

DECISION OF DIRECTOR OF LIQUOR LICENSING

FIRST APPLICANT: 152 ST GEORGES TERRACE PTY LTD

NATURE OF APPLICATION: GRANT OF A SPECIAL FACILITY LICENCE

PREMISES: WEWORK
152 ST GEORGES TERRACE, PERTH

APPLICATION REF: A717826096

SECOND APPLICANT: 45 FRANCIS STREET TENANT PTY LTD

NATURE OF APPLICATION: GRANT OF A SPECIAL FACILITY LICENCE

PREMISES: WEWORK
45 FRANCIS STREET, NORTHBRIDGE

APPLICATION REF: A069828678

DECISION OF: BRETT SNELL, DEPUTY DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DECISION: 11 MARCH 2020

DATE OF REASONS: 13 MAY 2020

Background

1. On 29 November 2019, an application was made by 152 St Georges Terrace Pty Ltd (the First Applicant) for the grant of a special facility licence in respect of premises to be known as *WeWork* and situated at 152 St Georges Terrace, Perth (*WeWork Perth*).
2. A second application was made on 3 December 2019, by 45 Francis Street Tenant Pty Ltd (the Second Applicant), for the grant of an identical special facility licence for premises to be known as *WeWork* and situated at 45 Francis Street, Northbridge (*WeWork Northbridge*).
3. Pursuant to s 46 of the *Liquor Control Act 1988* (Act) and reg 9A of the *Liquor Control Regulations 1989* (regulations), both applications sought the grant of a special facility licence for the prescribed purpose of a works canteen.
4. The corporate structures of 152 St Georges Terrace Pty Ltd and 45 Francis Street Tenant Pty Ltd show that both companies have the same directors and shareholder.
5. As a result of the common corporate structure, the fact that identical licences were sought and the same issues arose, I decided to determine both applications together, based on the written submissions of the Applicants, pursuant to the provisions of s16(12) of the Act.

WEWORK – PERTH AND NORTHBRIDGE

6. On 11 March 2020, I published a notice of decision, pursuant to s18AA of the Act, in which I refused both applications on the basis that neither Applicant had demonstrated how their respective businesses met any of the prescribed purposes for which a special facility licence may be granted, as required by s46(2b) of the Act.
7. On 17 March 2020, the Applicants requested written reasons for the notice, in accordance with s18AA(4) of the Act. Accordingly, my reasons for refusing the applications follow.
8. As this is an administrative decision, rather than referring in detail to the entirety of the evidence before me, I will set out what I consider to be the relevant material facts. Further, I have considered all of the information submitted by the Applicants and the fact that I have not referred to a specific submission or piece of evidence, does not mean that I have not taken it into account.

Overview of the applications

9. The Applicants submitted that Perth and Northbridge stand to benefit greatly from the WeWork model, which would enable Western Australian businesses to share office space in a modern professional environment, supported by tailor-made facilities management services. The Applicants also submitted that while the proposed liquor service will be a modest and ancillary feature, it will be an important aspect to the contemporary corporate setting.
10. The Applicants further explained that:

‘WeWork provides shared office workspaces and related support services for a variety of small to large businesses, under a membership structure, to co-exist in a professional office setting. WeWork has built shared workspaces across the globe...’
11. In terms of the manner of trade at both WeWork premises’, the Applicants further submitted that:

‘There will be no direct exchange of money for the liquor. The liquor will be provided on a complimentary basis as part of the facilities management services arising from the arrangement that each individual business will have with WeWork to use space in the premises. That arrangement will take the form of a membership agreement.’
12. It was also submitted that businesses to operate from WeWork will have to enter into a membership agreement with WeWork, which will entitle them to use space within the premises based on the terms of their individual agreement and on the basis that all members are over the age of 18. As part of the terms of the membership agreement, the member and its staff will be entitled to use a communal lounge area, including lounge chairs, tables and chairs, tea and coffee making facilities, a kitchenette and liquor. While the proposed liquor service would be modest, it was seen as an important feature of the premises.

WEWORK – PERTH AND NORTHBRIDGE

13. The Applicants also submitted that a small selection of unrefrigerated wine and beer on a tap will be available for the workers to access and the liquor supplies would only be available during limited hours, namely from 2 p.m. to 6 p.m., on usual working/business days (although later submissions indicated that only beer on tap would be made available from 3 p.m. to 6 p.m.) At other times the taps will be switched off and the liquor supply locked.
14. The capacity of each level of the *WeWork* Perth will be as follows:
 - (a) Level 32 - 210 people;
 - (b) Level 33 - 234 people;
 - (c) Level 34 - 224 people;
 - (d) Level 35 - 264 people;
 - (e) Level 36 - 249 people;
 - (f) Level 37 - 264 people; and
 - (g) Level 38 - 249 people.
15. Similarly, there will be a capacity for 745 workers on level 4 of *WeWork* Northbridge.
16. The Applicants also submitted that:

‘Every effort will be made by the applicant to conduct business under the SFL in a manner that minimises the potential for harm or ill-health to occur as a result of the liquor being made available at the premises.

Various policies, practices and procedures will be implemented to facilitate compliance and to create a place that encourages responsible drinking.

Staff will be trained thoroughly on matters of harm minimisation and responsible service and members will also be educated accordingly.

Strict policies will apply in respect of juveniles...

There will be close monitoring of drunkenness on the premises which will not be tolerated.’

17. In response to the provisions of s46(2b) of the Act, the Applicants submitted that:

‘The totality of the proposal, the nature of the business involved, the trading conditions proposed, the physical features of the premises and the type of patrons to be catered for collectively make it abundantly clear that a “works canteen” SFL is indeed the most appropriate class of licence...’

18. In this regard, the Applicants submitted that liquor is proposed to be supplied to:
 - (a) “persons working for a specified business” at *WeWork*; and
 - (b) “guests”.

WEWORK – PERTH AND NORTHBRIDGE

19. Further, the Applicants submitted that the licensed areas will be “located at...the place where...a specified business is being carried on, catering for the needs of workers and the licences are sought to provide for the needs of people working at WeWork Perth and Northbridge, rather than for the needs of others.”
20. In response to the provisions of s46(2) of the Act, the Applicants submitted that no other class of licence, whether on its own, varied or associated with a permit, is suitable for the Applicants to conduct business as proposed.
21. The Applicants also submitted that there is nothing contained in either the Act or the regulations which precludes premises in Perth or Northbridge from being approved for the purposes of a ‘works canteen’.
22. Accordingly, the Applicants sought approval for the following special trading condition to be endorsed on each licence:

‘The licensee is authorised to sell and supply liquor to workers at WeWork and their guests, for consumption in the licensed areas, between 2pm and 6pm on usual business days.’

Determination

23. Section 16 of the Act prescribes that the licensing authority:
 - (a) may make its determinations on the balance of probabilities; and
 - (b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply; and
 - (c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
24. Section 46 of the Act provides that the licensing authority shall not grant a special facility licence:
 - (a) except for a prescribed purpose as set out in regulation 9A of the regulations;
 - (b) just because an approval, consent or exemption required under another written law in respect of a particular licence type, cannot be obtained; or
 - (c) if granting or varying a licence of another class, or imposing, varying or cancelling a condition, on a licence of another class, or issuing an extended trading permit in respect of another class of licence, would achieve the purposes for which the special facility licence is sought.
25. Regulation 9A of the regulations sets out the purposes for which a special facility licence may be granted. Regulation 9A(1) states that a special facility licence may be granted for the purpose of allowing the sale of liquor at a works canteen, or at other premises specified in the licence, to workers and their guests.

WEWORK – PERTH AND NORTHBRIDGE

26. Subregulation (3) of regulation 9A states that:

specified means specified in the licence;

worker means a person —

- (a) working on a specified project; or
- (b) working for a specified business;

works canteen means a canteen, located at or near the place where a specified project is being undertaken or a specified business is being carried on, catering for the needs of workers.

27. Pursuant to s46(3) of the Act, 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.

28. A special facility licence granted for the prescribed purpose of a works canteen under reg 9A(1) of the regulations is granted for the purpose of allowing the sale of liquor ...at a works canteen ...to workers and their guests. **Worker** means a person working on a specified project or for a specified business.

29. Therefore, the terms and conditions that are imposed on a relevant special facility licence must ensure that the licence is used only for the purpose of selling liquor to workers who are working on a specified project or for a specified business, and their guests. **Specified**, means specified in the licence.

30. In response to the Director's letter of 22 January 2020, in which a preliminary view was expressed that the manner of trade proposed in the applications did not meet the prescribed requirements for the grant of special facility licences for the purpose of works canteens, the Applicants submitted that:

- (a) the decision to apply for a special facility licence for the prescribed purpose of a works canteen was the result of legal advice from their lawyer;
- (b) while the Applicants' appreciated that WeWork's business may be somewhat unique and not fit into a clear licence category, they nonetheless deemed the relevant special facility licences as the most appropriate;
- (c) while they understood there may be some concern about the potential fluidity of their customer base (i.e. members), the Applicants noted:
 - (i) companies represent a significant portion of the Applicants' membership bases (as opposed to individuals);
 - (ii) companies tend to sign up to long term licences of up to twelve months or longer;
 - (iii) given the above, the Applicants' have a clear, forward looking picture of who their Members are for extended periods of time (i.e. the "specified workers"); and

WEWORK – PERTH AND NORTHBRIDGE

- (iv) due to confidentiality issues, they were unable to provide the individual names of their Members, although they were happy to provide anonymised information and statistics regarding Members on a regular basis (e.g. quarterly).
31. The Applicants also referred to their initial legal submissions, including their original submissions addressing the provisions of s46 of the Act.
32. On the proper construction of reg 9A(1), (2) and (3), I am of the view that the people or companies who conduct their own businesses in the shared office space provided by WeWork cannot be considered as **workers** for the purposes of reg 9A(1) and (3), given that those persons would not be working on a **specified** project or working for a **specified** business. Rather, it would simply be multiple businesses sharing a common office space.
33. As a result, the proposed premises cannot be considered to be **works canteens**.
34. Accordingly, I concluded that neither Applicant had demonstrated that the proposed businesses for which the licences were sought met any of the prescribed purposes for which a special facility licence may be granted, as required by s46(2b) of the Act.
35. In response to the enquiries on 12 December 2019 which sought information on how the Applicants proposed to serve or supply liquor at the proposed premises, the Applicants advised that during normal business operations:
- (a) liquor would only be made available to patrons by way of self-service tap beer, between the hours of 3 p.m. and 6 p.m. on Monday to Friday, with a maximum of four beer taps, offering low to full strength beer;
 - (b) tap beer will be served in reusable lightweight aluminium cups; and
 - (c) whenever alcohol is available an RSA certified staff member will be on duty in the immediate proximity of the licensed area and an approved manager will be on site.
36. During events:
- (a) liquor will be served by an RSA certified staff member;
 - (b) professional and certified bar and wait staff will be employed to prepare and serve a limited selection of drinks; and
 - (c) alcohol will be served in a combination of usable aluminium and plastic cups.
37. Further, the Applicants' *Responsible Alcohol Management plan for Europe and Australia* states that areas where liquor is supplied and consumed will only be patrolled for 30 minutes within every hour.
38. The Director's *Standards of Licensed Premises*¹ policy provides generalised guidance on the legislative requirements and criteria that will be used when considering the suitability of premises to be licensed under the Act. While the policy notes that special facility

¹ Published on 30 May 2019

WEWORK – PERTH AND NORTHBRIDGE

licences will be dealt with on a case by case basis, depending on the nature of the business to be carried on under the licence, it clearly states that customers must not be able to access liquor via self-service facilities, albeit in relation to other licence types.

39. Further, in the *Harm Minimisation* policy², the Director explains that alcohol is not considered to be an ordinary substance because it has the potential to cause harm if served or consumed in an irresponsible manner. Additionally, one of the primary objects under s5(1) of the Act is ‘to minimise harm or ill health caused to people, or any group of people, due to the use of liquor.’ Another primary object is to ‘regulate the sale, supply and consumption of liquor.’ As such, the sale, supply and consumption of liquor should be carefully regulated.
40. In view of this, the Director requires that applicants and licensees under the Act demonstrate that they will:
 - (a) sell and supply liquor; and
 - (b) ensure that liquor is consumed on licensed premises, in a responsible manner.
41. It is my view that the self-service of liquor by customers, in the context of these applications, does not establish that liquor will be sold or supplied in a responsible manner. As a result, I could not be satisfied that the Applicants would exercise an appropriate level of control and supervision in respect of the sale and supply of liquor, as envisioned under the Act.
42. As a result, I was of the view that it was not appropriate to exercise discretion and treat these applications as applications for the grant of licences of another class, notwithstanding the discretionary power to do so under s46B(1)(a) of the Act. Accordingly, the applications were refused.
43. Should the Applicants be dissatisfied with this determination, they 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.
44. This matter has been determined by me under delegation pursuant to s 15 of the Act.



DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

² Published on 30 May 2019