

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: WELLARD HOSPITALITY PTY LTD

PREMISES: WELLARD TAVERN

PREMISES ADDRESS: LOT 5001 CHISWICK PDE WELLARD

APPLICATION ID: A000057275

NATURE OF APPLICATION: APPLICATION FOR CONDITIONAL GRANT OF A TAVERN LICENCE

DATE OF DETERMINATION: 29 JUNE 2015

Introduction

- 1 On 4 December 2014, an application was lodged by Wellard Hospitality Pty Ltd (the applicant) for the conditional grant of a tavern licence in respect of premises situated at Lot 5001 Chiswick Parade, Wellard and to be known as the Wellard Tavern. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. There were no objections to the grant of the application, however the Commissioner of Police (the Commissioner), pursuant to s 69 of the Act, lodged a notice of intervention.
- 3 In accordance with ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties. The evidence and submissions of the parties are briefly summarised as follows.

Submissions on behalf of the applicant

- 4 The proposed tavern is to be constructed at Lot 5001 Chiswick Parade, Wellard and is planned as part of the "Village at Wellard" (the Village) community development, which is a new neighbourhood to be located on the Perth to Mandurah railway line.
- 5 According to the applicant, the proposed tavern will be a much needed family friendly tavern and will provide a community meeting point and venue for socialising for residents of Wellard and the surrounding areas, which are currently underserved by this type of community amenity.
- 6 The proposed tavern will consist of a 178 m² bistro floor, an 85m² bar area, a 50m² function/lounge room, a 143m² covered alfresco area and a 260m² open alfresco area. The premises will open from 6am on weekdays to provide food and coffee, but the sale of liquor will not commence until 10am. The emphasis will be on good quality food and the provision of a community venue, along with the responsible service of liquor.

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- 7 The area of Wellard where the proposed tavern will be located is undergoing development and the Village is strategically located near the Wellard train station on the Perth to Mandurah railway line, which will provide easy access to and from the area. The structure plan for the Village anticipates the development of 3,275 residences which represents a population of approximately 8,200 people once the development is complete. The Village centre will be the social and community hub of the new development and will consist of 5000 square metres of retail space, including a Woolworths supermarket, a newsagency, a hairdresser and other commercial shops and food offerings.
- 8 According to the applicant, the locality surrounding the proposed tavern incorporates all or part of the suburbs of Wellard, Parmelia, Kwinana Town Centre, Calista and Leda and small portions of Medina, Orelia, Bertram and Baldivis. The locality of the proposed tavern is unusual in that it comprises both well-developed areas and new developing areas. There is currently urban development taking place in Wellard, Kwinana and Bertram, which is driven in part by the Perth to Mandurah railway line. The proposed tavern will be located in the developing part of Wellard. The Village at Wellard is designed to accommodate the community's everyday needs, including retail, business and leisure, all within walking distance of the public transport node.
- 9 The applicant submitted a Public Interest Assessment (PIA) to support its application, which included a Wellard Tavern Community Engagement Report (market survey) prepared by Creating Communities and a report prepared by MGA Town Planners (the MGA report)
- 10 In terms of public support, the market survey indicated that over 80% of respondents support the development of the proposed tavern, with the main reasons for this support being the provision of food and meals, a place to socialise and gather with friends and family, and the provision of drinks.
- 11 The MGA report considered the application from a town planning perspective and provided information on:
- the nature of the proposed development;
 - the commercial hierarchy of the locality;
 - traffic movements in the locality;
 - the demographic profile of the locality;
 - any "at-risk" groups in the area; and
 - existing licensed facilities in the locality.
- 12 According to the MGA report, the population in the locality has increased by an average of approximately 545 persons per year. By mid 2014 the population is expected to be approximately 17,713 people, rising to 18,258 by mid 2015. Parmelia

has the largest population in the locality, followed by Leda and then the developing Wellard. Income levels for some areas of the locality are below the State average, however, the suburb of Wellard has above average incomes. Whilst the locality is generally reputed to be a “blue collar” area with a low socio-economic status, the suburb of Wellard contradicts this reputation with a community of above average socio-economic status.

13 It was submitted by the applicant that there are only six licensed premises in the locality. Three of these are liquor stores, one is a tavern, one is a club, and one is a restaurant. The distance between the existing licensed premises and the proposed tavern are:

- BWS Leda (Liquor Store) 2.1 km
- Dan Murphy’s Kwinana (Liquor Store) 2.3 km
- Liquorland Kwinana (Liquor Store) 2.3.km
- Admiral Tavern (Tavern) 2.3 km
- Kwinana Golf Club (Club) 4.1 km
- Spicy Pan Indian Restaurant (Restaurant) 2.6km

There are no other licensed premises in the suburb of Wellard. The only other tavern in the locality is the Admiral Tavern, which is located in the Kwinana Town Centre and caters to residents in that area. The applicant further submits that once the Village at Wellard is developed with capacity for another 8200 people in the suburb of Wellard, one tavern in the area will not be sufficient to cater to local trade and therefore the proposed tavern will cater to the new residents in the community of Wellard and people who pass through Wellard en-route to or from the train station.

14 It was therefore submitted by the applicant that the proposed tavern will cater for the requirements of the residents of Wellard and it will create a community venue which reflects the developing nature of the locality. The proposed tavern will be family friendly with a focus on the provision of meals and provide a community amenity that is not currently available in Wellard.

Submissions on behalf of the Commissioner of Police

15 The Commissioner intervened in the application for the purposes of having conditions imposed on the licence, if the application is approved.

16 The Commissioner submitted that in order to ensure the premises trades in a manner which will not cause disturbance or public disorder, conditions relating to trading hours, noise levels and entertainment, the provision of CCTV, Crowd Controllers and food should be imposed on the licence.

Determination

- 17 The applicant seeks to establish a tavern in the “Village at Wellard” community development. A village square adjacent to the tavern site connects the railway station to The Strand, the commercial main street of an activity centre forming the hub of the suburb of Wellard. The proposed tavern site is therefore strategic to this activity centre. The proposed tavern will be modest in size and provide a focal point for the local community. There is support from the local community for the grant of the application, with The Village at Wellard Resident Association stating the proposed tavern would be a valuable asset and generate significant benefits for the community. According to the Association the proposed tavern will be the epicentre of their social activities. There are no objections to the grant of the application.
- 18 The applicant must, pursuant to the requirements of s 38(2) of the Act, satisfy the licensing authority that the grant of the application is in the public interest.
- 19 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).
- 20 The factual matters which the licensing authority is 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.
- 21 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
 - 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.
- 22 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

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- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- 23 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.
- 24 There is no presumption in favour of the grant of an application; rather the opposite applies where an applicant must adduce sufficient evidence to discharge its onus under the Act. The applicant has submitted a detailed PIA together with expert reports. Having considered the applicant's evidence I find:
- there is very strong public support for the grant of the application and the services and facilities to be provided, as evidenced in the market survey;
 - the proposed tavern will form the social hub for the local community;
 - the proposed tavern will provide a range of products and services which will be conveniently located for the growing population; and
 - although the suburb of Wellard sits within less affluent suburbs, Wellard is, to some extent, isolated by the road design in the locality.
- 25 Consequently, I am of the view that the grant of the application would be catering to the requirements of consumers for liquor and related services and would facilitate the use and development of licensed premises reflecting the diversity of consumers, consistent with objects 5(1)(c) and 5(2)(a) of the Act. In considering the harm minimisation object of the Act (object 5(1)(b)), I am of the view the grant of the application would not present an unacceptable risk to the community.
- 26 I am therefore satisfied that the grant of the application is in the public interest, as required under section 38(2) of the Act.
- 27 The Commissioner intervened in the application to recommend various conditions that might be imposed on the licence, if granted. The applicant is amenable to most, except for the conditions relating to entertainment and noise. The Commissioner wanted to prohibit DJ music in the form of live performance, however the applicant contends that the ability to provide customers with the option to hire a DJ for a social or corporate function, and for the venue to accommodate DJ entertainment as part of its offering aligns with customer demand and is an important community function of the tavern.
- 28 The Commissioner also wanted to place noise restrictions on the premises, however the applicant submits that such conditions are unnecessary. The applicant commissioned an Environmental Noise Assessment for the local council, and that report concludes that noise received at the neighbouring premises would be below ambient noise level and would be deemed to comply with the regulatory requirements,

however any music associated with the premises will need to be background music at a noise level no more than 70 dB(A) at 1m from any speaker.

- 29 Having considered the applicant's submissions concerning the above two conditions which are in dispute, I will only impose a condition relating to music consistent with the Environmental Noise Assessment.
- 28 Consequently, I am satisfied the applicant has discharged its onus under s 38(2) of the Act and that the applicant has complied with all other statutory requirements and conditions precedent to the application being granted, 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 4 December 2014;
 - (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 28 June 2016 (12 months from the date of the decision) pursuant to s 62(4)(c) of the Act.
- 29 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 licence.
- Food must be available at all times during trading hours.
- The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing.

- Any music played at the premises is not to exceed 70 dB(A) at 1m from any speaker.
- The maximum number of patrons permitted on the licensed premises at any one time shall not exceed 510 or such lesser number imposed by the local government authority.
- Seating is to be provided for a minimum of 450 patrons.
- 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'.
- 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.
- Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available at all times.
- 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 7 p.m. (or the time of opening the premises if after 7 p.m.) each Friday and Saturday until 30 minutes after closing.

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.

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.
- 30 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.
- 31 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



Your Ref:

Our Ref: A000057275

Enquiries: Richard Duncan
☎ (08) 9425 1853

Squire Patton Boggs
GPO Box A39
PERTH WA 6000

Dear Sir/Madam

APPLICATION FOR THE CONDITIONAL GRANT OF A TAVERN LICENCE: WELLARD TAVERN

I refer to the application lodged by Wellard Hospitality Pty Ltd on 04 December 2014.

Please find enclosed a copy of the decision in respect of the above premises.

Should you have any queries regarding this please contact me on (08) 9425 1853.

Yours faithfully

Richard Duncan
CUSTOMER SERVICE OFFICER

29 June 2015

cc: Liquor Enforcement Unit

[Enc]