

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: CAFE 37 PERTH PTY LTD

PREMISES: ALFRED'S PIZZERIA

PREMISES ADDRESS: BASEMENT, 37 BARRACK STREET, PERTH

APPLICATION ID: A000057310

NATURE OF APPLICATION: APPLICATION FOR CONDITIONAL GRANT OF A
SMALL BAR LICENCE

DATE OF DETERMINATION: 10 SEPTEMBER 2015

1. This determination relates to an application by Cafe 37 Perth Pty Ltd ("the Applicant") for the conditional grant of a small bar licence for premises to be known as *Alfred's Pizzeria* and situated at the Basement, 37 Barrack Street, Perth.
2. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* ("the Act") and was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing ("the Director"), which resulted in the lodgement of a notice of intervention by the Commissioner of Police ("the Commissioner"), pursuant to the provisions of s 69(6) of the Act.
3. To give effect to the provisions of s 16 of the Act, a document exchange was initiated between the parties in order to ensure that each party was given a reasonable opportunity to present its case.
4. Pursuant to ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties, which are briefly summarised below.
5. In order to support its application, the Applicant lodged a number of submissions, including a Public Interest Assessment ("PIA"), in which it was submitted that the proposed premises will provide a relaxed Italian-American diner style environment, with a strong focus on quality handmade pizza, suited to intimate dining, drinking and socialising. According to the Applicant, "WA products and an Italian mobster theme such as the 'Godfather' will be combined with excellent customer service to provide patrons with a special experience."
6. The Applicant further submitted that *Alfred's Pizzeria* has a total floor area of about 120 m², which includes the premises' servery, public customer area, kitchen, toilet and storage areas, with the public customer area being approximately 90 m². According to the Applicant, this "small space will be easily controlled, managed and supervised. Alcohol consumption and patron behaviour will be closely monitored." The Applicant further submitted that: "As the space is limited, the maximum number of patrons at any

one time will be small so the venue poses very little risks to the surrounding catchment.” It was also submitted by the Applicant that there are no themed small bars in the locality that are even similar to what is proposed at *Alfred’s Pizzeria*.

7. The proposed maximum number of patrons to be admitted to the premises at any one time is 80.
8. In order to establish that the grant of the licence will cater to the requirements of consumers for liquor and related services, the application was also supported by a survey of potential customers.
9. In relation to the proposed manner of trade under the licence, the Applicant submitted that it intends to provide a niche venue, unlike anything else currently available in Perth. In this regard, it was further submitted that:
 - (a) the drink service will include freshly squeezed juices, with or without spirits, premium coffee, a selection of premium boutique beers, a specialist wine list and a selection of premium spirits, with cocktails being available for special occasions or functions, such as New Year’s Eve or Melbourne Cup Day;
 - (b) a combined bar and table service is proposed, with patrons being able to place their initial order at the counter, with a full table service will be available for patrons who continue to order more food and drinks;
 - (c) pizza will be offered by the slice or as whole pizzas, with the menu changing from time to time in keeping with patron demands and seasonal changes; and
 - (d) patrons will be not be restricted to only consuming liquor whilst seated, albeit the small size of the premises will inhibit large groups of people from standing.
10. The following restrictive trading conditions were proposed by the Applicant:
 - (a) non-alcoholic drinks and drink options that contain light to mid strength alcohol will be available at all times;
 - (b) a Closed Circuit Television (“CCTV”) System will be installed and maintained in accordance with the Director’s *Safety and Security at licensed premises* policy;
 - (c) music to be played at the premises shall be at a level which allows conversation to occur;
 - (d) food will be made available at all times;
 - (e) seating will be provided for 40 patrons at all times, except when there is a pre-booked function at which the seating arrangements may be re-arranged to accommodate the particular requirements of the function;
 - (f) shooters, energy drinks and pre-packaged alcoholic beverages (RTDs), will not be offered for sale or supply; and

- (g) there will be a neat dress standard applicable at all times.
11. It was also submitted that wireless internet access would be provided free of charge to patrons to attract and encourage patrons to relax and quietly surf the internet.
 12. The representations of the Commissioner relate to the grant of the licence resulting in public disorder or disturbance and other matters relevant to the public interest.
 13. After noting the harm minimisation conditions recommended by the Applicant in its PIA, the Commissioner suggested that these conditions should be imposed on the licence, should it be granted.
 14. The Commissioner also submitted that given the proposed premises is located in an area that is regularly subject to high crowd densities and a “hot spot” for aggression, it would be appropriate, if the licence is granted, to require that it be subject to conditions requiring the Applicant to:
 - (a) engage one crowd controller during peak trading hours on Friday and Saturday evenings, which would ensure the good order of the premises and also mitigate much of the demands placed on police resourcing by licensed premises; and
 - (b) post signage to prohibit entry of members of Outlaw Motorcycle Gangs (“OMCG”) who are wearing ‘gang’ insignia, as outlined in the Director’s *Dress Standards for Licensed Premises* policy, given that members of OMCG are known to frequent venues in the Perth CBD and may seek to resort to new licensed premises.
 15. Although both parties were given the opportunity to lodge further evidence and submissions in accordance with the provisions of s 16 of the Act, only the Applicant availed itself of this opportunity, with its written response to the notice of intervention acknowledging that while there is always potential for harm or ill-health to occur as a consequence of its application being approved, this outcome is not unique to its application and is a potential possibility with any new licence.
 16. In addition to the trading conditions already identified in its PIA, the Applicant also indicated that it was prepared to comply with any condition that required it to refuse entry to any person wearing a jacket or any other clothing, patch or insignia of an OMCG.
 17. However, the Applicant opposed the Commissioner’s recommendation regarding the mandatory employment of a security guard at peak trading hours on Friday and Saturday nights on the basis that the premises’ small customer area and maximum patron number on the premises at any one time, would mean that customer behaviour can be appropriately managed by the licensee and approved manager at all times.

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18. Given that this determination relates to an application for the conditional grant of a small bar licence, which are generally recognised as being of lower risk than some other licence types (refer the Director's *Public Interest Assessment* policy), I accept the Applicant's submissions regarding its ability to manage customers without a mandated requirement to engage a crowd controller on Friday and Saturday nights.
19. Accordingly, after considering all the information before me, I am satisfied that the Applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted and that the grant of the application is in the public interest.
20. Accordingly, the licence is conditionally granted, subject to the following conditions:
- (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 premises;
 - (c) all work being completed within 12 months in accordance with the plans and specifications dated 29 January 2015;
 - (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 9 September 2016 pursuant to s 62(4)(c) of the Act.
21. On confirmation of the grant, the following conditions will be imposed on the issue of the licence:
- (a) Trading hours:

The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.
 - (b) Trading conditions:
 - (i) 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 small bar licence;
 - (ii) the sale of packaged liquor for consumption off the licensed premises is prohibited;

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- (iii) the maximum number of patrons permitted to be on the licensed premises at any time is not more than 80;
 - (iv) seating must be provided for 40 patrons at all times, except when there is a pre-booked function, at which the seating arrangements may be re-arranged to accommodate the particular requirements of the function;
 - (v) food must be available during trading hours;
 - (vi) the licensee shall not promote or sell drinks which offer liquor by virtue of their 'emotive' titles such as (but not exclusive to) 'laybacks', 'shooters', 'slammers', 'test tubes' and 'blasters';
 - (vii) no energy drinks may be mixed with liquor or sold in any other form on the premises. For the purposes of this condition, "energy drinks" has the same meaning as formulated caffeinated beverage within the *Australian New Zealand Food Standards Code* with a composition of 145 mg/l of caffeine or greater, but does not include coffee that has been brewed on the licensed premises;
 - (viii) the licensee must provide drink options that contain low alcohol content as well as a range of non-alcoholic drinks;
 - (ix) the licensee is prohibited from selling and supplying pre-packaged alcoholic drinks that are "ready to drink" (RTDs);
 - (x) music to be played at the premises shall be at a level which allows conversation to occur; and
 - (xi) a CCTV system is to be installed and maintained in compliance with the Director of Liquor Licensing's *Safety and Security at Licensed Premises* policy.
- (c) Dress standard:
- (i) The following dress standard applies during the permitted trading hours:
 - (1) neat casual attire is to be worn; and
 - (2) footwear is to be worn at all times.
 - (ii) A notice is to be displayed at all entrance to the licensed area/event reflecting this condition.
- (d) Dress standard (Outlaw Motor Cycle Gangs):
- (i) The following dress standard applies during the permitted trading hours:

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- (1) 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:
 - a) Coffin Cheaters;
 - b) Club Deroes;
 - c) Gods Garbage;
 - d) Gypsy Jokers;
 - e) Outlaws;
 - f) Finks;
 - g) Rebels;
 - h) Comancheroes;
 - i) Hell's Angels;
 - j) Rock Machine;
 - k) Mongols and
 - l) Lone Wolf.
 - (2) A notice is to be displayed at all entrance to the licensed area/event reflecting this condition.
- (e) Entertainment Condition:
- (i) 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:
 - (1) be immodestly or indecently dressed on the licensed premises, and/or
 - (2) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
 - (ii) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:
 - (1) 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

- (2) 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
- (3) 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.

(iii) In this condition "licensed premises" includes any premises, place or area:

- (1) which is appurtenant to the licensed premises; or
- (2) 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.

(f) 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.

- 22. Pursuant to s 127(2) of the Act, a prescribed licence fee is payable prior to the operation of the licence.
- 23. The Applicant is also reminded that trading may not commence under the licence without the prior written approval of the licensing authority.
- 24. 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.
- 25. This matter has been determined by me under delegation pursuant to s 15 of the Act.


Brett Snell
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING