

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

**APPLICANT:** SASSEY PTY LTD

**PREMISES:** LOT 80

**PREMISES ADDRESS:** LOT 101, 54 SHEENS ROAD NATURALISTE

**APPLICATION ID:** A000196770

**NATURE OF APPLICATION:** GRANT OF A TAVERN LICENCE

**DATE OF DETERMINATION:** 10 AUGUST 2016

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### **Introduction**

- 1 This is an application by Sassey Pty Ltd (the applicant) for the grant of a tavern licence for premises to be known as Lot 80 and located at Lot 101, 54 Sheens Road, Naturaliste. 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 the Executive Director, Public Health (EDPH) lodged a notice of intervention pursuant to s 69 of the Act. The purpose of the intervention was to make representations regarding the harm and ill-health concerns based on the high-risk characteristics associated with the operation of a tavern licence. The EDPH recommended that, if the application is granted, the following conditions be imposed on the licence to mitigate the potential risks and ensure the applicant trades in a manner consistent with the submissions which accompanied the application:
  - the maximum number of patrons permitted on the licensed premises is not to exceed 200 at any one time;
  - the premises is to have a required amount of seating, except during pre-booked functions and events;
  - food must be available during all hours of trade;
  - low alcohol liquor and non-alcoholic drinks must be available to purchase during all trading hours; and
  - no liquor is to be sold or supplied by virtue of their 'emotive' title and known as 'laybacks', 'shots', 'shooters', 'test tubes', 'jelly shots', 'blasters', or 'bombs'.
- 3 Pursuant to s 13 and s 16 of the Act, the application will be determined on the written materials lodged by the parties.

## Determination

- 4 The applicant currently operates a licensed restaurant at the site of the proposed tavern. The applicant essentially seeks the grant of a tavern licence in order to provide greater flexibility to patrons of the venue; however this will not result in a significant shift in the general manner of trade at the premises. The proposed venue will still be a local food and beverage based tourism premise in the Margaret River Wine Region. The applicant only wishes to sell a limited range of packaged liquor, being wine, under the Wise Wines label.
- 5 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA provided details on the reasons for the application, proposed manner and style of operation, demographics of the locality, the benefits to the public if the application is granted, and addressed the matters set out in s 38(4) of the Act.
- 6 The onus falls upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest: s 38(2).
- 7 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).
- 8 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.
- 9 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.
- 10 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

- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- 11 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.
- 12 I have considered the applicant's evidence and submissions as detailed in its PIA and I find that the grant of the application would cater to the requirements of consumers for liquor and related services; facilitate the use and development of licensed premises reflecting the diversity of consumers; and promote the tourism industry in the State, consistent with objects 5(1)(c) and 5(2)(a) of the Act. In terms of the harm minimisation object of the Act: 5(1)(b), I am of the view the grant of the application would not present an unacceptable risk to the community. In arriving at these conclusions, I have also given weight to the trading history of the premises under the restaurant licence and the applicant's proposed manner of trade under the tavern licence.
- 13 I am therefore satisfied that the grant of the application is in the public interest, as required under section 38(2) of the Act and that the applicant has complied with all other statutory requirements and conditions precedent to the application being granted.
- 14 In respect of the evidence submitted by the EDPH in his intervention and the recommended conditions, the applicant submitted that it is committed to operating a safe and responsible premises and is agreeable to the conditions proposed by the EDPH, with the exception of the condition requiring food to be available at all times during trading hours. In this regard, the applicant submitted that the condition be amended so that food is to be available at all times until 30 minutes before closing.
- 15 Consequently, the standard conditions for a licence of this nature will be imposed together with other basic conditions to support the harm minimisation object of the Act or conditions consistent with the applicant's PIA:

#### 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.
- During the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises and wine under the Wise Wines label (only) as packaged liquor for consumption off the licensed premises.

- Food must be available at all times during trading hours until 30 minutes before closing.
- The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing.
- The maximum number of patrons permitted on the licensed premises at any one time shall not exceed 200 or such lesser number imposed by the local government authority.
- The premises is to be set up with table and chairs at all times except during pre-booked functions and events.
- 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 must be available at all times.

#### 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;
- (v) Outlaws;
- (vi) Finks;
- (vii) Rebels;
- (viii) Comancheroes;
- (ix) Hell's Angels;
- (x) Rock Machine;
- (xi) Mongols;

(xii) Lone Wolf; and

(xiii) Bandidos.

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 film or computer game or "Category 1 – Restricted" or "Category 2 – Restricted" publication, 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,

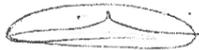
but does not include any part of the premises which is reserved for the private use of the licensee, manager or employees of the licensee and to which the public does not have access.

Compliance with harm minimisation policy

The licensee is to have a 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.

- 16 Pursuant to s 127(2) of the Act, the prescribed licence fee is be payable prior to the operation of the licence. I am satisfied that the licence fee has been paid.
- 17 The licensed premises are defined as the area outlined in red on the plans attached and dated 8 March 2016. A copy of that plan is to be retained on the premises and produced to any authorised officer if required.
- 18 Pursuant to s 116(3) of the Act, the premises' trading name of Lot 80 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.
- 19 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.
- 20 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.
- 21 Restaurant licence number 6060145251 is surrendered contemporaneously with the grant of this application.
- 22 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