

DECISION OF DIRECTOR OF LIQUOR LICENSING

LICENSEE: ARCHIE BROS AUSTRALIA PTY LTD

PREMISES: ARCHIE BROTHERS, CIRQUE ELECTRIQ & STRIKE BOWLING & HOLEY MOLEY GOLF CLUB

PREMISES ADDRESS: SHOP MJ2200/1 LEVEL 2 KARRINYUP SHOPPING CENTRE
200 KARRINYUP ROAD KARRINYUP WA 6018

LICENCE NUMBER: 609215823020

APPLICATION ID: A985625793

DATE OF DETERMINATION: 09 July 2021 (reasons decision 6 August 2021)

INTRODUCTION

1. An application was lodged by Archie Bros Australia Pty Ltd (the applicant) on 22 December 2020 pursuant to ss 46, 62 and 68 of the *Liquor Control Act 1988* (the Act) for the conditional grant of a special facility licence (amusement venue) to be situated at shop MJ2200/1, level 2 of Karrinyup Shopping Centre, 200 Karrinyup Road, Karrinyup.
2. The application was advertised in accordance with the directions of the Director of Liquor Licensing. An intervention was lodged by the Chief Health Officer (CHO).
3. On 9 July 2021 I handed down a notice of decision under s 18AA of the Act conditionally granted the application and imposed a number of licence conditions designed to minimise the likelihood of undue harm or ill health to people, or any group of people due to the use of liquor at the premises.
4. On 21 July 2021 the intervenor sought written reasons for this finding under the provisions of s 18AA (3) of the Act. This decision depicts those written reasons.

APPLICANT'S SUBMISSIONS

5. The applicant sought the grant of a special facility licence in accordance with s 46 of the Act, for the prescribed purpose of 'amusement venue' as described in r 9A(18) of the *Liquor Control Regulations 1989* (the Regulations). With reference to s 46 of the Act the applicant contends no other licence category will satisfy the purpose for which the applicant is seeking the special facility licence.
6. The applicant proposes to operate a large 3417 square metre entertainment complex comprising Holey Moley mini golf, Archie Brothers Cirque Electriq amusement games, ten pin bowling, dodgem cars, laser tag, karaoke, bar and dining facilities and function rooms for hire.
7. The proposed premises will be located at the Karrinyup Shopping Centre and will form part of a new 'West Deck' food and entertainment destination precinct of the expanded shopping centre.

8. The applicant states it is an experienced operator of multiple similar venues operated by both the applicant and related entities around the country and in WA. The applicant claims the proposed premises will be a low-risk type of venue offering a multi-faceted licensed amusement centre which will provide a range of attractions for all ages. There will be a choice of dining and liquor facilities and seating will be provided for approximately 500 persons. Certain areas are not proposed to be licensed such as escape rooms, bowling lanes, laser tag, and bumper cars.
9. The applicant is seeking proposed trading hours each day of the week from 10am to 1am the following day.
10. Unaccompanied juvenile access is sought under s 120 of the Act up until 8pm daily. The applicant also proposed a condition that liquor is not to be sold, consumed or supplied at any time when a function room is hosting a child-focused event or function. The applicant notes related entities have previously applied for and obtained a juvenile exemption for premises known as Holey Moley Northbridge, Strike Bowling in Cannington and Strike bowling at Forest Chase.
11. In support of the application the applicant lodged objective evidence in the form of 55 surveys and 21 letters of support. The applicant submits this evidence demonstrates a consumer requirement for the licence and that the venue will positively enhance the amenity of the precinct and the shopping centre. The applicant maintains the grant will not adversely impact the amenity of the area and will greatly enhance hospitality and entertainment services in a safe and unique location.
12. The applicant submitted there are minimal at-risk groups in the locality except for young people whose exposure to liquor will be adequately controlled by internal policies and procedures. The applicant contends that their experience obtained from operating similar licensed venues leads to the conclusion that the grant will not result in harm or ill health especially given that liquor will be an ancillary service to the amusements on offer. To this end the applicant states that the average patron length of stay will be 1 – 2 hours during which time patrons will typically only consume 1-3 alcoholic drinks.

CHIEF HEALTH OFFICER INTERVENTION

13. The CHO sought to intervene in this application to make representations that there are internal venue-based risk factors for harm related to the proposed physical layout and manner of trade, which warrant a harm minimisation approach that includes conditions on the licence.
14. The CHO is of the view that the proposed amusements will be attractive to families, including children and young people. The open plan will place an emphasis on alcohol as part of venue experience and will be highly visible, exposing children and young people to the sale, promotion and consumption of liquor.
15. The CHO states that children and young people are recognised as at-risk groups and seeks for the licence to be conditioned that unaccompanied juvenile are not permitted on the premises and that no juveniles (either accompanied or unaccompanied) are permitted

on the premises past 8pm on any day. The CHO also recommended that liquor may not be sold, supplied or consumed in the party/function rooms at any time the room is hosting child focused events or functions (ie children's parties and school excursions).

16. The applicant's proposed 1am closure time each day was opposed by the CHO who quoted research demonstrating late night trading can facilitate alcohol - related harm to patrons and negatively impact the amenity of the locality. The CHO recommended a closing time of 12 midnight each night was more appropriate.
17. Should the licence be granted, the CHO recommended a number of harm minimisation conditions to be imposed on the licence in order to reduce the risk of alcohol - related harm.

DETERMINATION

18. In relation to the application for a special facility licence with a prescribed purpose of 'amusement venue', I accept the applicant's contention that no other licence category will satisfy the purpose for which the applicant is seeking the special facility licence.
19. In determining an application, the Licensing Authority, under the provisions of s 16 of the Act, is to make its determination on the balance of probabilities. Section 33 of the Act indicates that the Licensing Authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the Licensing Authority considers in the public interest.
20. In accordance with s 38 of the Act the applicant must satisfy the Licensing Authority that the grant of the licence is in the public interest. In determining whether an application is in the public interest under s 38 of the Act, the Licensing Authority may have regard to the following;
 - 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) *whether the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some way be lessened; 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 effect the granting of the application might have in relation to tourism, or community or cultural matters; and*
 - e) *any other prescribed matter.*
21. Further, in determining an application it is necessary for the Licensing Authority to undertake a considered approach in having regard to and weighing and balancing seemingly competing primary objects under s 5 of the Act which are;

a)- to regulate the sale, supply and consumption of liquor; and

b) to minimise harm caused to people, or any group of people, due to the use of liquor; and

c) 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.

With the resultant determination required to satisfy the wider overall public interest as referred to in ss 33 and 38 of the Act.

22. I accept the evidence of the applicant that the premises will be a low-risk destination venue where liquor consumption will be ancillary and not the primary purpose of those attending. I also accept the applicant's evidence that other venues in WA of a similar nature (and like trading conditions) operate without any apparent issues.
23. Further, I accept the applicant's evidence that the locality is a higher socio-economic area with few at risk groups other than the premises being an attraction to juveniles with the resultant risks associated with juvenile interaction with adults consuming liquor. I consider this risk can be ameliorated and applicant has demonstrated, again at similar venues, their ability to effectively manage this risk. I also accept the applicant's evidence, based on the operation of its other venues, that liquor use is minimal and liquor advertisement/signage is limited.
24. To further mitigate harm crowd controllers will be employed, and CCTV will be installed throughout the venue to strengthen surveillance. Approved managers and staff will also roam the premises to monitor patron conduct and liquor consumption.
25. Having assessed the grounds of the intervention and the respective submissions lodged by the intervenor and applicant, I have determined the applicant has discharged its onus under s 38 (2) of the Act and established that the grant of the application is in the public interest. I am of the opinion however that to mitigate the harm or ill health which could be associated with this licence, that it is appropriate to impose conditions on the licence. These conditions are consistent with the applicants proposed manner of trade and the respective submissions lodged by the applicant and the intervenor.
26. The CHO intervened for the purposes of making representation to the Licensing Authority and to recommend the imposition of trading conditions on the licence. As I have indicated, both the applicant and intervenor agree that conditions should be imposed on the licence to minimise harm due to the sale, supply and consumption of liquor under the licence, however two main issues of division are apparent which relate to juvenile access to the premises and the proposed trading hours.
27. With regards to juveniles, I accept the premises will be attractive to young people which are an at-risk group. As a result, I consider it necessary to impose conditions on the licence to mitigate potential harm to this group. As a result I intend to impose a condition on the licence that unaccompanied juveniles are permitted on the premises, however they

will not be permitted on the premises after 8pm each night. Allied to this the applicant has indicated they enforce a management policy at their venues that all juveniles will not be permitted after 8pm at night which will further negate potential harm during later night trading.

28. The applicant has also agreed to a licence condition that liquor may not be sold, supplied or consumed in the party/function rooms at any time the room is hosting child focused events or functions (is children's parties and school excursions) and will enact a management policy that a host will be present in all children functions to further assist in managing any risk.
29. In relation to the proposed trading hours, whilst I accept the evidence of the CHO that late night trading can lead to increased harm and impact on the amenity, I also accept the evidence of the applicant that the premises will be a lower risk venue than a tavern style premises where liquor consumption is the primary purpose, and which historically are more likely to experience negative issues with late night trading. I note that the applicant has requested in the witness statement of Mr Niall O'Doherty, Chief Performance Officer for Funlab Holding Pty Ltd (an associate company of the applicant) that the applicant only seeks for the proposed venue to have the same trading hours as those imposed at Strike Bowling in Carousel. This is an equivalent licensed venue to the proposed premises with a similar layout, operation and patron profile and is also located in a shopping centre precinct. No concerns have been raised with the operation of this venue.
30. As a result, I consider that mirroring the trading hours of the Carousel licence is appropriate to balance the established consumer requirements for extended trading hours against the potential for any impact on the amenity of the locality or increase in harm or ill health. Therefore, I intend to impose a condition on the licence limiting the closing time to 12 midnight Sunday to Wednesday and until 1am the following day only on Thursday, Friday and Saturday nights.
31. Accordingly, I advise that the application has been approved and that the licence has been conditionally granted, subject to:
 - A certificate under s 39 of the Act being lodged before the operation of the licence;
 - Compliance with the Local Government Act 1995, Health (Miscellaneous Provisions) Act 1911 and any written law relating to sewerage and drainage of these premises;
 - All work being completed within 12 months in accordance with the plans and specifications dated 10 February 2021;
 - The recommendations of the Inspector of Licensed Premises on the Schedule of Requirements dated 5 May 2021 being satisfactorily completed and the Director of Liquor Licensing (the Director) being notified in writing at least 21 days prior to the applicant wishing to trade under the licence;
 - A final inspection by an Inspector of being conducted to ensure that all

requirements have been satisfactorily completed; and

- The Applicant seeking confirmation of the grant on or before **8 July 2022**, pursuant to s 62(4)(c) of the Act.

On confirmation of the conditional grant, trading conditions will be imposed on the issue of the licence as detailed in the attached schedule;

SCHEDULE OF TRADING CONDITIONS WHEN LICENCE COMMENCES OPERATION

TRADING HOURS

The following permitted trading hours are specified for the purposes of s 98C of the Act:

- Sunday to Wednesday, from 10 a.m. to 12 midnight;
- Thursday to Saturday, from 10 a.m. to 1 a.m. the following morning.

Trading is not permitted on Christmas Day, Good Friday or before noon on Anzac Day.

TRADING CONDITIONS

Pursuant to s 46(3) of the Act and r 9A(18) and r 9A(19) of the regulations, this licence is granted for the prescribed purpose of an "amusement venue", authorising the sale of liquor at an amusement venue to patrons at the venue.

The predominant purpose of the licensed premises must at all times remain as the playing of ten pin bowling, Holey Moley mini golf, the provision of Escape and Karaoke rooms or other similar amusements. Therefore, the manner of trade and the layout of the premises must reflect these purposes.

During the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises.

The sale of packaged liquor for consumption off the licensed premises is prohibited.

The licensee shall not promote, advertise or employ incentives which encourage the excessive consumption of liquor by virtue of their 'emotive' titles such as (but not exclusive to) 'laybacks', 'shooters', 'slammers', 'test tubes' and 'blasters'.

Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available during trading hours.

Food must be available during trading hours.

The maximum number of persons permitted to be on the licensed premises at any time is to be set at the activation stage of the licence by reference to the maximum accommodation number imposed by the local health authority.

Pursuant to s 120(1)(e) of the Act, unaccompanied juveniles are permitted to enter or remain on the licensed premises until 8pm.

Liquor may not be sold, supplied or consumed in the party/function rooms at any time when the room is hosting child-focused events or functions (ie children's parties and school excursions).

A CCTV video surveillance system must be in place and operational. The system must comply with the minimum requirements identified in the Director's 'Safety and Security at Licensed Premises' Policy and must be maintained in accordance with the policy.

PROFIT SHARING AUTHORISED

Pursuant to s 104 of the Act, the turnover percentage rental arrangements entered into by the licensee, Archie Bros Australia Pty Ltd, and the owner, AMP Capital Funds Management Limited, as contained in the Summary of Terms regarding an Offer to Lease lodged with the Director on 10 February 2021 are approved.

ENTERTAINMENT CONDITION

(a) 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:

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

(b) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:

- i. exhibiting or showing, or causing, suffering or permitting to be exhibited or shown, on the licensed premises any "R 18+", "X 18+" or "RC" classified film or computer game or "Category 1 – Restricted" or "Category 2 – Restricted" publication, or extract therefrom; or
- ii. 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
- iii. 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.

(c) In this condition "licensed premises" includes any premises, place or area:

- i. which is appurtenant to the licensed premises; or
- ii. 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.

The continuation of this special facility licence will be reviewed by the Director if at any time in the future the licence is to be transferred to another party. The purpose of that review is to determine whether the licence is to be used for the reasons for which it was granted (section 46(3) of the Act refers).

LICENCE FEES

32. Pursuant to s127(2) of the Act, the prescribed licence fee will be payable prior to the issue of the licence.
33. Sale and supply of liquor may not commence without the prior written approval of the Licensing Authority.
34. Pursuant to s 116(3) of the Act, the premises' trading name 'Archie Brothers, Cirque Electriq & Strike Bowling & Holey Moley Golf Club' is approved. The licensee on confirmation of this conditional grant, shall not subsequently conduct business at the licensed premises under any other name, without the prior approval of the Director.
35. 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.
36. This matter has been determined by me under delegation pursuant to s 15 of the Act.



Daryl McLauchlan
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

06 August 2021