

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

APPLICANT: ACE MIDLAND GATE CINEMAS PTY LTD

PREMISES: CINE GOLD LOUNGE

PREMISES ADDRESS: ACE MIDLAND GATE CINEMAS, MIDLAND GATE  
SHOPPING CENTRE, GREAT EASTERN HWY, MIDLAND

LICENCE NO: 6100117094

### **NATURE OF APPLICATION: VARIATION OF TRADING CONDITIONS**

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#### **Introduction**

1. On 25 June 2013, an application was lodged by Ace Midland Gate Cinemas Pty Ltd ("the applicant") to add, vary or cancel a trading condition of its special facility licence in respect of premises known as Cine Gold Lounge and situated at the Midland Gate Shopping Centre, Great Eastern Highway, Midland.
2. The application is made pursuant to ss 63, 64 and 68 the *Liquor Control Act 1988* ("the Act"), and seeks to vary trading condition No 1 so as to authorise the licensee to sell and supply liquor to persons, who have a current Ace Cinema ticket or a voucher for the screening or performance at the cinema, or to persons attending a pre-booked function associated to the viewing of a film or performance, for consumption in that part of the licensed premises known as the Gold Class Lounge.
3. Pursuant to s 67 of the Act, the application was required to be advertised by way of a Notice on the site of the premises for a period of 14 days commencing on 4 December 2014; by way of a Notice to Residents and Businesses located within a 200 metre radius of the premises; and a General Notice to educational, health care and local and regional government institutions, as well as community and church groups, within the locality.
4. There were no objections to the grant of the application. However, pursuant to s 69 of the Act, a Notice of Intervention was lodged by the Commissioner of Police ("the Commissioner").
5. Pursuant to ss 13 and 16 of the Act the application will be determined on the papers and by me under delegation pursuant to s 15 of the Act.

#### **Background**

6. The applicant is the holder of a special facility licence granted for the purpose of allowing the sale of liquor at a theatre or cinema to persons attending a performance

or film at the theatre or cinema in accordance with r 9A(4) of the *Liquor Control Regulations 1989* (“the Regulations”).

7. Under the special facility licence entry to the licensed premises is permitted only to persons holding a current Cine Gold Lounge ticket. Therefore, the licensee is only authorised to sell and supply liquor to persons holding a current Cine Gold Lounge ticket for consumption on the licensed premises only.
8. The applicant now seeks to vary the trading condition so as to authorise the licensee to sell and supply liquor to persons who have a current Ace Cinema ticket or voucher for the screening or performance at the cinema, or to persons attending a pre-booked function associated to the viewing of a film or performance at the cinema.
9. Regulation 9A(4) of the Regulations provides:

*“A special facility licence may be granted for the purpose of allowing the sale of liquor at a theatre or cinema to persons attending a performance or film at the theatre or cinema.”*

#### **Submissions of the applicant**

10. The applicant’s Public Interest Assessment (PIA) lodged in support of the application contains the background to the application, the intended manner of trade, and addresses the matters set out in s 38(4) of the Act.
11. The applicant submitted:

*“The proposed ‘varied’ condition has been submitted at this time to offer **to all the patrons** of Ace Cinema Midland Gate the amenity to purchase food and beverages (alcoholic and non-alcoholic) prior to the relevant session of the film or performance screening, at the Cine Gold Lounge licensed area **regardless of the type of current ticket they hold.**”*
12. To demonstrate that the grant of the application is in the public interest the applicant together with its PIA and attachments, lodged patron’s surveys which in the main show support for the application.
13. According to the applicant, the grant of the application will not impact adversely upon the amenity of the area and will not result in an increase in harm or ill-health to person due to the consumption of liquor.

#### **Submissions of the Commissioner**

14. The Commissioner lodged a Notice of Intervention to provide information to be considered by the licensing authority as to matters relevant to the public interest.

15. The Commissioner made presentations and in particular submitted that if the application was granted, conditions should be imposed to reflect the purpose of the licence and the licensed premises.

### **Responsive submissions by the applicant**

16. In response to the Notice of Intervention, the applicant acknowledged the suggested trading conditions of the Commissioner and generally agreed with the imposition of the conditions if the licensing authority deemed them necessary and in the public interest.
17. According to the applicant, Ace Midland Gate Cinemas is a low-risk venue managed by experienced operators, with no known recent infringements and the grant of the application will allow patron access to the Cine Gold Lounge, as an ancillary service, and is in the public interest.

### **Determination**

18. In accordance with s 38 of the Act, the onus is on the applicant to satisfy the licensing authority that the grant of the application is in the public interest. In this regard, the licensing authority, however constituted, makes its determination on the balance of probabilities.
19. In determining whether an application should be granted “in the public interest” consideration must be given to the objects of the Act as specified in s 5 and provisions contained in s 38 of the Act.
20. In considering the public interest, the licensing authority needs to consider both the positive and negative social, economic and health impacts, and exercise a discretionary value judgement as to whether the application should be granted (refer section 19 of the Interpretation Act 1994 and Parliamentary Debates, WA Parliament, Vol 409, page 6342; Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR 241).
21. In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:

*The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.*

*The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the*

*public, society or the nation and its content will depend on each particular set of circumstances.*

22. In accordance with s 5 of the Act the primary objects are:
  - to regulate the sale, supply and consumption of liquor;
  - to minimize 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.
23. Pursuant to s 33 of the Act, the licensing authority has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest, but must deal with an application on its own merits within the scope of the Act (refer *Woolworths Ltd v Director of liquor Licensing* [2012] WASC; *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).
24. The applicant seeks to vary the trading condition of its special facility licence to allow the sale and supply of liquor to persons who have a current Ace Cinema ticket or voucher for the screening or performance, or to persons attending a pre-booked function associated to the viewing of a film or performance at the cinema.
25. The applicant's proposal will allow all patrons who have a valid ticket to be able to purchase food and liquor for consumption in part of the licensed premises which has been restricted, so far, only for the use of those patrons who hold a current Cine Gold Lounge ticket.
26. The Commissioner submitted that if the application is granted, conditions should be imposed to reflect the purpose of the licence and the licensed premises. In this regard, the Commissioner as an Intervener to the application carries no burden of proof (per *Greaves J, Gull Petroleum (WA) Pty Ltd* (1998) LLC No. 13/98).
27. In considering the information presented, I am satisfied that the reasons in support of the application are valid and I am prepared to exercise my discretion under s 33 of the Act to grant the application subject to trading conditions which reflect the purpose of this special facility licence and the licensed premises to which the licence relates.
28. Accordingly, as I am satisfied that the grant of the application is in the public interest and that the applicant has complied with all the statutory criteria, requirements and conditions precedent to the application being granted, pursuant to ss 63 and 64 of the Act, the application is granted subject to the following conditions:
  1. The licensee is authorised to sell and supply liquor to persons, who hold a valid ticket/voucher and are attending the screening of a film at the cinema or attending a cinema related function, for consumption on the licensed premises.

2. Unaccompanied juveniles are not permitted to enter or remain on the licensed premises.
  3. The sale of packaged liquor for consumption off the licensed premises prohibited.
  4. The number of persons permitted on that part of the licensed premises known as Gold Glass Lounge, at any one time, must not exceed 100 persons.
  5. Meals (food) and hot beverages, including coffee, shall be made available for purchase and consumption on the licensed premises during trading times.
  6. The licensee is permitted to sell and supply liquor up to a maximum of four (4) drinks or one (1) bottle of wine, at any one time, to persons holding a current Cine Gold Lounge ticket for consumption in that part of the licensed premises known as Cine Gold theatres and described on the approved plans as SB 40 and SB 24.
  7. The selling and supply of beverages supplied in such a way that would encourage rapid consumption of liquor (e.g. but not limited to; unadulterated spirits or liqueur in a shot glass); or drinks known as 'lay-backs', 'shots', 'shooters', 'test tubes', 'jelly shots', 'blasters' or 'bombs' or any other emotive title, is prohibited.
  8. No liquor is to be supplied mixed with energy drink. For the purpose of this condition 'energy drinks' has the same meaning as formulated caffeinated beverage within the Australia New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater.
29. Pursuant to s 116(4) of the Act the licensee shall cause a copy of the licence to be displayed in a readily legible condition and in a conspicuous position in the licensed premises.
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.

Eric Romato  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING  
20 January 2015