

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: COVENTRY SEAFOOD BAR & GRILL PTY LTD
PREMISES: COVENTRY SEAFOOD BAR AND GRILL
PREMISES ADDRESS: SHOP 2AB, 243-253 WALTER ROAD, MORLEY
APPLICATION ID: A000177765
DATE OF DETERMINATION: 20 OCTOBER 2015
NATURE OF APPLICATION: **CONDITIONAL GRANT OF A TAVERN RESTRICTED LICENCE**

1. On 22 April 2015, an application was lodged by Coventry Seafood Bar & Grill Pty Ltd (“the Applicant”) for the conditional grant of a tavern restricted licence for premises to be known as *Coventry Seafood Bar and Grill* and situated at Shop 2AB, 243-253 Walter Road, Morley.
2. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (“the Act”) and was advertised 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 of the Act.
3. Pursuant to ss 13 and 16 of the Act, the application will be determined on the papers lodged by the parties, which are briefly summarised below.
4. The Applicant submitted that the application relates to premises located in Coventry Village (“the Village”) in central Morley and opposite the *Centro Galleria* shopping centre, which has an aim of becoming a global food and shopping experience, “with the potential to be one of Perth’s biggest tourist attractions and a major destination for Perthites and travelling visitors.”
5. In order to support its application, the Applicant lodged a Public Interest Assessment (“PIA”) and other submissions, in which it addressed those matters prescribed in s 38(4) of the Act; and explained that a tavern restricted licence is sought to replace the restaurant licence number 60620750715, previously granted in respect of the premises, essentially because the manner of trade permitted under a restaurant licence does not satisfy the needs of its patrons.
6. Furthermore, the Applicant confirmed its intention to surrender the restaurant licence on the grant of the tavern restricted licence, should its application be successful.

7. According to the Applicant:

“There is a clear indication that the conversion of the Restaurant to Tavern will continue to have a positive impact and benefit to the locality community. Coventry Seafood Bar + Grill currently enhances the range and diversity of offerings at Coventry Village and... will cater for liquor and food related services currently not being satisfied within the food and beverage precinct at the village.”

8. In seeking the conditional grant of a tavern restricted licence, the Applicant outlined that its objectives are to provide:

- (a) quality meals in a contemporary modern facility;
- (b) great value seafood and quality meat meals inspired by international flavours and experiences;
- (c) food and beverages in an inviting and friendly, family oriented environment; and
- (d) a drink and sport viewing facilities in a casual bar environment with easy access from the Village Markets.

9. In order to establish that the grant of the application will cater to the requirements of consumers for liquor and related services, the Applicant conducted a “survey of over 200 persons from all different suburbs and of different age demographics”, which it submitted:

“...confirmed that a well-run tavern offering seafood at an affordable price would be a winner at the Village. It also confirmed that the consumer wanted the choice to consume an alcoholic beverage without a meal ...”

10. The representations of the Commissioner sought the imposition of conditions on the licence, if granted, to ensure that it is not operated in a manner that will result in public disorder or disturbance or otherwise be contrary to the public interest. In this regard, the Commissioner submitted that an impromptu meeting was held on 22 July 2015, between a representative of the Liquor Enforcement Unit, the Applicant and local police, where strategies were agreed upon by all parties for the minimisation of alcohol-related harm.

11. As such, the Commissioner recommended that it would be in the public interest to impose the conditions agreed to by the parties on the grant of the tavern restricted licence. The relevant conditions relate to:

- (a) restricting the trading hours under the licence to those nominated by the Applicant;
- (b) a CCTV system being in place and operational in accordance with the Director's *Minimum Standards – Closed Circuit Television* policy;

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- (c) restricting entertainment at the premises by:
- (i) prohibiting performances of live bands using amplified music and/or DJs;
 - (ii) restricting music played at the premises to background music only, which allows normal conversation to occur;
 - (iii) only permitting acoustic performances by bands;
 - (iv) prohibiting bands from performing in the alfresco area; and
 - (v) restricting acoustic performances to between the hours of 6 p.m. and 11 p.m. only;
- (d) the provision of substantial food for purchase at the licensed premises during trading hours, until half an hour prior to closing;
- (e) the provision of seating for a minimum of 180 patrons during normal business hours, which may be temporarily reduced in connection with *bona fide* pre-booked functions;
- (f) that liquor will not be sold or supplied in such a way that would encourage the rapid consumption of liquor;
- (g) that low-strength, mid-strength and non-alcoholic drinks must be available for purchase during the permitted trading hours;
- (h) that no liquor is to be supplied that has been mixed with an energy drink;
- (i) the provision of licensed security guards on Friday and Saturday nights; and
- (j) the imposition of a dress standard in accordance with the Director's *Dress Standards for Licensed Premises* policy, particularly with respect to the wearing of jackets, clothing, accessories or visible body markings bearing patches or insignia of any Outlaw Motor Cycle Gangs.
12. In correspondence dated 6 August 2015, the Applicant wrote to representatives of the Commissioner of Police, in which it agreed to most conditions contained within the notice of intervention, although issue was raised with the recommendation relating to the provisions of food. In this regard, the Applicant submitted that at the meeting of 22 July 2015, it was agreed that the food service at the licensed premises would cease an hour before close of business, rather than the 30 minutes contained in the relevant condition proposed by the Commissioner.
13. An applicant for the grant of a tavern restricted licence must, pursuant to section 38(2) of the Act, satisfy the licensing authority that granting the application is in the public interest. In this regard, the Act as a whole establishes a regime for the control and regulation of the sale, supply and consumption of liquor; and does not proceed on the basis that there is any presumption in favour of the grant of a licence, but rather the

reverse: that an applicant must demonstrate that it is in the public interest that the application should succeed (refer *Woolworths Ltd -v- Director of Liquor Licensing* [2012] WASC 384).

14. In determining whether the grant of an application is “in the public interest”, the licensing authority is 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).
15. Also, when determining whether the grant of an application is in the public interest (refer s 38(4)), the licensing authority should consider both the positive and negative social, economic and health impacts that the grant of the application will have on the community (refer s 19 of the *Interpretation Act 1994* and Parliamentary Debates, WA Parliament, Vol 409, p 6342). In this regard, advancing the objects of the Act as set out in s 5, is a mandatory public interest consideration (refer *Palace Securities supra*).
16. In my view, the Applicant has lodged sufficient evidence to establish that its clients are seeking a different type of hospitality service than can be currently provided under its restaurant licence. Following the meeting between the parties on 22 July 2015, it appears that there is general agreement over the appropriate licence conditions to mitigate the potential harm and/or ill-health posed by the grant of the tavern restricted licence. Where there is disagreement, I consider it to be negligible.
17. Furthermore, while I have noted the Applicant’s indication that it may trade for fewer hours than the maximum range of permitted trading hours prescribed in s 98 of the Act for a hotel licence¹, I can see no causal reason to further restrict the permitted trading hours under the licence.
18. Therefore, 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.
19. Accordingly, the licence is conditionally granted, subject to the contemporaneous surrender of restaurant licence number 60620750715 and the imposition of 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 premise;

¹ Which, pursuant to s 41(1)(c) of the Act, includes a tavern restricted licence.

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- (c) all work being completed within 12 months in accordance with the plans and specifications dated 5 June 2015 and subject to full compliance with the Schedule of Requirements dated 10 June 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 XX October 2016, pursuant to s 62(4)(c) of the Act.
20. 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 tavern restricted licence;
 - (ii) the sale of packaged liquor for consumption off the licensed premises is prohibited;
 - (iii) the maximum number of patrons permitted to be on the licensed premises at any time is not more than 250;
 - (iv) seating must be provided for 180 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) a substantial food and dining menu must be available for purchase by patrons, for consumption on the premises, until an hour prior to closing time;
 - (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;

- (viii) the licensee must provide drink options that contain low alcohol content as well as a range of non-alcoholic drinks;
 - (ix) music to be played at the premises:
 - (1) shall not be in the form of performances by live bands using amplified music and/or DJs;
 - (2) may be acoustic performances by bands, subject to:
 - a) bands being prohibited from performing in the alfresco area; and
 - b) such performances only occurring between the hours of 6 p.m. and 11 p.m.; and
 - (3) is restricted to background music only, which allows normal conversation to occur;
 - (x) 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.
 - (xi) Crowd controllers licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed on Friday and Saturday nights, from 7.30 p.m. until 30 minutes after trading ceases, at a ratio of two crowd controllers for the first 100 patrons and one crowd controller for each additional 100 patrons or part thereof. Crowd Controllers are required to wear high visibility jackets/shirts/vests.
- (c) Dress standard (Outlaw Motor Cycle Gangs):
- (i) The following dress standard applies during the permitted trading hours:
 - (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.

(d) 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.

(e) 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.

21. Pursuant to s 127(2) of the Act, a prescribed licence fee is payable prior to the operation of the licence.
22. The Applicant is also reminded that trading may not commence under the licence without the prior written approval of the licensing authority.
23. 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.
24. 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