

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ISS INTEGRATED SERVICES PTY LTD

PREMISES: JULUTHARNDU MAYA

PREMISES ADDRESS: LOT 369 WICKHAM DR WICKHAM

APPLICATION ID: A000057204

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

DATE OF DETERMINATION: 21 MAY 2015

Introduction

- 1 On 12 September 2014, an application was lodged by ISS Integrated Services Pty Ltd (the applicant) for the grant of a tavern restricted licence for premises to be known as Julutharndu Maya and located Lot 369 Wickham Drive, Wickham. The application is made pursuant to s 41 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, pursuant to s 69 of the Act the Executive Director Public Health lodged a Notice of Intervention.
- 3 In accordance with ss 13 and 16 of the Act, the application will be determined on the papers. The submissions and evidence of the parties are briefly summarised as follows.

Submissions by the applicant

- 4 Wickham is predominantly a mining town located in the heart of the Pilbara region. It is approximately 1,570km north of Perth; 10km from Point Samson; 13km from Roebourne; and 40km from Karratha, which is the nearest major town in the region. Wickham is a partially 'normalised town', whereby most of the town's infrastructure is on the Crown Lease granted to the Robe River Joint Venture (JV) pursuant to the Robe State Agreement and is, therefore, the responsibility of the JV. Although the roads, drains and most of the water infrastructure has been normalised and transferred to the relevant government authorities, the JV, through Rio Tinto mining company, is still responsible for all community infrastructure and in effect still 'owns and runs' the town.
- 4 Wickham had a population of 1,651 people at the 2011 Census. According to the applicant, the town is lacking in choice and diversity of services with there being only one existing licensed premises open to the general public for on-premise consumption, which is also operated by the applicant.

- 5 The proposed tavern restricted licence will be located in the Julutharndu Maya building which is a mixed use, multi-faceted facility which combines gymnasium, hospitality, offices and transit lounge and is designed to appeal to and service Rio Tinto's fly-in-fly-out workers, local residents and visitors to the town.
- 6 The applicant is an experienced operator of similar licensed facilities in WA, and proposes to offer a high standard of services with quality dining, drinking, socialising and function facilities. The proposed tavern will comprise the following:
 - dining room and kitchen;
 - bar area;
 - outdoor courtyards; and
 - transit lounge.
- 7 The applicant submitted a comprehensive Public Interest Assessment (PIA) which provided details on the applicant and background to the application; the locality in which the premises will operate; the intended manner of trade at the premises; the demographic profile and social health indicators of the locality; and the likely impact on the amenity of the area. The applicant also undertook consultation with the local community to ascertain members' views on the proposed tavern. The result of this consultation indicated overwhelming support for the proposal.
- 8 It was submitted by the applicant that whilst there are some at-risk groups present in the locality, there will be no adverse impact on any section of the community if the licence is granted. The applicant, through its experience and well tested management practices, will ensure the public interest is very well served by the establishment of new and much needed tavern services in Wickham.
- 9 Consequently, it was submitted that the proposed premises is designed to be a community gathering place where people who live and work locally can seek refreshments and socialise together in a modern, quality environment.

Submissions by the Executive Director Public Health

- 10 The EDPH intervened in the application to make representations regarding the risk of alcohol-related harm and ill-health associated with the grant of the application and how that risk might be minimised.
- 11 Specifically, the EDPH submitted that:
 - there are at-risk groups for alcohol-related harm (including mining workers and Aboriginal people) who reside in or frequent the locality;
 - Julutharndu Maya is located in Wickham, a locality that already experiences levels of alcohol consumption and harm higher than the State rate; and

- police have reported alcohol-related problems (including assaults) at the Wickham Sportsman bar, which is also operated by the applicant and warrants a cautious approach in relation to the current application.
- 12 According to the EDPH, tavern licences, by their nature, can be a higher risk for harm. Research has demonstrated that, as a function of the quantity of liquor sold, there is an association between different liquor licence types and varying degrees of risk for serious alcohol-related harm to occur, including assaults. It is therefore important to consider the particular characteristics and proposed trading operations of Julutharndu Maya to determine whether those factors exacerbate or ameliorate the risk of harm that might result from the grant of the application.
- 13 The EDPH provided a detailed submission and supporting evidence highlighting the particular risk factors, which include the size of the proposed tavern; the impact of increasing the availability of alcohol in Wickham; the existing at-risk groups including particular concerns relating to miners and construction workers in remote areas; existing high rate of alcohol consumption in the area and the associated harms; and problems with the applicant's management of the only other existing tavern in town.
- 14 Consequently, the EDPH submitted that if the licence is granted, it is important to impose conditions on the licence to ameliorate the risks to the community from the operation of a new tavern in this locality. Based upon the identified risk factors, the EDPH recommended conditions relating to the availability of food; the provision of seating; prohibiting the sale of packaged liquor; the provision of music; responsible server practices; CCTV system; dress standards and juveniles.

Determination

- 15 The applicant seeks to establish a new licensed facility in the mining town of Wickham. The proposed premise, which is part of a multi-faceted facility, will be licensed under tavern restricted licence, which only authorises the sale of liquor for consumption on the premises. The applicant is an experienced operator of similar premises and does not wish to sell packaged liquor. The proposed premises will provide a range of services to the local community, which, according to the applicant, are lacking in the town.
- 16 There is no presumption in favour of the grant of an application under the Act, rather the opposite applies. An applicant for the grant of a tavern restricted licence must adduce sufficient evidence to satisfy the licensing authority that the grant of the application is in the public interest. The expression 'in the public interest' is not defined under the Act, but imports a discretionary value judgement 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).

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- 17 The scope and purpose of the Act can be ascertained from its objects, which the licensing authority must take into consideration. The primary objects of the Act, as set out in s 5, are:
- a) to regulate the sale, supply and consumption of liquor;
 - b) to minimize harm caused to people, or any group of people, due to the use of liquor; and
 - c) 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.
- 18 I have carefully considered the applicant's evidence and submissions, and, based upon this information, I am satisfied that the grant of the application would be consistent with primary object 5(1)(c) of the Act, and the secondary object of facilitating the use and development of licensed facilities reflecting the diversity of the requirements of consumers (object 5(2)(a)). The proposed venue has the potential to positively contribute to the amenity of the town and supplement other improvements to the town which are taking place. I note that there are no objections to the grant of the application and there is strong support from the local community.
- 19 The EDPH has provided evidence highlighting the risks associated with the grant of the application, particularly in view of the presence of at-risk groups and the existing high levels of alcohol consumption and harm in the locality. There is no onus on an intervener to establish their assertions of fact or opinion (refer *Re Gulf Liquor* (1999) 20 SR (WA) 321).
- 20 Minimising alcohol-related harm is also a primary object of the Act. Where there is conflict between the statutory objects, the licensing authority must undertake a weighing and balancing exercise. Each decision will depend upon the particular circumstances of the case (refer *Executive Director of Public Health v Lily Creek International Pty Ltd* (2000) 22 WAR 510).
- 21 Whether the risks associated with the grant of an application would eventuate, involves a degree of prediction (refer *Malec v JC Hutton Pty Ltd* (1990) 169 CLR 638).
- 22 In order to ameliorate the risks associated with the operation of the premises, the EDPH recommended a number of conditions that could be imposed on the licence. The applicant has agreed to some of those conditions or volunteered its own conditions.
- 23 Consequently, in weighing and balancing the competing interests in this case, I find that, with appropriate conditions, the risks associated with the grant of the application, in this locality, can be minimised and the proposed tavern can operate in a manner which is not contrary to the public interest. I am satisfied that the positive aspects of

the application outweigh the risks and therefore find that the grant of the application is in the public as required under s 38 (2) of the Act.

24 In determining what are at the appropriate conditions for the licence I have been guided by the parties' submissions. The evidence of the EDPH clearly establishes that the locality in which the premises is to operate experiences above average rate of alcohol consumption and alcohol-related harm and there are 'at-risk' groups present in the area, which includes FIFO workers. There have also been some issues with the applicant's management of the only other tavern in town, with three incidents occurring at those premises between December 2013 and March 2014. A cautious approach is therefore warranted.

25 The following conditions will therefore 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 restricted licence.
- the sale of packaged liquor for consumption off the licensed premises is prohibited.
- during the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises.
- food must be available during trading hours.
- tables and seating for dining shall be set up in the dining room area at all times except for private pre-arranged functions or special events.
- seating for the following minimum number of people in the following areas shall be set up at all times except for private pre-arranged functions and special events:
 - 24 in the bar;
 - 32 in the courtyard next to the dining room;
 - 48 in the courtyard next to the bar; and
 - 37 in the transit lounge.
- the consumption of liquor in the transit lounge is prohibited except for a private pre-arranged function or event.

- any music played at the premises must be background in nature only, sufficient to allow normal conversation to occur except during a private pre-arranged function or special event.
- 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'.
- drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options shall be available for purchase at all times.
- 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.
- the licensee is to have and maintain a CCTV system compliant with the policies of the Director of Liquor Licensing.
- a minimum dress standard policy must apply. A notice of the dress standard must be displayed at each entrance to the premises.
- unaccompanied juveniles are prohibited from entering or remaining on the licensed premises.

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.
- I am satisfied that the licence fee has been paid.
- The licensed premises are defined as the area outlined in red on the plans attached and dated 12 September 2014. A copy of that plan is to be retained on the premises and produced to any authorised officer if required.
- Pursuant to s 116(3) of the Act, the premises' trading name of "Julutharndu Maya" 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.
- The applicant must ensure that the signage required under s 116(5) of the Act is displayed on the licensed premises within 14 days of the date of this decision (i.e. on or before 4 June 2015).
- Additionally, pursuant to s 116(4) of the Act, the licensee must ensure a copy of the licence is displayed in a readily legible condition and in a conspicuous position in the licensed premises.

36 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.

37 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