

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

**APPLICANT:** THAT COCKTAIL GUY PTY LTD

**PREMISES:** THAT COCKTAIL GUY

**PREMISES ADDRESS:** OFFICE 2, UNIT 4, 15 ALEXWOOD DRIVE FORRESTDALE

**APPLICATION ID:** A000197011

**NATURE OF APPLICATION:** SPECIAL FACILITY LICENCE (CATERER)

**DATE OF DETERMINATION:** 28 October 2016

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### **Background**

1. This decision refers to an application by That Cocktail Guy Pty Ltd (“the applicant”) for the grant of a special facility (caterer) licence for premises to be known as That Cocktail Guy and situated at Office 2, Unit 4, 15 Alexwood Drive, Forrestdale.
2. The application is made pursuant to s 46 of the *Liquor Control Act 1988* (“the Act”) and regulations 9A(13) and 9A(14A) of the *Liquor Control Regulations 1989* (“the regulations”).
3. The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing (“the Director”). No objections or interventions were lodged.
4. Pursuant to ss 13 and 16 of the Act, the application will be determined on the papers.

### **Submissions of the applicant**

5. The applicant seeks the grant of a special facility licence for the purposes described as “catering” in accordance with s 46 of the Act, for premises situated at 4/15 Alexwood Drive, Forrestdale.
6. The applicant’s Public Interest Assessment (PIA) lodged in support of the application, *inter alia*, includes the introduction and the background of the applicant; the intended manner of trade; and addresses the matters set out in s 38 of the Act.
7. In respect of the purposes for the licence and the manner of operation, the applicant submitted that its purpose is to sell and supply liquor as part of a complete mobile bar (cocktail) service around the Perth metropolitan area and outlying suburbs at private events and functions by pre-arrangement with function/event organisers.

8. The applicant has indicated that customers have expressed a desire to be able to utilize That Cocktail Guy to supply the alcohol in the cocktails, thereby reducing the organisational burden for the function/event organiser and has therefore sought a liquor licence to facilitate this aspect of its operations.
9. It was submitted that the mobile bar service will enable event/function organisers to offer their guests a stylish and professional service in the preparation and presentation of cocktails and gourmet platters.
10. The applicant has proposed a number of harm minimisation and management policies to ensure its operations are well managed and comply with all relevant regulations so as to provide a safe and welcoming environment for its target market. This includes persons predominantly in the 20s to 40s age bracket, small businesses and community events and those with a higher than average disposable income and a mature and responsible approach to the consumption of alcohol celebrating birthdays, general celebrations, weddings, hens nights, private corporation events and cultural events.
11. Whilst the applicant indicated it does not have access to its own commercial kitchen facilities, it does have access to a nominated commercial kitchen.

**Determination**

12. Regulation 9A(13) of the regulations provides:

*"A special facility licence may be granted for the purpose of allowing at a function the sale, by a caterer, of liquor supplied at premises at which the caterer has agreed with the person organising the function to provide liquor (whether with or without food), for consumption by persons at that premises; and*

Regulation 9A(14A) of the regulations provides that in sub regulation 13, "caterer" means a person who-

- (a) carries on a food business as defined in the Food Act 2008 section 10: and
- (b) handles or sells food for consumption at functions."

13. This essentially provides the scope and purpose for which a special facility (caterer) licence may be granted.
14. The applicant seeks approval under s 46 of the Act and r 9A(13) of the regulations to sell and supply liquor via means of a mobile bar for the purpose of catering at functions to persons with whom the caterer has agreed to provide liquor (whether with or without food) for consumption by persons attending those functions which are held on unlicensed premises.

15. In respect of special facility licences, in accordance with s 46 of the Act, the licensing authority shall not grant a special facility licence except for a prescribed purpose. In this regard, taking into consideration the tenor of the applicant's submissions, I am satisfied that pursuant to s 46 of the Act, the purposes for which the licence is sought are prescribed, in the regulations, and the application in this respect can proceed.
16. Further, 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.
17. In determining whether an application should be granted "in the public interest", the licensing authority is required to exercise a discretionary value judgement within 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; and *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7WAR 241. That is, consideration must be given to the objects of the Act as specified in s 5 and regard may be given to the matters prescribed in s 38(4) of the Act.
18. 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.*

19. Pursuant to s 33 of the Act, 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 within the scope of the Act (refer *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC; and *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).
20. The primary objects of the Act, as set out in s 5 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.

21. The secondary objects as set out in s 5(2) are:

- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and
- to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

22. The applicant indicated that a substantial portion of its current business (which does not include the sale or supply of liquor) offers catering services which involves the preparation and service of platters and novelty cocktails to small private or corporate events that are relatively low risk. The consumption of alcohol in relation to the service offered by the applicant (where the alcohol is procured by and supplied by the event organiser) is focussed on quality rather than quantity.

23. The applicant is intending to expand its business to include the sale and supply of alcohol used in its cocktails at premises where it has been engaged as a caterer to provide alcohol for consumption at those premises for the purposes of “reducing the organisational burden for the event organisers”. The mobile bar service provided by the applicant will then “enable function organisers to offer their guests a stylish and professional service in the preparation and presentation of cocktails and gourmet platters”....and that ...“gourmet food and quality is prioritised over the consumption of alcohol”.

24. The applicant has provided evidence that it has access to a bona-fide commercial kitchen and has stated that its business model “involves offering catering services for the **preparation and service** (*emphasis added*) of platters and novelty cocktails”, and that it “regularly **handles** (*emphasis added*) food for consumption at functions”, however there was no substantive evidence to establish that it could in fact be considered a caterer for the purposes of the Act.

25. The applicant was afforded the opportunity to provide further and better particulars to demonstrate that it satisfies the requisite requirements by way of (a) providing a list of functions where the applicant had agreed with the event organiser to provide food catering, clearly demonstrating where the client supplied food itself and/or via another registered food business or other third party and (b) stipulating how the nominated commercial kitchen has been utilised in order to satisfy policy requirements for the

purposes of preparation, cooking, handling and heating of food supplied for functions, occasions or events, with particular attention to Part 2, s 8 of the *Food Act 2008*.

26. In its subsequent and responsive submissions, the applicant provided a list of events (recent and upcoming) but afforded little clarity as to where it had agreed with the event organiser to provide food catering so as to clearly demonstrate and indeed distinguish when it had supplied food itself and/or when food had been supplied via another registered food business or other third party.
27. The applicant did, however, emphasise that in its view, providing past examples was not relevant to the legislative or policy criteria it was required to meet and which the agency was required to consider when determining the current application.
28. In deference to this view, I am of the opinion that the onus is clearly on the applicant to satisfy this authority that all necessary and relevant requirements (legislative and otherwise) have been met, in order for it to be afforded caterer status for the purposes of this application.
29. The applicant did draw attention to the definition of a “food business” pursuant to the *Food Act 2008* which involves the handling of food intended for sale, or the sale of food “regardless of whether...it involves the handling or sale of food on one occasion only” and that further, it regularly handles food for consumption at functions.
30. In addition, the applicant referenced the definition of food pursuant to the *Food Act 2008* and intimated that at every function in which it was present, the sale and handling of food was involved in the form of the ingredients in the various cocktails and alcohol free beverages provided to its guests and to its customers or their guests, citing the selling and handling of “soft drinks, which are food, olives, pineapple pieces, soda water and lime juice, all of which are also food”.
31. Whilst I am of the opinion that the ingredients referred to can, for the purposes of the *Food Act 2008*, be considered food, I am not convinced that the applicant’s argument is reasonable or indeed persuasive enough, on the balance of probabilities, so as to allow a definitive conclusion to be drawn that it has satisfied all the necessary requirements to be considered a caterer as intended by and for the purposes of the relevant legislation.
32. As to how the applicant had previously utilised its nominated kitchen facility to support its contention of being considered a caterer, it was revealed that it had not done so at all, but had instead utilised the commercial kitchen of respective event organisers when catering events. This included the subcontracting out of the cooking and preparation of food supplied by the applicant at events with the applicant merely displaying and serving the food. The applicant did, however, provide evidence of a booking it had made to utilise its nominated commercial kitchen for an upcoming event/function.

33. The applicant concluded that it was immaterial whether it sold or handled other food (such as platters) at these functions and on that basis believed it satisfied the definition in the *Food Act 2008* of a food business, and the definition of a caterer in r 9A of the Regulations.
34. In considering all of the information and evidence before me, I am not convinced, on the balance of probabilities that the applicant has sufficiently discharged its onus so as to satisfy me that both legislative and policy requirements relevant to the current application have been fulfilled in order to be considered a caterer for the purposes of the current application.
35. Notwithstanding that the applicant has access to a commercial kitchen and has the capacity to provide food, it does not, in my opinion, carry on a food business *per se*, pursuant to r 9A(14A). Further, I am not convinced that the applicant has satisfied the meaning of food handling as defined in Part 2, s 8 of the *Food Act 2008*, particularly given the applicant has stated that it "regularly handles food for consumption at functions".
36. There is no historical evidence to demonstrate the specific manner in which the applicant has handled food consistent with the definition which includes "the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving and displaying of food" other than to state in its submission that it has done so under the broad category of "details of catering services".
37. Therefore, in the exercise of my discretion under s 33 of the Act, I am not prepared, for all of the reasons detailed above, to grant to the applicant a special facility "caterer" licence.
38. This matter has been determined by me under delegation pursuant to s 15 of the Act.
39. Should the applicant be dissatisfied with this decision, a review of the decision may be sought 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 applicant receives notice of this decision.



Spiro Gougoulis  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING