

**DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICANT:** OUTER LAGOON PTY LTD  
**PREMISES:** CAVES HOUSE HOTEL YALLINGUP  
**PREMISES ADDRESS:** 18 YALLINGUP BEACH ROAD, YALLINGUP  
**LICENCE NO:** 15012  
**NATURE OF MATTER:** ALTERATION REDEFINITION

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**Introduction**

- 1 On 23 December 2013 an application was lodged by Outer Lagoon Pty Ltd (the applicant) for an alteration redefinition application in respect of premises known as Cave House Hotel Yallingup in order to redefine the licensed premises to include a stand alone packaged liquor outlet. The application is made pursuant to s 77 (1) 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 on 20 February 2015. No objections or interventions to the application were received.
- 3 Pursuant to ss 13 and 16 of the Act the application will be determined on the papers.

**Submissions on behalf of the applicant**

- 4 The applicant claims that their current packaged liquor sales occur over the hotel bar and this process is not conducive to the public interest. The applicant states that they regularly experiences storage constraints with the current process and the inefficient design of the hotel building and that the Heritage listing of the hotel hampers any efforts to rationalise or redesign the interior of the hotel. Therefore the applicant seeks to licence a standalone dedicated packaged liquor facility which was formerly a managers dwelling and is located approximately twenty metres from the main hotel building.
- 5 The new packaged liquor outlet will allow the licensee to carry more stock, and in particular keep more stock refrigerated. The applicant provided a proposed product list which is strongly favoured toward regional wines and locally produced beer and ciders. This stock list will, according to the applicant, greatly benefit a range of smaller local producers who have not previously been able to experience such a level of product exposure.

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- 6 The applicant submits that the proposed packaged liquor outlet will provide a convenient packaged liquor facility servicing, but not limited to, drive by shoppers, tourists and local residents.
- 7 In support of the application the licensee lodged a Public Interest Assessment (PIA) addressing the matters of public interest detailed in s38 of the Act. The applicant also introduced evidence from the public in the form of 38 proforma style letters of support and 107 public witness questionnaires. This evidence indicated the respondents fully support the proposed outlet and indicated they would appreciate the better level of service and the increased range of stock to be provided. Respondents state they are inconvenienced at present as they are currently forced to travel to Dunsborough or Busselton to source their liquor requirements.
- 8 According to the applicant the locality in which the premises will be located is a relatively socio economically advantaged area and in particular, there are few ‘at risk’ groups in the locality. It was also submitted that alcohol –related hospitalisations in the Busselton Shire for 2007-2011 were significantly lower than the corresponding State population evidencing a reduced level of alcohol-related harm exists in the shire.
- 9 The applicant submitted evidence that there were only three other licensed premises within a three kilometre radius of the premises. Of these premises only Lamonts Smiths Beach has a packaged liquor facility but according to the applicant the range of stock is limited. The applicant states that the nearest other packaged liquor facilities to Yallingup are located in Dunsborough which is approximately 7-8 kilometres away.
- 10 Overall, it was submitted by the applicant that the grant of the application is in the public interest because:
- It was supported by the public and tourists who want, and will utilise, the proposed premises.
  - A retail packaged liquor outlet at the Hotel is a service and facility that would be reasonably expected by the public and the new facility will provide customers with a much better level of service than currently provided;
  - the proposed liquor outlet will cater for the demand of customers for local and regional liquor products and will support small local producers; and
  - there is nothing to suggest that the grant of the application will negatively impact the local community.

## Determination

- 11 This application is lodged under the provisions of s 77 (1) of the Act. Importantly s 77 (5a) expressly states that “*an application for the alteration or redefinition of licensed premises as defined in a licence that seeks to include in those licensed premises an area that is not contiguous with those licensed premises shall not be approved by the licensing authority.*”
- 12 The proposed packaged liquor outlet at Cave House Hotel Yallingup is not contiguous to the existing licensed premises. However, an exemption to the contiguous requirement is provided for under section 77 (5a) (a) for premises which are entered in the Register of Heritage Places compiled under the *Heritage of Western Australia Act 1990*.
- 13 Perusal of the current State Register of Heritage Places indicates that Cave House Hotel Yallingup is indeed on the register (No. 00428) and as a result, whilst the proposed packaged liquor outlet is not contiguous to or in any way attached to the current licensed area, by virtue of this heritage listing, the licensed premises is exempt from the provisions of s 77 (5a).
- 14 The applicant, in applying for this alteration redefinition application for a packaged liquor outlet, must satisfy the licensing authority that granting the application is in the public interest. 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).
- 15 The scope and purpose of the Act can be ascertained from its objects, which are set out in s 5. Therefore, in determining whether the grant of this application is ‘in the public interest’ I am bound to take into account the objects of the Act. 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 consumer 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.
- 16 The applicant seeks to establish a relatively small 115 square metre packaged liquor outlet in an existing building adjacent to the main Cave House Hotel building.

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- 17 The proposed services and facilities, according to the applicant, have been specifically designed to cater for the everyday and weekly needs of local residents, short stay accommodation users and tourists alike.
- 18 In support of the application the licensee has submitted a detailed public interest assessment with accompanying attachments depicting support for the application. I consider this evidence indicates that local residents and tourists want, and will utilise, the proposed facility, which is located in an area which experiences continued tourism growth and development.
- 19 Further, I accept the evidence presented by the applicant that the grant of the application will not negatively impact the local community and that the new bottle shop is designed to overcome the current shortcomings in the existing facilities available for the sale and storage of packed liquor at the licensed premises.
- 20 I consider that this application will result is a significantly better packed liquor facility for patrons of Caves House than those currently on offer. This provision of a better packaged liquor service is clearly in the public interest.
- 21 In my view, the evidence establishes that the grant of the application would be consistent with object 5(1)(c) of the Act (catering to the requirements of consumers for liquor and related services) and object 5(2)(a) (facilitate the use and development of licensed facilities ...reflecting the diversity of the requirements of consumers).
- 22 Consequently, I am satisfied that the applicant has complied with all the necessary statutory requirements and conditions precedent and the application is therefore granted and the licensed premises is redefined to include the area outlined in red on the floor plans lodged dated 24 December 2014.
- 23 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  
7 May 2015