

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

**LICENSEE:** HIGHMOON PTY LTD & YARDOO PTY LTD

**PREMISES:** NORTHBRIDGE BREWING COMPANY

**PREMISES ADDRESS:** 44 LAKE STEET, NORTHBRIDGE

**LICENCE NUMBER:** 6020128422

**APPLICATION ID:** A000184582

**NATURE OF APPLICATION:** VARIATION OF LICENCE CONDITIONS

**DATE OF DETERMINATION:** 3 MAY 2016

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### **Introduction**

- 1 This is an application by Highmoon Pty Ltd and Yardoo Pty Ltd (“the applicant” or “the licensee”), the licensee of premises known as the Northbridge Brewing Company (NBC) and located at 44 Lake Street, Northbridge for variation of the trading conditions of its licence. The application is made pursuant to s 64 of the *Liquor Control Act 1988* (the Act).
- 2 Effectively, the applicant seeks to remove the restriction on packaged liquor sales at the premises and remove the obligation that the venue be open for breakfast Monday to Saturday.
- 3 Pursuant to s 38(1)(c) of the Act, it was determined that the application would be subject to the requirements of s 38(2). The application was subsequently advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. An objection, pursuant to s 74 of the Act, was lodged by Tindara Tarricone, the licensee of Lake Street Liquor Supply (the objector).
- 4 In accordance with the provisions of ss 13 and 16 of the Act, the application will be determined on the written materials lodged by the parties. The evidence and submissions of the parties are briefly summarised as follows.

### **The applicant’s evidence and submissions**

- 5 According to the applicant, its premises is a micro-brewery tavern which commenced trading in 2014, and since then it has proven to be a well managed and popular venue catering to both locals and tourists. The applicant seeks to only sell its Beerland brand products as packaged liquor and it is not the intention to sell other packaged liquor products commonly found in most packaged liquor outlets. Beerland products are only available at the applicant’s premises and are not sold at any other liquor outlets.

- 5 Beer that is produced at NBC is marketed under the Beerland label. This was done in case the owners of the venue sought to establish other craft brewing venues and wanted to provide the same beers at these other venues. It was submitted that Beerland venues are based on the theatre of brewing, where the operations are visible to patrons and brewing staff are active in promoting the beer range, the brewing process and the venue. Beerland is focused on selling its own beers solely at its venues, with takeaway sales only to promote the brand. The applicant also proposes to produce a cider and would also like to offer this product as packaged liquor.
- 6 It is not the applicant's intention to establish a dedicated bottleshop at the premises, with all packaged liquor sales occurring across the bar.
- 7 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA addressed the application in the context of the objects of the Act and the matters set out in s 38(4). The PIA also included various witness questionnaires and the results on an on-line survey to demonstrate that patrons of the premises have a desire to be able to purchase the unique range of liquor products available at the venue as packaged liquor.
- 8 In respect of the condition requiring the premises to be open for breakfast, it was submitted by the applicant that there is very little demand by the public for this service and people do not normally go to Northbridge for breakfast during the week. The applicant proposes to still offer breakfasts on weekends.

#### **The objector's evidence and submissions**

- 9 The objector relied upon each of the grounds of objection set out in s 74(1) of the Act.
- 10 When the applicant applied for the licence in the first instance, it was stressed that the premises would have no packaged liquor facility. According to the objector, it is disingenuous of the applicant to have promoted the application for the grant of the licence on the basis that they would not sell packaged liquor, only to reverse that commitment after having traded for a short period of time.
- 11 Furthermore, it was submitted by the objector that when the licence was subsequently granted, conditions were imposed on the licence to militate against the risks of the venue operating in a sensitive area and to ensure the premises operates in a manner consistent with the licensee's proposed manner of trade. One such condition was the prohibition of packaged liquor sales.
- 12 According to the objector there are a number of licensed premises within walking distance of the applicant's premises, which are authorised to sell packaged liquor. This includes the objector's liquor store which is within 200 metres of the NBC.
- 13 The objector also submitted that the applicant's PIA does not adequately demonstrate that the grant of the application is in the public interest and the substance of the application is more aspirational rather than based on actual facts. There is little

evidence to support the claim that tourists have any requirement to purchase packaged liquor at the venue. It was also submitted that the location of the applicant's venue to the Northbridge Piazza is likely to lead to people purchasing packaged liquor from the applicant and then consuming it in the Piazza, leading to public drunkenness. This is particularly so when there is an event taking place at the Piazza.

- 14 The objector also contended that the applicant does not have planning approval from the local government authority to sell packaged liquor.

### Determination

- 15 The applicant operates a popular micro-brewery in Northbridge under a tavern licence. When the licence was granted by the Liquor Commission, a condition prohibiting the sale of packaged liquor was imposed, in part, to reduce any negative impact the operation of the premises may have in this sensitive location. Liquor products produced by the licensee are not available at any other licensed premises and the licensee now wishes to make these unique products available to patrons for consumption off the premises. There will not be a dedicated bottleshop area and any packaged liquor sales would be made over the bar.
- 16 There is no presumption in favour of the grant of the application and the applicant must satisfy the licensing authority that the grant of this application is in the public interest. 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).
- 17 The factual matters which I am 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;
- 18 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.
- 19 The secondary objects of the Act are:

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- 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.
- 20 The objector asserted that the applicant has not been forthright in what it seeks and the manner in which it has approached this application. It was submitted by the objector that the applicant wants to sell Beerland products, however such an approval would enable the applicant to sell products produced by, or exclusively for, the licensee or its related entities. According to the objector, this could result in the licensee brewing all its craft products off site, away from Northbridge, and by third parties provided it is packaged as “Beerland branded beer and cider”.
- 21 In my view, there is some validity to what the objector asserts. It was certainly not clear from the applicant’s earlier submissions as to the exact extent of what the applicant was seeking in terms of the liquor to be provided as packaged liquor. In later concessions to the objector, it became apparent that what the applicant was seeking was the ability to sell, as packaged liquor, “Beerland branded beer and cider” being defined as craft beer and cider that:
- is produced by, or exclusively for, the licensee or its related entities;
  - is clearly labelled with Beerland branding; and
  - has been made available in draught form for consumption on the licensed premises.
- 22 As quite correctly pointed out by the objector, this would allow the licensee to sell products produced by third parties, which in my view, is inconsistent with the notion of the premises operating as a micro-brewery and selling its own uniquely brewed products.
- 23 The applicant has provided evidence from its patrons of their desire to purchase beer produced by the licensee as packaged liquor. I accept that such a concession would be consistent object 5(1)(c) and 5(2)(a) of the Act.
- 24 I do not accept the objector’s submissions that the grant of the application will lead to public drunkenness, particularly given the fact that it is a limited product range, packaged liquor would only be provided over the bar and other premises in the area, including the objector’s premise, sell a full range of packaged liquor products. I am cognisant that the prohibition on the sale of packaged liquor was imposed as a harm minimisation initiative and to ensure consistency with the applicant’s proposed manner

of trade, however, allowing the sale of a small range of products, unique to the venue, as packaged liquor, would not, in my view, pose an unacceptable risk to the amenity of the locality or be out of character for a premises which operates as a micro-brewery.

25 In concluding that the sale of a limited range of packaged liquor from the applicant's premises would be consistent with the objects of the Act, the issue arises as to whether the applicant should be able to sell liquor produced away from the premises or by third parties. As I have concluded earlier, I am of the opinion that such an authority would not be appropriate for a micro-brewery styled premise.

26 Consequently, I am prepared to vary the conditions of the licence to authorise the sale of packaged liquor subject to the following:

- the liquor must be produced by the licensee at the licensed premises only (i.e. 44 Lake Street, Northbridge);
- the liquor must be clearly labelled with Beerland branding; and
- the liquor must be made available in draught form for consumption on the licensed premises.

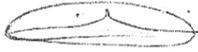
27 On the evidence before me, I am satisfied that this variation is permitted under the s 40 certificate issued for the premises by the local government authority. I arrive at this conclusion for the following reasons:

- the s 40 certificate indicates that the premises will comply with the City of Perth City Planning Scheme No. 2 (TP 2);
- Planning Schemes generally deal with the predominant use of the land and not the only use of the land. The definition of a "tavern" in TP 2 is that the premises is used for the sale of liquor for consumption on the premises and the premises is the subject of a tavern licence under the *Liquor Control Act 1988*;
- a tavern licence under the Act authorises the sale of packaged liquor; and
- the Development Approval for the premises imposed certain restrictions; however this did not include a restriction on packaged liquor sales.

28 Section 64(4) of the Act provides that if there is an inconsistency between a condition imposed under the Act and a requirement of, or made under, any other written law, the condition or requirement which is more onerous for the licensee shall prevail. Therefore, notwithstanding my expressed view above, the onus still falls upon the applicant to ensure it complies with any relevant planning approvals (or restrictions).

29 In respect of the request to remove the obligation to provide breakfast each day at the premises, this is uncontroversial and is therefore approved.

- 30 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.
- 31 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