

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: MILK INVESTMENTS PTY LTD

PREMISES: GATE 1 IGA PLUS LIQUOR

PREMISES ADDRESS: UNIT C3, GATE 1, CORNER HORRIE MILLER DRIVE,
AND WHITEHAM ROAD, PERTH AIRPORT

LICENCE NO: 12780

NATURE OF MATTER: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

This is an application by Milk Investments Pty Ltd ("the applicant") for the conditional grant of a liquor store licence for premises to be known as Gate 1 IGA Plus Liquor and situated at Unit C3, Gate 1, Corner Horrie Miller Drive, and Whiteham Road, Perth Airport. The application is made pursuant to Sections 47 and 62 of the *Liquor Control Act 1988* ("the Act").

Pursuant to section 67 of the Act, the application was required to be advertised on the site of the premises between 17 March 2009 and 13 April 2009; by way of a notice published in *The West Australian* newspaper on 17 March 2009; by way of a Notice to Residents and Businesses distributed within a 200 metre radius of the premises; and by a General Notice distributed to educational, health care and local and regional government institutions, as well as community and church groups situated within the locality. No objections or Interventions were received.

Pursuant to the powers given in sections 13 and 16 of the Act, I have decided to determine this application on the basis of the papers before me.

LEGISLATIVE PROVISIONS

Section 47 of the Act provides the mechanism by which the licensing authority may grant a liquor store licence and section 62 is the means by which such a licence may be granted in relation to a premise, on conditions relating to the completion of the premises.

Under section 38 of the Act, the applicant is required to satisfy the licensing authority that the granting of the application is in the public interest. The matters to which the licensing authority may have regard when considering the public interest are set out in section 38(4) of the Act.

Furthermore, section 33 of the Act provides that 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.

DOCUMENTS CONSIDERED

The following documents were considered in making this decision:

- Notice of Application;
- Public Interest Assessment Submissions ('PIA');
- Legal submissions;
- Intended Manner of Trade;
- Applicant's Details and Background;
- Letters of support;
- Specification of Work;
- Supermarket Design Brief;
- Project Vega Business Attraction;
- Gate1 Business Centre – aerial and artist impressions;
- Correspondence from Westralia Airports Corporation confirming planning approval (Section 40); and
- Schedule of Requirements dated 8 April 2009.

CONCLUSIONS – LEGISLATIVE FRAMEWORK

The objects of the Act are set out in section 5. The Act's primary objects are:

- to regulate the sale, supply and consumption of liquor;
- to minimise harm or ill-health 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.

Section 33 of the Act provides;

- (1) *Subject to this Act, the licensing authority has an absolute discretion to grant or refuse an application under this Act on any ground, or for any reason, that the licensing authority considers in the public interest.*
- (2) *An application —*
 - (a) *may be refused, even if the applicant meets all the requirements of this Act; or*
 - (b) *may be granted, even if a valid ground of objection is made out,**but is required to be dealt with on its merits, after such inquiry as the licensing authority thinks fit.*

Applicants must satisfy the licensing authority that the granting of an application is in the public interest. In this regard, section 38(4) of the Act provides:

Without limiting subsection (2), the matters the licensing authority may have regard to in determining whether granting an application is in the public interest include —

- (a) *the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and*
- (b) *the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and*
- (c) *whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and*
- (d) *any other prescribed matter.*

Therefore, pursuant to sections 33(1) and 38 of the Act, the test to be applied in the determination of this application is a public interest test; where section 38(2) requires that the applicant “...must satisfy the licensing authority that granting the application is in the public interest”.

Relevant to the determination of applications in relation to alcohol-related harm issues are the following:

- *Executive Director Public Health v Lily Creek International & Ors (2000) WASCA 258*
- *Executive Director Public Health v Lily Creek International Pty Ltd & Ors (2001) WASCA 410*
- *Predicting Alcohol-related harms from licensed outlet density: A Feasibility Study. Monograph Series No. 28 report, published by the National Drug Law Enforcement Research Fund*

In the *Predicting Alcohol-related harms from licensed outlet density: A Feasibility Study. Monograph Series No. 28* report, published by the National Drug Law Enforcement Research Fund, the following summary of literature review findings is provided:

"One of the greatest strengths of the outlet density research literature is the robust finding that assaults are highly correlated with outlet density; that is, as density increases so do levels of assault.

Outcomes from outlet density studies in relation to violence are reassuringly predictable, despite problems with data quality and access, choice of geographical unit and outlet density measure, country or location of interest, methodological limitations, underlying assumptions and with reducing frequency and analytical error (i.e. failure to address spatial autocorrelation).'

In *Executive Director Public Health v Lily Creek International & Ors (2000) WASCA 258* Professor Dennis Gray summarised international and Australian literature and research, and argued that this research demonstrates that alcohol consumption levels are influenced by the availability of alcohol.

Consistent with Professor Gray's comments, it can be said that there is a significant body of research spanning more than 30 years that demonstrates that there is a positive relationship between levels of per capita alcohol consumption and the frequency and range of social and health problems.

While it is acknowledged that the relationship between alcohol consumption and social and health problems is a complex one, there is clearly a demonstrable, positive relationship between the availability of alcohol and the level of consumption.

Examples of harms include acute harms, such as violent assault, drink driver road crashes and pedestrian fatalities, and long term or chronic harms that arise from many years of problem drinking.

When considering the Act's harm minimisation object, the Supreme Court stated in *Executive Director Public Health v Lily Creek International & Ors* (2000) WASCA 258 (paragraph 29) that:

"The potential of harm or ill-health to people, irrespective of whether the harm or ill health is proved on a balance of probabilities, would be a powerful public interest consideration. This section is therefore consistent with the view that the mere possibility of harm or ill-health would always be a relevant matter for the Licensing Authority when discharging its functions."

The Supreme Court also stated at paragraph 29 that:

"...the public interest considerations that underlie s5(1)(b) indicate that the potential of harm or ill-health is to be taken into account irrespective of whether the prospect of harm or ill-health is a possibility or a probability."

When considering the public interest and the risk of alcohol-related harm, it is important to also consider the nature of the proposed premises; its location; the trading hours; and the management proposed in relation to, amongst other things:

- the responsible service and promotion of liquor;
- security; and
- noise management.

Whether harm or ill-health would arise in this particular case or whether the applicant will cater for the requirements of consumers for liquor and related services, requires predicting the future. Justice Ipp quoted the observation in *Malec v J.C. Hutton Pty Ltd* (1990) 169CLR638 (Lily Creek 2000 paragraph 26) –

"The future may be predicted and the hypothetical may be conjectured. But questions as to the future or hypothetical effect of physical injury or degeneration are not commonly susceptible of scientific demonstration or proof".

In this regard, in discharging its functions *"...the mere possibility of harm or ill-health..."* is a relevant matter for the licensing authority to consider. *"The potential of harm or ill-health to people, irrespective of whether the harm or ill-health is proved on a balance of probabilities, would be a powerful public interest consideration."* (Lily Creek 2000, paragraph 29).

DETERMINATION

Pursuant to section 38(2) of the Act, the applicant must satisfy the licensing authority that the grant of the application is in the public interest. Sub-section (4) sets out the matters the licensing authority may have regard to in determining whether the granting of the application is in the public interest.

In addition to the requirements of section 38, the licensing authority must also determine whether the grant of the application is in the public interest under section 33(1) of the Act.

The applicant proposes to operate a liquor store business in conjunction with an IGA Supermarket, offering a full range of packaged liquor, browse facilities and ancillary services.

The premises will form part of the Gate1 at Kewlink East project, which is intended to service the various companies and their employees that are situated at Kewdale, Welshpool, Access Park and the Perth Airport complex. This new development will provide a diverse range of office, commercial and retail spaces. The Gate1 IGA will provide a convenient "one-stop" shop. It is noted that in the locality of the proposed premises, there are no other packaged liquor outlets (other than a wholesaler).

Conclusion

In this case, I accept the applicant's submissions that the proposed premises will cater for the requirements of consumers for liquor and related services, that is; the premises will provide a convenient and accessible packaged liquor service for Perth Airport complex businesses and their employees, as well as persons travelling along Horrie Miller Drive.

Therefore, having considered the submissions of the applicant, I am satisfied, on the balance of probabilities, that pursuant to sections 33(1) and 38(2), the grant of the application is in the public interest.

I am also 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.

This licence is conditionally granted and is subject to the following conditions:-

- a Certificate under section 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 premises;
- all work being completed within twelve (12) months by in accordance with the plans and specifications dated ;
- 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 on completion of that work within 21 days before the day the licensee wishes to commence trading 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 pursuant to section 62(4)(c) of the Act.

WHEN THE LICENCE COMMENCES OPERATION IT WILL BE SUBJECT TO THE FOLLOWING CONDITIONS:-

TRADING HOURS

The permitted trading hours in accordance with section 98D of the Act will be as follows:-

- Monday to Saturday: 8 am until 10 pm;
- Sunday: 10 am until 10 pm;
- Anzac Day: 12 noon until 10 pm; and
- No trading will be permitted on Good Friday or Christmas Day.

TRADING CONDITIONS

The licensee is permitted to sell and supply liquor in accordance with the provisions of section 47 of the Act as it relates to liquor store licences.

TASTING CONDITION

Pursuant to section 47(2) of the Act, the licensee is authorised to supply liquor by way of free sample for consumption within the licensed premises under the full responsibility of the licensee or approved manager at all times subject to the following conditions:-

1. Tastings may not be supplied to juveniles.
2. All glasses and equipment shall be washed and sterilised in accordance with regulation 7 of the *Health (Food Hygiene) Regulations 1993*, unless single use disposable containers are used.
3. Compliance with the food handling practices as detailed in the *Health (Food Hygiene) Regulations 1993*.

MANDATORY TRAINING

All staff occupying supervisory positions must successfully complete the nationally accredited unit of competency (SITHFAB009A) "*Provide responsible service of alcohol*" within four weeks of the grant of the licence.

In addition, all servers of liquor must successfully complete either the nationally accredited unit of competency (SITHFAB009A) "*Provide responsible service of alcohol*" or the non-accredited abridged course from one of the approved training providers in respect of this abridged course within four weeks of the grant of the licence.

INCIDENT REGISTER

Pursuant to section 116A of the Act and Regulation 18EB, the licensee must maintain a register of incidents that take place at the licensed premises. This incident register must be retained in the form approved by the Director of Liquor Licensing and must be made available at the request of an authorised officer.

TRAINING REGISTER

Pursuant to Regulation 14AG, the licensee shall maintain a training register that records training compliance for all staff. This training register must be retained in the form approved by the Director of Liquor Licensing and must be made available at the request of an authorised officer.

FREE DRINKING WATER

Pursuant to section 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.

COMPLIANCE WITH HARM MINIMISATION POLICY

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. Additionally, the licensee shall ensure that the premises' House Management Policy and Code of Conduct are displayed in a prominent position on the licensed premises.

LICENCE FEES

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

TRADING MAY NOT COMMENCE WITHOUT THE PRIOR WRITTEN APPROVAL OF THIS OFFICE.

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

J Belling
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING
11 June 2009.

