

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: CHARAX PTY LTD

PREMISES: DUNSBOROUGH CELLARS

PREMISES ADDRESS: UNITS 8 & 9 58 DUNN BAY ROAD DUNSBOROUGH WA 6281

APPLICATION ID: A000057201

NATURE OF APPLICATION: APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 5 May 2015

Introduction

- 1 On 11 September 2014 an application was lodged by Charax Pty Ltd (the applicant) for the conditional grant of a liquor store licence in respect of premises to be known as Dunsborough Cellars and located at Units 8 & 9, 58 Dunn Bay Road, Dunsborough. The application is made pursuant to ss 47 and 62 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. Pursuant to ss 73 and 74 of the Act an objection was lodged by DCSC Pty Ltd while the Commissioner of Police lodged a Notice of Intervention pursuant to s 69 of the Act.
- 3 Pursuant to 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 Dunsborough, which is located in the Margaret River wine region, is a popular holiday destination approximately 220 kilometres south of Perth. Dunn Bay Road is the main street running through the Dunsborough retail and commercial precinct. The proposed liquor store is to be located in the Cape Centre, one of three commercial centres located along Dunn Bay Road and opposite the major shopping centre in town, Dunsborough Centrepoin. The proposed liquor store is therefore conveniently located with easy access and plentiful parking for the public.
- 5 The proposed liquor store, which will be independently owned and operated by local businessmen, will have an area of 263m² and focus on locally produced alcohol products from Dunsborough and the broader Margaret River wine region. It is also proposed to provide a range of low alcohol wine and beer, organic and preservative free products and alcohol products which are gluten free. The proposed store will also provide a unique Pegas CraftTap system to offer packaged, locally produced, fresh

craft beer that is only available on draught, from one of the many breweries in the south-west region.

- 6 The applicant submitted a Public Interest Assessment (PIA) together with 275 consumer questionnaires and various letters of support. The PIA provided details of the antecedents of the applicant, details of the locality surrounding the proposed liquor store, its intended manner of operation and addressed the matters set out in s 38(4) of the Act.
- 7 It was submitted by the applicant that there is overwhelming support from the local community for the proposed premises which will provide a service not only to local residents but also to the many tourists who visit the town each year.

Submissions by the objector

- 8 It was submitted by the objector that the grant of the application is not in the public interest (s 74(1)(a)) and the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor (s 74(1)(b)).
- 9 According to the objector, the applicant has failed to demonstrate that the grant of the application is in the public interest. In this regard, it was submitted that the entire thrust or bulk of the applicant's claim that the establishment of a third liquor store in Dunsborough is in the public interest is based upon responses to the applicant's questionnaire that as a consequence of the sale of Zinns Liquor Store to Liquorland there is less local content in that store leaving the locality void of any regionally focused selection of Margaret River wines and beer.
- 10 The objector submitted that advice from Liquorland is that it carries 250 lines of West Australian wine, many of which are sourced from Margaret River and there are on-going discussions with local wineries to increase the range of wines available. Although the applicant may stock different wines to those sold by Liquorland or BWS, this in itself does not necessarily justify the grant of the application.
- 11 In respect of the potential for the grant of the application to cause undue harm to the community, the applicant submitted the grant of the application will increase the availability of alcohol in the community and may therefore increase the potential harm, particularly amongst young people. The population under 14 years of age in the locality is greater than the State average. The increase in the availability of alcohol may also result in an increase in assaults and dwelling burglaries.
- 12 According to the objector, the intent of the public interest test is not to allow the proliferation of liquor stores, but allow a more competitive, responsible and dynamic liquor environment to meet the changing expectations of consumers. Consequently, it was submitted by the objector that there are sufficient liquor outlets in Dunsborough and the proposed liquor store will bring no particular or special benefit to the public.

Submissions by the Commissioner of Police

- 13 The Commissioner intervened in the application to make representations that if the application is granted public disorder or disturbance is likely to result. The Commissioner has concerns about the application given the general harms associated with take-away alcohol, primarily during 'Leavers' period each and every year at the end of November.
- 14 Consequently, the Commissioner recommended conditions that may mitigate the risks associated with the operation on the licence, if granted, including conditions about dress standards, CCTV and licensed security during the period of 'Leavers' week.

Determination

- 15 The applicant seeks to establish a moderately sized liquor store in Dunsborough, a popular tourist destination in the South West. The applicant will have a focus on alcohol products from Dunsborough and the Margaret River wine region, including craft beer. The applicant will offer a unique Pegas CraftTap system to offer packaged, locally produced craft beer that is only available on draught from the local breweries. The proposed liquor store will be conveniently located in a commercial centre located in the main street running through Dunsborough.
- 16 An applicant for the grant of a liquor store licence must satisfy the licensing authority that the grant of the application is in the public interest (refer s 38(2) of the Act). 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 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.
- 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:

- 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 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.

21 The applicant submitted a PIA to discharge its onus under s 38(2) of the Act. The applicant also submitted 275 consumer questionnaires and letters of support, which collectively indicate the grant of the application will be catering to the requirement of consumers for liquor and related services.

22 Although there are eight existing licensed premises in town that can sell packaged liquor, only two, the Dunsborough Tavern which operates under the BWS banner and Liquorland Dunsborough, have a dedicated packaged retail liquor area. The applicant, who will be independently owned and operated and not one of the national liquor chains, proposes to provide a range of services and products not otherwise available to customers; including dedicated wine events, regular tastings, a wine club and a large range of local craft beer.

23 There was only one objection to the grant of the application. The objector submitted that there are sufficient existing liquor outlets in town and the proposed liquor store will bring no particular or special benefit to the public. It was also submitted the grant of the application may increase the availability of alcohol in the town and therefore has the potential to increase harm in the community.

24 In response to the matters raised by the objector, the applicant submitted that the objection is based primarily on pecuniary interest, because the objector is the owner and landlord of the shopping centre in which Liquorland Dunsborough is situated. According to the applicant there is strong support from the local community for a third liquor store in Dunsborough, particularly one that is independent of Coles and Woolworths, and one which will support the local breweries and wineries.

25 Pursuant to s 73(10) of the Act the burden of establishing the validity of any objection lies on the objector.

- 26 In my view, there is nothing compelling in the evidence submitted by the objector and I find that the objector has failed to discharge its onus as required under s 73(10) of the Act.
- 27 The intervention from the Commissioner was for the purpose of having conditions imposed on the licence should the application be granted. The applicant has indicated its willingness to work with the local accord and police, particularly in regard to any agreed initiatives put in place during 'Leavers' week and to have certain conditions imposed on its licence as recommended by the Commissioner.
- 28 Having considered the evidence, I am satisfied the grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act. In terms of the harm minimisation object of the Act, there is nothing in the evidence, in my view, to indicate that granting the application would pose an unacceptable risk to the local community in the terms considered by Wheeler J in *Executive Director of Public Health v Lily Creek International & Ors* [2001] WASCA 410.
- 29 Consequently, I am satisfied the applicant has discharged its onus under s 38(2) of the Act and complied with all the necessary statutory requirements and conditions precedent to the application being granted. The applicant is conditionally granted a liquor store licence subject to the following:

Conditional grant

- a Certificate under s 39 of the Act being lodged before the operation of the licence;
- compliance with the Local Government Act 1960, Health Act 1911 and any written law relating to the sewerage and drainage of these premise;
- all work being completed within 12 months in accordance with the plans and specifications dated 11 September 2014.
- 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;
- a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- the applicant seeking confirmation of the grant on or before 5 May 2016 pursuant to s 62(4)(c) of the Act.

The following conditions will be imposed on the issue of the licence:

Trading hours

The permitted trading hours are those prescribed in s 98D of the Act. In this respect, only liquor stores located in the metropolitan area are permitted to trade on Sundays.

Trading

The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.

General

The licensee is to have and maintain a CCTV system in accordance the policy of the Director of Liquor Licensing.

Tasting Condition

Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:

- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
- (b) Tastings cannot be supplied to juveniles.
- (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
- (d) Compliance with the Food Act 2008 at all times.
- (e) Tastings per sample must not exceed the following measures:
 - (i) Wine – 50 mls
 - (ii) Beer – 100 mls
 - (iii) Spirits – 15 mls.
- (f) Free drinking water must be made available at all times that samples of liquor are available for tasting.

Licence fee

Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.

- 30 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 31 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.
- 32 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

5 May 2015