

## DECISION OF DIRECTOR OF LIQUOR LICENSING

**APPLICANT:** BUSEN PTY LTD  
**PREMISES:** LITTLE CHUTNEYS  
**PREMISES ADDRESS:** 71-75 ROKEBY RD, SUBIACO  
**LICENCE NO:** 6020120502  
**NATURE OF MATTER:** GRANT OF A TAVERN LICENCE

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This is an application by Busen Pty Ltd for the grant of a tavern licence, pursuant to sections 41 and 62 of the *Liquor Control Act 1988* ("the Act") in respect of premises to be known as Little Chutney's and situated at 71-75 Rokeby Road, Subiaco. These premises are currently licensed under restaurant licence number 6060114778, which is held by the applicant.

The applicant is also seeking the grant of an extended trading permit, pursuant to section 60(4)(g) of the Act for extended trading hours on Thursday, Friday and Saturday nights from midnight until 1 a.m. the following morning.

Pursuant to section 67 of the Act, the application was required to be advertised on the site of the premises between 7 September 2007 and 5 October 2007 and by way of a notice published in *The West Australian* newspaper on or before 7 September 2007.

The WA Police has lodged an objection to that part of the application relating to the extended trading permit.

As permitted by sections 13 and 16 of the Act, the application is to be determined on the written submissions

Finally, pursuant to section 38 of the Act, the onus is upon an applicant to satisfy the licensing authority that the grant of this licence is in the public interest. Section 38(4) sets out the matters that the licensing authority may have regard to when considering the grant of a licence.

**APPLICANT'S CASE**

Pursuant to the provisions of section 38 of the Act, the applicant filed a public interest assessment (PIA) submission on 4 September 2007 in order to establish that the grant of the application is in the public interest.

The applicant advises that:

*"The concept of Little Chutney's will join the growing trend of combined small scale eating, drinking and coffee houses in modern mixed use high street areas in Australia,*

*operating under a number of trading conditions which will ensure it can provide an alternative to other traditional “predominantly liquor only” bars in Subiaco. The Little Chutney’s wine and dine facility will provide quality Indian cuisine and breakfast food as opposed to food designed around a fast drinking crowd, that is, no chips or fast-food snacks.*

*It is a style of operation... that will be free of loud nightclub or pub band style music and large crowds. As such it will not be an entertainment facility, nor will it focus on an only after-hours style of operation. Little Chutneys will provide a regular full restaurant style menu being available during most trading hours.”*

The applicant’s target audience is that characterised by adults over 25 years of age. Subiaco is an affluent suburb, populated by well educated and high income residents. This group is well travelled; and has expectations of quality surroundings together with a sophisticated choice of food and drink. A large part of this group’s income is devoted to their social and recreational time. Little Chutney’s is pitched directly at this Subiaco demographic who live and work in Subiaco, both during normal shopping hours and in the evenings.

Due to Little Chutney’s small size and its wine and dine environment, the applicant argues it cannot be construed as a hotel “front public bar” or a traditional pub such as other nearby premises. The combination of operations within the establishment of wine and boutique beers, coffee and restaurant menu food, snack food and background bar dining/bar music, complements the mixed-use locality.

In terms of the provisions of sections 38(2) and 38(4) of the applicant submits that:

- the decision of the State Administrative Appeals Tribunal (“SAT”) in *Busen Pty Ltd v City of Subiaco* [2007] WASAT 49 includes detailed consideration of matters akin to those under section 38(2) and section 38(4) of the Act and it is therefore highly relevant. The context of the Tribunal’s decision was as follows —
  - (a) in May 2006 the City of Subiaco approved the use of the premises as a “Restaurant” under TPS4;
  - (b) the Applicant subsequently applied for planning approval to change the use of the premises from “Restaurant” to “Tavern” so as to enable it to serve liquor without the requirement that it be served ancillary to a meal;
  - (c) on 25 July 2006 the City of Subiaco refused that application;
  - (d) the Applicant sought a review of the City’s decision in the SAT, during which one of the two principal issues, as identified by the Tribunal, was “*Whether the proposed*

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*development is acceptable in relation to the health, safety and general welfare of the community and the amenity, including the social amenity, of the Subiaco Town Centre and neighbouring areas”;*

- (e) the City led substantial evidence in support of its case;
  - (f) having considered all of the evidence (at paragraphs [53] to [71] of the SAT decision), the Tribunal found that the objective characteristics of the proposed premises “*are such that it is likely to have an acceptable impact in relation to amenity*”;
  - (g) the Tribunal allowed the application for review and granted planning approval for the change of use to a tavern, subject to the conditions agreed to by the applicant.
- In relation to section 38(4)(a) matters, the applicant submits that the nature of the Subiaco Town Centre is such that some “at risk” groups and sub-communities are either situated within the locality of the premises or are likely to travel through or resort to the locality of the premises. However, the nature of the premises in the context of the locality is such that it is not likely to have any measurable or appreciable effect on these groups.
  - In relation section 38(4)(b) matters, the applicant submits that detailed evidence regarding aspects of potential impact on amenity was given by Mr Greg Rowe of Greg Rowe and Associates Town Planning Consultants, in the hearing before the SAT and the Tribunal agreed with Mr Rowe’s opinion that the proposed use of the premises as a tavern would have an acceptable impact on the amenity of the area.
  - On matters prescribed in section 38(4)(c), the applicant submits that the nature and proposed manner of operation will not result in any offence, annoyance, disturbance or inconvenience caused to people who may reside or work in the vicinity. Further, a CCTV camera system and floodlighting of the rear carparking have been incorporated as part of the premises to help monitor the surrounds of the venue.

## POLICE OBJECTION

On 3 October 2007, Senior Sergeant Graham Sears of the Subiaco Police Station, objected to the extended trading permit sought by the applicant. Although Senior Sergeant Sears has not specified the grounds of objection under section 74 of the Act, the objection can be summarised as follows:

- the submission by the applicant has not demonstrated any public interest for the requirement for a permit;
- Police patrols of the area on Thursday 6 September to Saturday 8 September indicate that the restaurant is quiet at about 2300 hours on the requested days; and
- there is no evidence in the submission that demonstrates public demand for a permit.

It is noted that the objection by Senior Sergeant Sears is not signed, dated or witnessed.

On 23 October 2007, the applicant lodged submissions in response to Senior Sergeant Sears objection and submits that:

- the submissions in support of the application clearly identify the proposed extended trading hours sought;
- the content of those submissions as a whole includes and encompasses matters relating to the operation of the premises during the proposed extended trading hours;
- the nature and proposed operation of the "Little Chutney's" premises as a tavern supports the grant of the extended trading hours sought as being in the public interest;
- the objection does show how that the grant of the extended trading hours is likely to:
  - lead to harm or ill-health to people, or any group of people, due to the use of liquor;
  - have an adverse impact on the amenity of the locality; or
  - result in offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the premises.

- there is no longer a test under the Act requiring the applicant to demonstrate that the grant of the extended trading hours is necessary in order to provide for the reasonable requirements of the public for liquor and related services; and
- the reference to police patrols on Thursday, 6 September 2007 to Saturday, 8 September 2007 indicating that the premises were “quiet” at about 2300 hours, merely reflects the fact that the premises currently operate under a restaurant licence and close at 11:30 pm on the nights in question.

## CONCLUSIONS

I accept the applicant’s argument that there is an increasing demand for high quality, small scale eating, drinking and coffee house type venues in the Subiaco Town Centre, and particularly in respect of sophisticated ‘wine and dine’ venues. While there are a number of other quality licensed premises in the area, many are lively ‘pub’ style or late night entertainment venues that do not necessarily cater for those who seek a quieter and smaller place to meet.

In terms of the objection by Senior Sergeant Sears, I am of the view that the onus set out in section 73(10) has not been met.

On the basis of the submissions made; the decision of the SAT; and given that there have been no matters identified which would raise doubts about the public interest arguments presented, I am satisfied that, having regard to the provisions of section 38 of the Act, the grant of this application would be in the public interest.

On 18 December 2007, evidence was lodged that the applicant received approval from the City of Subiaco in relation to Trading Conditions 4 and 9 of the SAT decision delivered on 22 February 2007.

Further, I am satisfied that the grant of the application is consistent with the objects of the Act in that it will:

- enable the regulation of the sale, supply and consumption of liquor;
- cater for the requirements of people visiting the Subiaco Town Centre for liquor and related services;
- contribute to the proper development of the liquor industry, the tourism industry and other hospitality industries in the Subiaco Town Centre;
- facilitate the use and development of licensed facilities, reflecting the diversity of the requirements of consumers in the Subiaco Town Centre; and
- provide adequate controls over the persons involved in, the sale, disposal and consumption of liquor.

I am also satisfied that the applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted.

This tavern licence will be subject to the following conditions:-

### **TRADING CONDITIONS**

The licensee is permitted to sell and supply liquor in accordance with the provisions of section 41 of the Act as it relates to tavern licences subject to the following special conditions:

1. The maximum number of patrons permitted within the tavern is not to exceed 108 patrons at any time.
2. Hot and cold food must be available to patrons at all times during trading hours. In particular, a regular full menu must be available at all times up until 10.30 pm Monday to Saturday and 10 pm Sunday. From 10.30 pm Monday to Saturday, an extensive snack menu, approved by the City of Subiaco Building and Health Services, must be made available.
3. No live music is to be played on the premises.
4. The maximum eating and drinking area in the tavern is limited to 92 square metres of which:
  - a) a maximum of 68 square metres may be used at any time that the tavern is operating; and
  - b) the 24 square metres located towards the rear of the tavern as marked on the approved plans may only be used at times when the commercial tenancies at 77 Rokeby Road, 479 Hay Street and upstairs offices are not operating; and
  - c) the 34 square metres located towards the front (east) of the building as marked on the approved plans is to permanently include tables and chairs during trading hours; and
  - d) tables and chairs are to be provided for at least 70 patrons at all times during trading hours, including tables and chairs for at least 30 patrons in the area referred to in (c) above.
5. A Management Strategy for the premises is to be approved by the City of Subiaco and implemented to the City's satisfaction and maintained to the City's satisfaction. The Management Strategy is to contain, but is not limited to:
  - a) the number of licensed security staff present;
  - b) complementary drinking water;

- c) complaint and reporting procedures;
- d) patron control (including staff training);
- e) sale of alcohol;
- f) queue management;
- g) access to taxi rank, complementary taxi calling service;
- h) lighting in and around the site;
- i) cleaning of the site and the public area around the site;
- j) management of the restricted seating area located towards the rear of the tavern as marked on the approved plans during times when the commercial tenancies at 77 Rokeby Road, 479 Hay Street and upstairs offices are operating; and
- k) any other relevant matters.

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

### **TRADING HOURS**

In relation to the sale and supply of liquor, the permitted trading hours in accordance with the Act are as follows:-

- Monday to Saturday – 12 midday to 12 midnight;
- Sunday – 12 midday to 10 pm;
- Good Friday or Christmas Day – 12 noon to 10 pm, where the liquor is sold ancillary to a meal supplied by the licensee; and
- Anzac Day (not being a Sunday) – from 12 noon until 12 midnight.

### **ENTERTAINMENT CONDITION**

1. 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;
  - (b) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner;
  - (c) exhibit or show, or cause, suffer or permit to be exhibited or shown, on the licensed premises any classified "R" moving picture or extract therefrom;

- (d) cause, suffer or permit 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
  - (e) cause, suffer or permit any person to take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
2. 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.

### **FREE DRINKING WATER**

Pursuant to section 115A of the Act, at all times that liquor is sold and supplied for consumption on the licensed premises, the licensee shall make available to patrons, potable drinking water free of charge. As a minimum, this condition is to be met by way of water dispensers located at or near all bar service areas. The water must be refreshed regularly, with clean glasses or disposable cups being available for use.

### **INCIDENT REGISTER**

Pursuant to section 116A of the Act and Regulation 18G, the licensee must maintain a register of incidents that take place at the licensed premises. This incident register must be retained in the form approved by the Director of Liquor Licensing and must be made available at the request of an authorised officer.

### **MANDATORY TRAINING**

All staff occupying supervisory positions must successfully complete the nationally accredited unit of competency (THHBFB09B) "*Provide responsible service of alcohol*" within four weeks of the grant of the licence.

In addition, all servers of liquor must successfully complete either the nationally accredited unit of competency (THHBFB09B) "*Provide responsible service of alcohol*" or the non-accredited abridged course from one of the approved training providers in respect of this abridged course, within four weeks of the grant of the licence.

## **TRAINING REGISTER**

Pursuant to Regulation 14AE, the licensee shall maintain a training register that records training compliance for all staff. This training register must be retained in the form approved by the Director of Liquor Licensing and must be made available at the request of an authorised officer.

## **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. Additionally, the licensee shall ensure that the premises' House Management Policy and Code of Conduct are displayed in a prominent position on the licensed premises.

## **EXTENDED TRADING PERMIT - ONGOING HOURS**

Upon the issue of the licence, pursuant to section 60(4)(g) of the Act, the licensee will be authorised to sell and supply liquor for consumption on the premises during the following hours:

Thursday:	12 midnight to 1 am
Friday:	12 midnight to 1 am
Saturday:	12 midnight to 1 am

The permit is subject to the following conditions:

1. No trading is permitted on Good Friday, Christmas Day or before noon on Anzac Day.
2. The sale and supply of packaged liquor is prohibited.
3. The maximum number of patrons permitted within the tavern is not to exceed 108 patrons at any time.
4. An extensive snack menu must be made available during the hours of this permit.
5. No live music is to be played on the premises.
6. There is to be no liquor discounting or advertising of cheap liquor during the operation of the permit.
7. The maximum eating and drinking area in the tavern is limited to 92 square metres of which:

- e) a maximum of 68 square metres may be used at any time that the tavern is operating; and
- f) the 24 square metres located towards the rear of the tavern as marked on the approved plans may only be used at times when the commercial tenancies at 77 Rokeby Road, 479 Hay Street and upstairs offices are not operating; and
- g) the 34 square metres located towards the front (east) of the building as marked on the approved plans is to permanently include tables and chairs during trading hours; and
- h) tables and chairs are to be provided for at least 70 patrons at all times during trading hours, including tables and chairs for at least 30 patrons in the area referred to in (c) above.

The permit will remain in force for 5 years commencing on the date the licence is issued.

The licensee is reminded that the permit can be cancelled at short notice, if it is found that the licence is being operated in a manner contrary to the public interest.

### **LICENCE FEES**

Pursuant to section 127(2) of the Act, regulation 26 of the Liquor Control Regulations 1989 (the regulations) and item 3a of Schedule 3 to the regulations, the prescribed licence fee for a licence other than a wholesaler's licence and the extended will be payable prior to the operation of the licence.

I am satisfied that the licence fee has been paid

Restaurant licence number 6060114778 will be surrendered simultaneously on the issue of this licence.

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

J Belling  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING  
22 February 2008



Department of Racing, Gaming & Liquor  
Government of Western Australia

Your Ref:

Our Ref: 12050

Enquiries: Hans Fan Der Linden  
☎ (08) 9425 1854

The Licensee  
Little Chutneys  
67 Rokeby Road  
SUBIACO WA 6008

Dear Sir/Madam

**GRANT OF A TAVERN LICENCE: LITTLE CHUTNEYS**

Enclosed is a copy of the decision in respect of the above licence together with the following documents:

- The approved plans outlined the licensed area in red.
- Extended Trading Permit Number 31427

Should you have any queries regarding this please contact me on [08] 9425 1854.

Yours faithfully

Hans Fan Der Linden  
CUSTOMER SERVICE OFFICER

22 February 2008

cc: Police - Central Metro District Office

cc: Licensing Enforcement Division  
Western Australia Police  
Cambridge House  
Level 2, 297 Hay Street  
PERTH WA 6000

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