



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

**APPLICANT:** YOUNG HENRYS BREWING COMPANY PTY LTD  
**PREMISES:** YOUNG HENRY'S BEER FARM  
**PREMISES ADDRESS:** 177 GALE RD METRICUP WA 6280  
**APPLICATION ID:** A000057318  
**NATURE OF APPLICATION:** APPLICATION FOR GRANT OF A TAVERN LICENCE  
**DATE OF DETERMINATION:** 18 NOVEMBER 2015

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### **Introduction**

1. On 6 February 2015 Young Henry Brewing Company Pty Ltd ("the Applicant") lodged an application for the grant of a tavern licence in respect of premises situated at 177 Gale Road, Metricup to be known as Young Henry's Beer Farm.
2. The application is made pursuant to ss 41 and 68 of the *Liquor Control Act 1988* ("the Act").
3. Pursuant to s 67 of the Act, the application was required to be advertised by way of a notice in *The West Australian* newspaper on or before 3 March 2015; by way of a notice on the site of the premises for a period of 28 days commencing on 3 March 2015; by way of a notice to residents and businesses located within a 200 metre radius of the premises; and a general notice to educational, health care and local and regional government institutions, as well as community and church groups, within the locality.
4. No objections were lodged. However, pursuant to s 69 of the Act the Commissioner of Police ("the Commissioner") lodged a notice of intervention.
5. Pursuant to ss 13 and 16 of the Act the application will be determined on the papers.
6. In regards to this application, it is noted that on lodgement of the application the Applicant was represented by Neville & Hourn Legal, Level 4, 162 Goulburn Street, Sydney and from 16 April 2015 by Lavan Legal, The Quadrant, 1 William Street, Perth. Lavan Legal, on behalf of the Applicant, lodged responsive submissions addressing the representations of the Commissioner.
7. By letter dated 5 November 2015 the parties to these proceedings were provided with the opportunity to lodge closing submissions. No further submissions were lodged.
8. The submissions and the evidence of the parties to these proceedings are briefly summarised below.

### **Submissions on behalf of the Applicant**

9. The Applicant seeks the grant of a tavern licence in respect of premises situated at 177 Gale Road, Metricup. The Applicant's Public Interest Assessment (PIA) lodged in support of the application provides a description of the locality, the Applicant's business model, the background to the application and addresses the matters contained in s 38(4) of the Act.
10. The proposed tavern consists of an existing herringbone dairy; a large hay shed built from concrete and corrugated iron; and a new shed. The proposed licensed premises comprises approximately 320 m<sup>2</sup>, and includes:
  - existing shed/feature entrance;
  - existing dairy – transition area between brewery, tasting areas and toilet access;
  - external decking of approximately 144m<sup>2</sup>;
  - existing hayshed/internal tasting area of approximately 180m<sup>2</sup> with an 8m bar/serverly; and
  - toilets facilities to accommodate up to 125 patrons.
11. In respect of its application for a tavern licence, the Applicant stated that the primary purpose of the business is the production of craft beers and submitted:

*As opposed to the common conception of tavern licences, Young Henrys is applying for this licence so that they can operate a 'cellar door' as part of the brewery. The business concept is more akin to a "microbrewery", as Young Henrys are primary producers the focus of the venue is production in contrast with consumption. This is reflected in the "House Rules".*
12. According to the Applicant, the proposed licensed premises will have little impact on the surrounding amenities as its business model is akin to the nature and character of the locality; and will be beneficial to the tourism and hospitality industries in the region.
13. It was submitted by the Applicant that there is minimal likelihood that there will be offence, annoyance, disturbance or inconvenience caused by the grant of the licence as the venue will not be a high risk venue as it will not be operated in the usual tavern fashion where the focus is on the consumption of alcohol. The Applicant's focal point, as a primary producer being operating the venue for the tasting and the selling of its own products.
14. The Applicant submitted that it has years of experience in the hospitality industry; acknowledged the potential risks associated with consumption of alcohol including underage drinking and intoxication; and submitted that there is little likelihood of any negative impact in the locality, from the grant of the licence, because of its intended manner of trade and its management practices. The Applicant also highlighted that a CCTV surveillance system has been installed in and around the premises and that the construction of the premises would assist in minimising any offensive noise emanating from the premises.
15. To demonstrate support for the tavern licence, the Applicant lodged a copy of its development application lodged with the City of Busselton; letters of support from persons and businesses in the region; Public Questionnaires; a Noise Impact Assessment; and information regarding the production and judging of craft beers.

### **Submissions of the Commissioner**

16. The Commissioner, in his notice of intervention dated 26 March 2015, makes representations on the grounds that:
  - On the question of whether, if the application was granted, public disorder or disturbance would likely result (pursuant to s 69(6)(c)(ii) of the Act; and
  - Any other matter relevant to the public interest (pursuant to s 69(6)(c)(iv) of the Act).

17. The notice of intervention included an analysis of the application for a tavern licence and the evidence of the Applicant; and highlighted matters of concern within the locality.
18. In conclusion, due to the high level of tourist activity in the locality, the Commissioner suggested possible trading conditions to be considered to minimise any potential harm that the grant of the application will have on people due to the use of liquor or the impact the grant of the licence would have on the amenity of the locality.

### **Responsive submissions lodged on behalf of the Applicant**

19. On 4 June 2015, the Applicant lodged comprehensive responsive submissions addressing the objects of the Act; and the concerns of the Commissioner. The Applicant also lodged evidence, such as letters and questionnaires to demonstrate support for the grant of the application.
20. In responding to the Commissioner's intervention the Applicant, reiterated and expanded on its intended manner of trade, highlighting that it is an established and well respected producer of liquor in the State of New South Wales with approximately 1 million litres of beer sold in the financial year ending 30 June 2015.
21. The Applicant submitted that an analysis of the locality revealed a very low level of "at-risk" groups of people in locality and that the locality is not a high risk area in terms of alcohol-related harm.
22. It was also submitted that it was unlikely that the grant of the application with or without the suggested trading conditions would cause public disorder or disturbance in the amenity of the area.
23. However in respect of the Commissioner's suggested trading conditions it was submitted that the Applicant accepts the conditions as being entirely reasonable and agrees to the proposed conditions being endorsed on the licence.

### **Determination**

24. The Applicant seeks the grant of a tavern licence in respect of the proposed premises situated at 177 Gale Road, Metricup.
25. In accordance with s 38 of the Act, the onus is on the Applicant to satisfy the licensing authority that the grant of the application is in the public interest. In this regard, the licensing authority, however constituted, makes its determination on the balance of probabilities.
26. In determining whether an application should be granted "in the public interest" the licensing authority, is required to exercise a discretionary value judgement within 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; and *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241. That is, consideration must be given to the objects of the Act as specified in s 5 and regard may be given to the matters prescribed in s 38(4) of the Act.
27. In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:

*The reference to "the public interest" appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to*

*prescribe some generally applicable rule, should give a description of the public interest that confines this expression.*

*The expression "in the public interest" directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.*

28. Pursuant to s 33 of the Act the licensing authority has an absolute discretion to grant or refuse an application under the Act on any ground, or for any reason, that the licensing authority considers in the public interest, provided that the application is dealt with on its merits within the scope of the Act (refer *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC; and *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).
29. The primary objects of the Act, as set out in s 5 are:
  - to regulate the sale, supply and consumption of liquor;
  - to minimize 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.
30. The secondary objects as set out in s 5(2) 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 persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
31. The Applicant in its application submitted that the primary reason for seeking a tavern licence for the proposed premises is that a producer's licence, under the Act, for beer does not allow the sale and supply beer on the licensed premises, other than by way of restrictive tastings conditions, for consumption on the licensed premises.
32. In this regard, it was submitted that the Applicant wishes to establish a microbrewery at the proposed premises situated in a locality characterised by a mixture of agricultural, viticultural and tourism uses, with some residential dwellings attached to agricultural properties.
33. The Applicant's primary focus is the production of craft beers and the tavern licence allows the Applicant to operate a 'cellar door' facility as part of its brewery operation. The tavern licence will enable the Applicant to sell and supply liquor, produced by the applicant, for consumption on the licensed premises and packaged liquor for consumption off the premises.
34. It was also submitted that the Applicant as a primary producer is currently also producing spirits at its Sydney premises and that it is their intention to age spirits and produce craft beers at the proposed premises. It is also intended to make food trucks available at the premises to provide patrons with the option to purchase food for consumption on the premises.
35. The Applicant has obtained the appropriate planning approvals from the City of Busselton so as to enable the proposed premises to include a brewing area, a tasting area, and a dining and consumption area.
36. However, I note that the s 40 (planning approval) certificate issued by the City of Busselton and lodged with the application does not specifically restrict the kind or the type of liquor to be sold at the proposed premises, in accordance with the tenor of its planning approval and this application. In

this regard in view that the Applicant seeks to establish a microbrewery and also produces spirits in the State of New South Wales I am of the view that it would be reasonable to conclude that only liquor, produced by the Applicant, was sought to be sold and supplied for consumption on or off the proposed premises.

37. In this application no objections were lodged in accordance with s 74 of the Act. However, the Commissioner in accordance with s 69 of the Act intervened in the application. In this regard the Commissioner, as intervener, carries no burden of proof and makes representation to assist the licensing authority. (per Greaves J, *Gull Petroleum (WA) Pty Ltd* [1988] LLC No. 13/98).
38. In regards of the representations of the Commissioner, in this case, there is nothing in the submissions made to indicate that if the application was granted it would result in offence, annoyance, disturbance or inconvenience to residents and that the amenity, quiet or good order of the locality would in some other manner be lessened.
39. In considering all of the information presented, I am satisfied that the Applicant has discharged its onus under s 38(2) of the Act and that the grant of the application is consistent with objects contained in s 5(1)(c) of the Act, to cater for the requirements of consumers for liquor and related services, and s 5(2) of the Act to facilitate the use and development of licensed premises reflecting the diversity of the requirements of consumers.
40. Therefore, I am prepared to exercise my discretion under s 33 of the Act and grant the application for a tavern licence subject to trading conditions which reflect the tenor of the Applicant's intended manner of trade and some of the suggested trading conditions of the Commissioner. In particular, the sale and supply of packaged liquor for consumption off the licensed premises will be restricted to liquor produced by the licensee or a related body corporate.
41. Also in regards to the Applicant's proposal to allow 'food trucks' at the premises for the purpose of providing food to patrons for consumption on the licensed premises, the Applicant's attention is drawn to the requirements of s 104 of the Act, as it relates to a business conducted by a licensee on licensed premises, to ensure compliance with the Act.
42. Accordingly, as 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 the application for a tavern licence is granted subject to the following:

### **Trading hours**

1. The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.

### **Trading Conditions**

2. 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.
3. The predominant and primary purpose of this licence is to authorise the sale and supply of liquor produced by the licensee or a related body corporate for consumption on or off the licensed premises. In this regard, the licensee must, on the licensed premises or on the site and reasonable proximity to the licensed premises, have appropriate beer producing facilities to enable the production of beer. The planning conditions imposed by the City of Busselton (DA14/0220) in regards to the production of beer are also applicable trading conditions of this licence.

4. The sale and supply of packaged liquor, other than liquor produced by the licensee or a related body corporate, for consumption off the licensed premises is prohibited.
5. The number of persons that may be accommodated on the licensed premises, at any one time, must not exceed 125 persons.
6. Low-strength and mid-strength beer, plus non-alcoholic drinks must be available at all times business is being conducted under the licence.
7. The selling and supplying of beverages in such a way that would encourage rapid consumption of liquor (e.g. but not limited to; unadulterated spirits or liqueur in a shot glass); or drinks known as 'laybacks', 'shots', 'shooters', 'test tubes', 'jelly shots', 'blasters', or 'bombs' or any other emotive title, is prohibited.
8. No liquor is to be supplied mixed with energy drinks. For the purposes of this condition 'energy drinks' 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.
9. Noise emanating from the licensed premises must not exceed that permitted under the Environmental Protection (Noise) Regulations 1997.
10. A closed circuit television video ("CCTV") surveillance system, able to identify individuals and showing times and dates must be in place and operational. The CCTV system must comply with the requirements as identified in the Director's Policy 'Security at Licensed Premises'. It is expected that the system will provide and record continuous images of the entrances and exits to the premises (including the ETP area) during the normal trading hours and until one (1) hour after trading ceases. Images recorded via the CCTV system must be retained for, at least, twenty eight (28) days (or such other period as the Director of Liquor Licensing specifies) and must be made available for viewing or removal by the Police or other persons authorised by the Director.
11. Entry to the licensed premises is prohibited to any person wearing a jacket or any other clothing bearing patches or insignia including accoutrements, jewellery, visible tattoos, branding or any other item that indicates membership or association with any Outlaw Motorcycle Gang, including but not limited to the Coffin Cheaters; Club Deroes; God's Garbage; Gypsy Jokers; Outlaws; Finks; Rebels; Comancheroes; Hell's Angels; Rock Machine; Mongols; Lone Wolf; and Bandidoes.

### ***Entertainment Condition***

12. 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:
  - (a) be immodestly or indecently dressed on the licensed premises, and/or
  - (b) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
13. The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:
  - (a) 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;

- (b) 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
- (c) 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.

14. In this condition "licensed premises" includes any premises, place or area:

- (a) which is appurtenant to the licensed premises, or
- (b) 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.

### ***Compliance with Director's Harm Minimisation Policy***

15. 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.

### **Licence Fees**

16. Pursuant to s 127(2) of the Act the prescribed licence fee payable in respect of this licence is \$141.00 and is payable prior to the grant of the licence.
17. I am satisfied that the licence fee has been paid.

### **General**

18. The licensed premises are defined as the area outlined in red on the plans attached and dated 17 June 2015. A copy of that plan is to be retained on the premises and produced to any authorised officer on request.
19. Pursuant to s 116(3) of the Act, the premises' name "Young Henry's Beer Farm" is approved. The licensee shall not subsequently conduct business at the licensed premises under any other trading name without the prior approval of the Director of Liquor Licensing.
20. The applicant must ensure that the signage required under ss 116(4) and 116(5) of the Act is displayed on the licensed premises within fourteen (14) days of the date of this decision.
21. Additionally, pursuant to s 116(4) of the Act, the applicant must ensure a copy of the licence is displayed in a readily legible condition and in a conspicuous position in the licensed premises.
43. *In addition to the specified trading conditions of the licence, the licensee is also reminded of the obligations of a licensee under the Act including the following:-*

- *Supervision & Management*

The licensee must ensure that the conduct of the business at the licensed premises is personally supervised and managed by an Approved Unrestricted Manager or by the licensee if the licensee is a natural person at any time when business is conducted.

- *Mandatory Training - Responsible Service of Alcohol*

Within four (4) weeks of commencing employment at the licensed premises the licensee is required to have any person who will be engaged in the sale, supply and service of liquor on the licensed premises, and all senior staff, successfully complete a course of training in the responsible service of alcohol.

- *Free Drinking Water*

Pursuant to s 115A of the Act, at all times that liquor is sold and supplied for consumption on the licensed premises, the licensee shall make available to patrons, potable drinking water free of charge. As a minimum, this condition is to be met by way of water dispensers located at or near all bar service areas. The water must be refreshed regularly, with clean glasses or disposable cups being available for use.

44. 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.

45. This matter has been determined by me under delegation pursuant to s 15 of the Act.



Eric Romato

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING