DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: SWINGS & ROUNDABOUTS LIMITED
PREMISES: SWINGS TAPHOUSE & KITCHEN
PREMISES ADDRESS: 85 BUSSELL HIGHWAY, MARGARET RIVER
LICENCE NO: 6370053652

NATURE OF APPLICATION: VARIATION OF TRADING CONDITIONS

Introduction

1. On 1 August 2013, Swings & Roundabouts Limited, the licensee of the premises known as Swings Taphouse & Kitchen situated at 85 Bussell Highway, Margaret River, lodged an application, pursuant to ss 63, 64 and 68 of the Liquor Control Act 1988 (the Act) to vary trading conditions 5 and 6 of its licence. These conditions currently state:

   • Condition 5 - No packaged liquor will be sold or supplied.
   • Condition 6 - No tap beer will be sold or supplied.

The licensee seeks to amend these conditions to the following:

   • The sale of packaged liquor is limited to wine produced under the licensee’s producer’s licence.
   • Allow for the sale of local and boutique craft beer and cider on tap.

2. The application was advertised on the site of the premises for a period of fourteen days commencing 27 May 2014. No objections to the granting of the application were lodged. However, on 9 June 2014, a Notice of Intervention was lodged by the Executive Director of Public Health (EDPH).

3. The licensee has been advised that pursuant to s 38(1)(c) of the Act, it has been determined that the application would be subject to the provisions of s 38(2) of the Act.

4. Pursuant to the provisions of ss 13 and 16 of the Act the application will be determined on the papers. The evidence and written submissions of the parties are briefly summarised below.
Submissions on behalf of the licensee

5. In support of the application, the licensee submits in general that:

(a) to allow the sale of packaged liquor would only enhance the ‘show casing’ of an extensive range of wines available which is currently produced under their producer’s licence (Swings & Roundabouts Ltd no. 6180044016);

(b) it is not the intention of the licensee to supply packaged liquor on unlimited terms as a tavern licence would usually allow;

(c) the current licence allows for the consumption of beer on the premises and the distinction between being supplied in open containers or tap form would have no impact on the licence;

(d) the sale of local and boutique craft beer and cider on tap as opposed to beer in bottles cannot contribute to any possible negative change in noise, anti-social behaviour, litter or criminal acts;

(e) there is a predominant focus on the consumption and education of the licensee’s own products against a full hospitality experience that is food driven;

(f) their wine maintains a sophisticated positioning within the Taphouse and Kitchen venue. Wine tasting at the vineyard or cellar door is still appealing but is restricting to many who may not want to drink remotely and travel after, or who may want a craft alternative such as beer or cider on tap in preference to wine; and

(g) the letters of support lodged demonstrated under s 5(1)(c) of the Act that the grant of the application would cater to the requirements of consumers of liquor and related services.

Submissions on behalf of the EDPH

6. The purpose of the intervention by the EDPH was to suggest conditions that could be imposed on the licence which are consistent with the licensee’s intended manner of trade and which would minimise the risk of harm both now and in the future should the licence be transferred to a new operator.

7. The grounds of the intervention are, in general, based on the following submissions:

(a) conversion of the premises from a special facility licence to a tavern licence has the potential to be a higher-risk licence type for alcohol related harm;

(b) if harm minimisation conditions are not imposed on the licence, there is potential for the tavern to become high-risk for harm in the future should management of the premises changes;

(c) there are 31 liquor outlets in Margaret River that sell liquor to the general public and with a licence change, absent harm minimisation conditions, there is the potential for related harm and ill health cumulative impact;
(d) Margaret River experiences rates of alcohol-related assaults that are higher than the state; and

(e) Margaret River is a tourist destination and communities that experience high tourist numbers have been identified as potential at-risk groups.

8. In summary, the EDPH have proposed that the following conditions be considered for the purpose of minimising harm and ill-health and claims that they are in line with the licensee’s stated manner of trade:

(1) The sale and supply of packaged liquor is limited to wine produced under the licensee’s Producer’s Liquor Licence.

(2) No packaged liquor is permitted to be sold at the premises after 9 p.m.

(3) Food shall be made available at the premises at all times when open to the general public.

Further submissions on behalf of the parties

The licensee

9. Of the three conditions proposed by the EDPH, the licensee has agreed to conditions 1 and 3 however, contests condition 2 for the following reasons:

(a) Whilst the proposal to cease the sale of packaged liquor from 9 p.m. was in the initial submission, the licensee had since reconsidered this proposal as stated in their Public Interest Assessment (PIA) received on 30 April 2014 and claims that the reason for the change is that the time restriction would ultimately prove “implausible” from a customer service perspective.

(b) The concerns by the EDPH that there is potential for the premises to become high-risk for harm should management of the premises change is disputed as the concerns are based on “hypothetical” outcomes as there are no current considerations towards a change in management.

(c) The licensee’s management strategy is to provide a family safe environment and agrees with the concerns raised by the EDPH to support and maintain harm minimisation strategies.

The EDPH

10. In response, the EDPH recognised the licensee’s acceptance of proposed conditions 1 and 3, however, he maintained his position in respect to condition 2 in the Notice of Intervention that limiting the availability of packaged liquor is an important harm minimisation approach.
Determination

11. Pursuant to s 38(1)(c) of the Act, it was determined that s 38(2) of the Act would apply to this application. Consequently, there is an onus on the applicant to satisfy the licensing authority that:

- the grant of the application is in the public interest; and
- if the application was approved, no other class of licence would achieve the purposes for which the variation is sought (refer s 46A of the Act).

12. In respect to the Notice of Intervention lodged by the EDPH, there is no onus on an intervenor to establish their assertions of fact or opinion (refer Re: Gull Liquor (1999) 20 SR (WA) 321).

13. I have considered the licensee’s submissions and evidence and am satisfied that the grant of the application is in the public interest as required under s 38(2) of the Act. In this regard, I note that the licensee accepts two of the three conditions recommended by the EDPH.

14. In terms of restricting the availability of packaged liquor at the premises, I accept the licensee’s submission that restricting the sale of packaged liquor to 9 p.m., as proposed in condition 2, would appear unfavourable to their customer base and I am mindful that only wine produced by Swings & Roundabouts Ltd under their producer’s licence can be sold as packaged liquor.

15. In my view, if the application was granted, a tavern licence issued under s 41 of the Act would achieve the purposes for which this variation is sought. I am therefore statute barred from granting the application.

16. Furthermore, s 46B(1) of the Act states that if the licensing authority does not vary a special facility licence because s 46A(1) applies, the licensing authority may, with the consent of the applicant, treat the application for variation as an application for the grant of another class of licence and as such, the licensee has consented to me treating its application for variation of licence as an application for a tavern licence.

17. Consequently, the application for a tavern licence is approved subject to the following conditions:

TRADING HOURS

The permitted trading hours in accordance with s 98 of the Act are as follows:-

- Monday to Saturday – 6 a.m. to 12 midnight;
• Sunday – 10 a.m. to 10 p.m.;

• New Year’s Eve (where it falls on a Sunday) – 10 p.m. to 12 midnight;

• New Year’s Day – up to 2 a.m. from immediately after 12 midnight on New Year’s Eve;

• Good Friday or Christmas Day – 12 noon to 10 p.m., where the liquor is sold ancillary to a meal supplied by the licensee; and

• ANZAC Day – from 12 noon until 12 midnight.

TRADING CONDITIONS

1. The applicant is permitted to sell and supply liquor in accordance with the provisions of s 41 of the Act as it relates to tavern licences.

2. The sale of packaged liquor for consumption off the licensed premises is limited to only wine that is produced by Swings & Roundabouts Ltd under producer’s licence (6180044016).

3. Substantial meals will be available at the premises at all times liquor is sold and supplied.

4. Other than low or mid strength beer, only local premium beer, boutique craft beer and cider will be provided at the premises.

5. Subject to accommodation certification from the Shire of Augusta-Margaret River, the maximum number of patrons permitted to be on the licensed premises is as follows:
   
   • between 10 a.m. and 5 p.m. daily - 108;
   
   • Monday to Saturday from 5 p.m. to 12 midnight - 125; and
   
   • Sunday from 5 p.m. to 10 p.m. - 125.

ENTERTAINMENT CONDITION

1. 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:-

(a) be immodestly or indecently dressed on the licensed premises, and/or
(b) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.

2. The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:-

(a) 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;

(b) 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

(c) 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.

3. In this condition “licensed premises” includes any premises, place or area:-

(a) which is appurtenant to the licensed premises, or

(b) 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 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.

GENERAL

18. The licensed premises are defined as the area outlined in red on the plans dated 1 September 2014. A copy of that plan is to be retained on the premises and produced to any authorised officer on request.
19. **Pursuant to s 46B of the Act, special facility licence number 6370053652 is cancelled.**

20. 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.

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

L T Radis  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING  
2 September 2014