wrote to the licensee advising it that on the basis of the information and evidence provided by the police, I was considering imposing the following conditions on the licences:
- (1) An identification system shall be installed and operated from the commencement of trade on Friday, Saturday and Sunday nights until the close of business to record details of all persons entering the premises and –
    - (a) check the personal details (including by reference to whether those personal details are recorded on a list of persons subject to barring notices or prohibition orders as defined in the Act); and
    - (b) record for a period of not less than 28 days the personal details (by means of them being retained by the identification system in a format that is able to be provided to a member of the Police Force) or every person (other than an authorised person) entering the premises.
  - (2) An additional approved manager is to be present and on the premises from the commencement of trade on Friday, Saturday and Sunday nights through until

close of trade, with a primary role of RSA management. This additional manager is prohibited from working behind the bar, will wear easily identifiable apparel and be rostered specifically for this duty.

- (3) From 1 a.m. until close of business, the licensee is prohibited from selling and supplying liquor for consumption on the premises:
- (a) presented in such a way that would encourage the rapid consumption of liquor (for example, but not limited to, unadulterated spirits or liqueur in a shot glass);
  - (b) by virtue of their 'emotive' title such as, but not limited to, 'laybacks', 'shooters', 'slammers', 'test tubes' and 'blasters'; and
  - (c) the licensee is not to engage in advertising promotions or offers of cheap or discounted liquor, including happy hours.
- (4) From 1 a.m., 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).
- (5) A video surveillance system must be in place and operational and must comply with relevant policies of the Director of Liquor Licensing. In this regard, it is expected that:
- (a) this system will provide and record continuous images of the entrances and exits to the premises, bars and entertainment/dance areas, from 6 p.m. (or the time of opening the premises if after 6 p.m.), until one hour after trading ceases and be able to identify individuals, showing times and dates; and
  - (b) Images recorded via the video surveillance system must be retained for 28 days and must be made available for viewing or removal by the police or other persons authorised by the Director.
- (6) 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:

- Coffin Cheaters;
- Club Deroes;
- Gods Garbage;

- Gypsy Jokers;
- Outlaws;
- Finks;
- Rebels;
- Comancheroes;
- Hell's Angels;
- Rock Machine;
- Mongols; and
- Lone Wolf.

A notice is to be displayed at all entrance to the licensed area/event reflecting this condition.

(7) Patrons are prohibited from entering or re-entering the premises after 2 a.m.

(8) The balcony area of the premises is not to be used after 1 a.m. (Toucan Club).

In addition to the above conditions, I propose to vary the security condition on the licences to read:

“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 50 patrons or part thereof**, from 8 p.m. (or the time of opening the premises if after 8 p.m.) until 30 minutes after closing. Crowd controllers are to wear high visibility jackets/vests/shirts.

All security personnel are required to have undertaken RSA training prior to working at the premises.”

- 11 The licensee was provided with a copy of the police reports and afforded an opportunity to show cause why the above conditions should not be imposed on the licences.

#### **The licensee's response**

- 12 The licensee acknowledged that over the past 12 months the venues have been represented poorly and this has led to the police suggesting changes in how the premises are managed. However, according to the licensee, it has responded to the police concerns and made numerous positive changes to all aspects of the business operations and will continue to make further adjustments to improve how the premises are managed and operated.

- 13 However, it was submitted that to implement the proposed conditions would be detrimental to the viability of the venues and therefore the entertainment district in Mandurah. According to the licensee, in the last few months there has been a vast reduction in incidents inside the venues. Management and crowd control companies have changed and new teams are operating professionally and continually assessing how to make improvements at the venues.
- 14 More specifically, in respect of the proposed conditions, the following was submitted:

Condition 1 – identification system

The licensee has used scanning machines since 2012 and supports their use. Strict policies on their use have been introduced and therefore it is not necessary for their use to be imposed as a condition of the licence.

Condition 2 – additional approved manager

The venues have always had at least two managers on duty, however the venues are small locally owned and operated businesses which require all staff to be multi-skilled and multi-tasked. To have one manager restricted to the single task of assessing correct implementation of RSA practices is an underutilisation of qualified personnel. All staff and crowd controllers at the venues have an approved RSA qualification as part of their employment conditions and are expected to work with the approved managers to ensure adherence to RSA policies. Sustaining the cost of having one manager being specifically limited to a particular role is not economically viable.

Condition 3 – responsible sale and promotion of liquor

Each venue has trialled many different methods to ensure the sale of shooters is done responsibly. The venues do not advertise these items, nor are they suggested at point of sale and the venues promote alcohol consumption in a positive and respectful manner. The sale of shooters only occurs to rigorously assessed patrons who meet criteria outlined in RSA policies. The majority of attendances at the venue occur during the hours of 1-3 a.m. and we should be able to offer patrons a complete range of beverage options until 3 a.m. so as not to deny responsible attendees the choice. Surrounding venues offer discounted drinks until 1 a.m.

Condition 4 – energy drinks

This product is sold one per customer and several new initiatives have been trialled to discourage disproportionate consumption. All patrons consuming this item are rigorously assessed to ensure that they meet all criteria outlined in RSA policies.

Condition 5 – CCTV

The venues currently have compliant CCTV, however an upgrade has been rolled out over the last 18 months, with some work still to be completed. The licensee requests a time-frame of one year to meet this requirement.

#### Condition 6 – dress standards

Agreed.

#### Condition 7 – 2 a.m. lockout

The venues have used a one hour lockout prior to closing for a number of years and propose to trial a 3.30 a.m. lockout over the summer. The surrounding venues stop serving alcohol at 1 a.m. and therefore a 2 a.m. lockout would not allow patrons leaving these premises sufficient time to avail themselves of food and fresh air before attending the Toucan Club or Players Bar. The proposed lockout could result in some patrons, who have been waiting in line being refused entry come 2.am. If the youth have no further option to continue a night out after 2 a.m. house parties and suburban gathering would increase. It would also result in more people wandering around waiting for a taxi.

#### Condition 8 – balcony area of the Toucan Club

The majority of patrons arrive between 1 a.m. and 3 a.m. due to other venues in the area serving heavily discounted drinks until 1 a.m. Management have trialled several initiatives to improve behaviour on this alfresco landing. For the past few months the balcony has been drink free and a guard is stationed at all times on this area reducing any risk of incident. Patrons have been receptive of this and there have been no incidents relating to items being thrown. Management does close the venue at lockout, however it is also an industry requirement to enable patrons to smoke outside, preferably without leaving the premises.

#### Condition 9 – crowd controllers

Additional guards have been rostered, however are managed tightly to make this increased expense manageable. The ration of 1:100 is working well as the guards are of a high standard and screened before being able to work on site.

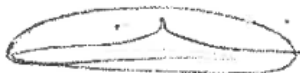
### **Reasons for determination**

- 15 Section 64 of the Act empowers the licensing authority to impose conditions on licences which the licensing authority considers to be in the public interest. The factual matters that I am bound to take into account when determining what is 'in the public interest' are those relevant to the primary and secondary objects of the Act as set out in s 5 (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227). Regulating the sale, supply and consumption of liquor and minimising alcohol-related harm in the community are two of the primary objects of the Act.
- 16 More specifically, under s 64, the licensing authority may impose conditions which it considers desirable in order to:
  - ensure the safety, health or welfare of persons who may resort to the licensed premises is not at risk;

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- ensure that liquor is sold and consumed in a responsible manner;
  - minimise harm caused to people due to the use of liquor;
  - ensure public order and safety;
  - prohibit entry to the licensed premises after a specified time; or
  - prohibit any practices which encourage irresponsible drinking.
- 17 The reports from the police detail a litany of problems and breaches of the Act and licence conditions at these venues which can be attributed to poor management by the licensee. All licensees have an obligation and responsibility to ensure that licensed premises are managed in accordance with the requirements of the Act. The public interest is synonymous with licensed premises being conducted in a manner consistent with good order and propriety.
- 18 Overall, I find, based upon the information provided by the police, that there has been a systemic failure on the part of the licensee to properly manage these premises. Although the licensee has recently implemented some strategies to improve the operation of the venues, it is of concern that it requires the intervention of the police and the licensing authority before deficient management practices at a venue are changed in order to reduce patron intoxication and assaults and anti-social behaviour emanating from those premises. I further note that an approved manager of the Players Bar has recently had his approval to manage licensed premises revoked by this authority.
- 19 The Players Bar and the Toucan Club are the only nightclubs in Mandurah and operate in close proximity to each other. Consequently, it is inevitable that people, who have been consuming liquor at other venues in the area, will migrate to these premises late at night. By the licensee's own admission, most patrons arrive between 1 a.m. and 3 a.m. after drinking at other venues. It is therefore imperative that these venues are managed to the highest standards and that liquor is promoted and consumed in a responsible manner. The primary purpose of a nightclub under the Act is the provision of live entertainment, and the consumption of liquor should only be an ancillary service.
- 20 The licensee does not dispute the information in the police reports; rather it submits that conditions should not be imposed because it has now responded to police concerns and has made some changes at the venues. Notwithstanding this submission, I am of the view that it is in the public interest to impose conditions on the licences of the Toucan Club and Players Bar in order to minimise the negative impact that these venues are having on the surrounding locality and to protect patrons attending these venues. The high levels of patron intoxication and anti-social behaviour attributable to these premises is unacceptable. I find that the licensee has

failed to show cause why conditions to remedy these problems should not be imposed on the licences, as required under s 64(2a) of the Act.

- 21 Consequently, conditions 1, 2, 3, 4, and 6 will be imposed as set out in the show cause notice.
- 22 In respect of condition 5, the licensee states that it has been rolling out an upgrade of its CCTV system over the last 18 months. This would appear to be more than ample time to bring the CCTV system into line with the current requirements of the Director's policy. Condition 5 will be imposed on the licence however the licensee will have 60 days to ensure compliance.
- 23 In respect of condition 7, the lockout will be amended from 2 a.m. to 3 a.m.
- 24 In respect of condition 8, the condition will be modified to allow patrons onto the balcony, however drinks are not permitted to be taken onto the balcony and the balcony is not to be used after 3 a.m.
- 25 The security condition will be varied as set out in the show cause notice.
- 26 It is now up to the licensee to demonstrate its on-going commitment to its obligations under the Act. Unless there is a significant and sustained improvement in the management of these venues, the licensee runs the risk of further conditions being imposed or disciplinary action being taken before the Liquor Commission, which could result in the suspension or cancellation of the licences.
- 27 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.



Peter Minchin  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING