



REPORT TO SUBCOUNCIL 15

1 ITEM NUMBER:

15 SUB.10./10./19.

2. SUBJECT

APPLICATION FOR A BUSINESS LICENCE FOR HEALTH AND ENTERTAINMENT: ELECTRONIC DEVICES, TO PERMIT A MAXIMUM OF FIVE LIMITED GAMBLING MACHINES: DJ's DINERS PTY LTD TRADING AS DJ's DINER, ERF 22760, SHOP 6, 10TH AVENUE, KENSINGTON 7405: JUSTIN COSTELLO

ONDERWERP

AANSOEK OM 'N SAKELISENSIE VIR GESONDHEID EN VERMAAK: ELEKTRONIESE TOESTELLE, OM 'N MAKSIMUM VAN VYF BEPERKTE DOBBELMASJIENE TOE TE LAAT: DJ's DINERS (EDMS.) BPK. HANDELDRYWENDE AS DJ's DINER, ERF 22760, WINKEL 6, 10DE LAAN, KENSINGTON 7405: JUSTIN COSTELLO

ISIHLOKO

ISICELO SEPHEPHA-MVUME LESHISHINI LEZEMPILO NOLONWABO: IMBUTHO YASEBUSUKU OKANYE IDISKO: ABARHWEBA NJENGABE: DJ's DINER, KWISIZA-22760, SHOP 6, 10TH AVENUE, KENSINGTON 7405: SIKA- JUSTIN COSTELLO

LSM K4439

3 PURPOSE

To advise Sub-Council 15 that a Business Licence application has been received, and processed for **Health and Entertainment – Electronic Devices, to permit a maximum of five limited gambling machines** at the abovementioned premises and to seek the approval of the Sub-Council 16 for authority to issue the license.

4 FOR DECISION BY

Sub-Council 15 is to consider the recommendation and make a decision in respect thereof to either approve or refuse the recommendation, in accordance with the delegations granted to Sub-Council – Delegation Part 24, Section 3(1) To grant licenses for Health facilities or entertainment as provided for in terms of item 2 of schedule 1 of the Businesses Act, Act 71 of 1991, and to exercise all powers conferred on the Municipality in terms of Section 2(4) to 2(10) of the aforesaid Act.

5 EXECUTIVE SUMMARY

The application for a Business Licence was properly applied for and submitted by the applicant to City Health for further processing.

The application was circulated to the necessary internal departments and to the South African Police Services, for comments/clearances.

All commenting departments/authorities have issued clearances, supporting the issuing of the business licence.

6. RECOMMENDATIONS:

It is recommended that:

6.1 The application received from DJ's Diners PTY LTD t/a DJ's Diners for a business licence for health and entertainment: electronic devices, to permit a maximum of five limited gambling machines on erf 22760, Shop 6, 10th Avenue, Kensington 7405, **BE GRANTED** subject to the following standard endorsements for this category of licence

1044

- 6.1.1 This business licence must be displayed prominently in a conspicuous place in or on the premises so as to be visible to patrons, the public and Council officials at all times.
- 6.1.2 This business licence is not transferable from person to person or from Business to business
- 6.1.3 The premises must comply with the requirements of the Tobacco Products Control Act, Act 83 of 1993, at all times.
- 6.1.4 The Director: City Health reserves the right to call for any other requirements that requirements that may be deemed necessary.
- 6.1.5 The approval of this licence does not exempt the holder from compliance with any other licences, conditions or statutory requirements
- 6.1.6 The premises must comply with the requirements of the Western Cape Noise Control Regulations, P.N. 200 of 2013, at all times.
- 6.1.7 The premises must comply with the fire requirements at all times.
- 6.1.8 The fire exit security gates need to be unlocked during operating hours.
- 6.2 Authority be granted to the Head: Environmental Health to sign and issue the necessary licence in 6.1 above.

6. AANBEVELINGS:

Daar word aanbeveel dat:

- 6.1 Die aansoek om 'n sakelisensie vir gesondheid en vermaak: elektroniese toestelle, ten einde 'n maksimum van vyf beperkte dobbelmasjiene op erf 22760, winkel 6, 10de Laan, Kensington 7405, wat van wat van DJ's Diners (Edms.) Bpk. handeldrywende as DJ'S Diners ontvang is, **TOEGESTAAN WORD**, onderworpe aan die volgende standaardondossemente vir hierdie lisensiekategorie:
 - 6.1.1 Hierdie sakelisensie moet opvallend op 'n duidelik sigbare plek in of op die perseel vertoon word sodat kliënte, die publiek en raadsamptenare dit te alle tye kan sien.
 - 6.1.2 Hierdie sakelisensie is nie van persoon tot persoon of onderneming tot onderneming oordraagbaar nie.
 - 6.1.3 Die perseel moet te alle tye aan die bepalinge van die Wet op die Beheer van Tabakprodukte, Wet 83 van 1993, voldoen.
 - 6.1.4 Die direkteur: stadsgesondheid behou hom die reg voor om enige ander vereistes te stel wat nodig geag word.
 - 6.1.5 Die goedkeuring van hierdie lisensie vrywaar nie die houer van voldoening aan ander lisensies, voorwaardes of statutêre vereistes nie.
 - 6.1.6 Die perseel moet te alle tye aan die vereistes van die Wes-Kaapse geraasbeheerregulasies, P.K. 200 van 2013, voldoen.

Handwritten signature

- 6.1.7 Die perseel moet te alle tye aan die brandweervereistes voldoen.
- 6.1.8 Die sekuriteitshekke by die branduitgang moet gedurende bedryfsure oopgesluit wees.
- 6.2 Magtiging aan die hoof: omgewingsgesondheid verleen word om die nodige lisensie in punt 6.1 te onderteken en uit te reik.

6. Izindululo:

Kundululwe ukuba:

- 6.1 **MASAMKELWE** isicelo esifunyenwe kwabe-DJ'S Diners PTY LTD t/a DJ'S Diners, sephepha-mvume leShishini lezeMpilo noLonwabo: iMbutho yasebusuku okanye iDisco kwiziza- 22760, Shop 6, 10th Avenue, Kensington 7405, ngokuxhomekeke phakathi kwezinye izinto kwezi ziqiniseko zilandelayo zolu hlobo lwephepha-mvume:
 - 6.1.1 Eli phepha mvume loShishino malibonakaliswe kwindawo esekuhleni/ebonakalayo okanye kwisakhiwo eso ukuze sibonakale kubathengi/kubaxhasi benkonzo, kuluntu nakumagosa eBhunga, ngalo lonke ixesha.
 - 6.1.2 Eli phepha-mvume loShishino akuvumelekanga ukuba litshintshelwe komnye umntu okanye ukusuka kwelinye ishishini ukuya kwelinye.
 - 6.1.3 Isakhiwo esi kufuneka sithobele imimiselo/iimfuno zoMthetho oLawula iMveliso zeCuba, onguNombolo 83 wango-1993, ngalo lonke ixesha.
 - 6.1.4 Umlawuli wezeMpilo kwiSixeko unelungelo lokumisela nokuba ngeyiphina imimiselo/imiqathango apho kuyakuthi kubonakale kuyimfuneko yoko.
 - 6.1.5 Ukuphunyezwa kweli phepha-mvume, akumkhululi umnini lo ukuba angathobeli amanye amaphepha-mvume, imiqathango okanye imimiselo yomthetho.
 - 6.1.6 Le ndawo kufuneka ithobele iimfuneko zeMigaqo yolawulo lweNgxolo yaseNtshona Koloni, engunombolo P.N.200 yango-2013, ngawo onke amaxesha
 - 6.1.7 Izakhiwo ezi kufuneka zithobele imigaqo yezemililo ngalo lonke ixesha.
 - 6.1.8 Amasango okhuseleko angokuphuma ngexesha lokuqhambuka komlilo kufuneka ahlale engetshixwanga ngexesha leeyure zokusebenza
- 6.2 Makunikezelwe igunya kwiNtloko yezeMpilo yokusiNgqongileyo ukuba ityikitye ize ikhuphe iphepha- mvume elifanelekileyo, elikhankanywe ku-6.1 ngentla

7. DISCUSSION/CONTENTS

The application for a Business Licence was properly applied for and submitted by the applicant to the City Health Department for further processing.

11/13

7.1 Constitutional and Policy Implications

The application complies with the requirements of the Constitution. Refusing the application on any grounds other than those listed in the Businesses Act, Act 71 of 1991 (as listed below) could be construed as to infringe on the Constitutional Rights of the applicant.

7.2 Sustainability Implications

Does the activity in this report have any sustainability implications for the City?	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>
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7.3 Legal Implications

The application complies with the requirements of the Businesses Act, Act 71 of 1991, which states in Section 2, Regulation (4) "A Licensing Authority **shall**, subject to the provisions of sub-section 6, issue a licence which is properly applied for unless-

- (a) In the case of a business referred to in item 1(1) or 2 of Schedule 1, the business premises do not comply with the requirements relating to Town Planning or the safety or health of the public of any law which applies to those premises.
- (b) In the case of a business referred to in item 2 of Schedule 1, the licensing authority is satisfied that:
 - (i) The Applicant, whether or not he is or will be in actual and effective control of the business, or
 - (ii) If another person is or will be so in control, that other person, is not a suitable person to carry on the business, whether by reason of his character, having regard to any conviction recorded against him, his previous conduct or for any other reason."

7.4 Staff Implications

No ☒

Yes ☐

7.5 Other Services Consulted

The application was circulated to the following departments for comments:

- 7.5.1 The City Health Department : Environmental Health and Specialised Environmental Health Services.
- 7.5.2 The Directorate Planning's Land Use Management and Building Development Department.
- 7.5.3 The Directorate Safety and Security's Emergency Services, Fire Safety Officer.
- 7.5.4 The South African Police Services.

9/11/15

All internal departments have issued clearances, supporting the issuing of the Business License. The SAPS report indicates that the applicant has convictions relating to the Post Office Act and the Road Traffic Act. In this regard please see legal opinion attached as Annexure F.

A copy of the file will be made available for scrutiny at the Sub-Council Meeting.

ANNEXURES

Annexure A - Land-use Planning Clearance and Building Development.

Annexure B - City Health - Environmental Health Clearance
- Mechanical Engineer Clearance

Annexure C - Fire Safety Clearance

Annexure D - SAPS Report- dated: 10/05/2019

Annexure E - Floor layout plan.

Annexure F - Legal opinion

FOR FURTHER DETAILS, CONTACT:

NAME	Bettie Leedo
CONTACT NUMBERS	021 4441739
E-MAIL ADDRESS	Bettie.Leedo@capetown.gov.za
DIRECTORATE	City Health
FILE REF NO	Lic 459009

*A-ZimBA
2/07/2019*

6/1/08/2019

DIRECTOR: CITY HEALTH
DR Waarisa Fareed

NAME

DATE

26/08/2019

Comment:

For Submission

☒ REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.

☐ NON-COMPLIANT

LEGAL COMPLIANCE

[Compulsory to Insert name]

NAME

TEL

DATE

Jean-Marie Holt

021 400 2953

30/08/2019

Comment:

Certified as legally compliant: JMH
Based on the contents of the report.

Mr ERNEST SASS
EXECUTIVE DIRECTOR : COMMUNITY SERVICES AND HEALTH

NAME

DATE

29/08/17

Comment:



ACTING MANAGER: SUBCOUNCIL 15
JOHANNES BRAND

TEL NO 021 444-9797

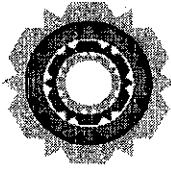
DATE 9 OCTOBER 2019



CHAIRPERSON: SUBCOUNCIL 15
ALDERMAN BRIAN WATKYNS

TEL NO 021 444-9798

DATE 9 OCTOBER 2019



**CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD**

**Business Licence: Application
Feedback Report**

Application Details

Application Number: 17/1/1/1 - 459009
Licence: 8004 HEALTH AND ENTERTAINMENT - DEVICES: Business premises with three or more electronic machines
Type: Entertainment
Status: Await Sub Council Decision
Trade Name: DJ's Diner-Kensington
Business Address: Shop 6, 10th Avenue Shopping Centre. Cnr Voortrekk 7405

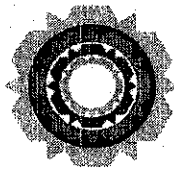
Payment Details

Receipt Number	Receipt Date	Amount Paid
654010553633	17 August 2017	R25.00

Land Use Feedback

Has Zoning been cleared?	Land Use Comments	PVO
Yes	The subject property is zoned: Mix Use Zone (MU2) thus permits the operation of the proposed activity as a primary right.	Rudi Bester

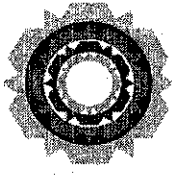
RO Feedback



**CITY OF CAPE TOWN
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**Business Licence: Application
Feedback Report**

RO	Requirement
Fire: John Jacobus Williams	No Objection
Health: Akhona Nombombo	No Objections.
Building Development: Noer Soeker	Ownership changed. A previous application was approved for the same setup Owner needs to install mechanical ventilation and fire extinguishers
Mechanical Ventilation: Asanda Dubula	<p>The fresh air supply system was not operating at the time of the inspection which is contravention of Regulation 01(1) of the National Building Regulations. The system must be repaired to ensure that it operates as designed and in accordance with the National Building Regulation read with SANS 10400-O:2011. Fresh filtered air must be brought into the rooms or spaces at the required air flow rate.</p> <p>The toilets, being devoid of natural ventilation, must be provided with an artificial ventilation system in compliance with regulation 01 of the National Building Regulations. The toilet foul air extraction system must extract either directly or via a ducted system to the outside and to operate from a timer switch (not off the lighting system) in accordance with SANS Code of Practice 10400-O: 2011.</p>
SAPS: Reporting Official SAPS	SAPS clearance obtained



**CITY OF CAPE TOWN
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Business Licence: Application File

The premises to comply with the requirements of the Western Cape Noise Control Regulations P.N. 200/2013 at all times.

Consumption of foodstuffs on premises

Operating Hours: The hours of operation of any Premises will form part on the conditions of the licence awarded in respect of such Premises, and will be in accordance with the hours of operation of the primary business.

The premises to comply with the requirements of the Tobacco Products Control Act 1993 as amended at all times

HI COLLEEN

Colleen Heldsinger

From: Noer Soeker
Sent: Thursday, 18 April 2019 9:05 AM
To: Colleen Heldsinger
Subject: RE: DJ's Diner Kensington 459009

Follow Up Flag: Follow up
Due By: Tuesday, 23 April 2019 11:30 AM
Flag Status: Flagged

Hi Colleen

I was onsite yesterday

All in order

Just one condition, that the owner need to unlock the fire exit security gate during operating hours

Regards


Noer Soeker

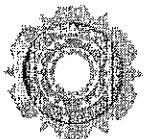
Designation, Building Inspector, Table Bay
Department, Spatial Planning and Environment Directorate

2nd Floor, Media City Building, Hertzog Boulevard, Cape Town

Tel: 021 400 6569 | **Fax:** 021 421 4665 | **Cell:** 082 807 9533 |

Email: Noer.Soeker@capetown.gov.za | **Web:** www.capetown.gov.za

Report a fault | Enquiry |  0800 65 64 63 (free call 24/7)



CITY OF CAPE TOWN
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From: Colleen Heldsinger <Colleen.Heldsinger@capetown.gov.za>

Sent: Monday, 15 April 2019 08:33

To: Rafeeq Fischer <Rafeeq.Fischer@capetown.gov.za>; Noer Soeker <Noer.Soeker@capetown.gov.za>

Cc: Melanie Ramos <mramos@grandslots.co.za>; Bettie Leedo <Bettie.Leedo@capetown.gov.za>; Jacqueline Peterson <Jacqueline.Peterson@capetown.gov.za>; Sarah Domingo <Sarah.Domingo@capetown.gov.za>; Melanie Ramos <mramos@grandslots.co.za>; Jason Williams <Jason.Williams@capetown.gov.za>; Evan Trevor Solomons <EvanTrevor.Solomons@capetown.gov.za>

Subject: RE: DJ's Diner Kensington 459009

Importance: High

Good morning Noer

I hope this mail finds you well.

As per email trail below and email attached, kindly advise as a matter of urgency please.

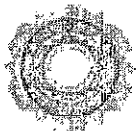
Your kind assistance is highly appreciated.

Kind Regards

Colleen Heldsinger
Business Licence Official Western
City Health - Social Services

Media City Building, C/O Adderley & Hertzog Blvd, 2nd Floor, Foreshore, Cape Town
Tel: 021 400 6513 | Email Colleen.Heldsinger@capetown.gov.za

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From: Rafeeq Fischer <Rafeeq.Fischer@capetown.gov.za>
Sent: Friday, 28 September 2018 3:14 PM
To: Noer Soeker <Noer.Soeker@capetown.gov.za>
Cc: Colleen Fortune <Colleen.Fortune@capetown.gov.za>
Subject: DJ's kensington

Salaam Mr Soeker

Please provide feedback on the license as requested below,

- DJ's Kensington – 459009
 - Mechanical Ventilation has confirmed that the site complied on condition that the building is compliant. Mr Rafeeq Fischer kindly find comments from Asanda Dubula. Can this be assigned to who is standing in for Mr Mike Mtshula please . Your kind assistance is highly appreciated.

Rafeeq Fischer
Principal Building Inspector
Development Management

2nd Floor, Media City Building,
Hertzog Boulevard, Cape Town

T + 27 21 400 6568
F + 27 21 421 4665
F 086 562 6699

W rafeeq.fischer@capetown.gov.za

W www.capetown.gov.za



TDA
CAPE TOWN
Transportation Development Agency
Partnership in Progress

Useful links:
[Planning Department](#)
[Report a fault \(C3\)](#)
[Water restrictions](#)

ANNEXURE B

Business Licenses

CITY OF CAPE TOWN
ISIKEKO SASEKAPA
STAD KAAPSTAD

Relating to the City of Cape Town

| CITYweb Home | Site Guide |

Tuesday 22 May 2018

VIEW REPORTING OFFICIAL REQUIREMENTS

	Application Number	Reporting Official Department	Reporting Official	Assessment Date
Select	459009	Building Development	Noer Soeker	2017/08/29 12:00:00 AM
Select	459009	Health	Akhona Nombombo	2018/02/26 12:00:00 AM
Select	459009	Mechanical Ventilation	Asanda Dubula	2018/02/22 12:00:00 AM
Select	459009	SAPS	Reporting Official SAPS	

Application Number	459009
Reporting Official	Akhona Nombombo
Reporting Official: Department	Health
Reporting Official: District	Western
Reporting Official: Office	Western Office : Berkley Road, Maitland
Comments	No Objections.
Reporting Official: Email	Akhona.Nombombo@capetown.gov.za
Reporting Official: Tel	02151441488
Business License Official	Colleen Fortune
Business License Official: District	Western
Business License Official: Office	Western Office : Berkley Road, Maitland
Business License Official: Email	colleen.fortune@capetown.gov.za
Business License Official: Tel	021 400 65

[\[.help . \]](#)

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ANNEXURE B

Colleen Heldsinger

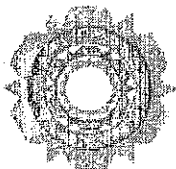
From: Asanda Dubula
Sent: Monday, 15 April 2019 8:22 AM
To: Colleen Heldsinger
Subject: FW: Business Licence Follow ups assistance

Good morning

Please see below

Kind regards

Asanda Dubula
Senior Technician
Mechanical Ventilation
City of Cape Town
City Health – Specialised Services
Tel: 021 400 3799
Email: Asanda.Dubula@capetown.gov.za



CITY OF CAPE TOWN
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From: Asanda Dubula
Sent: Monday, 25 June 2018 15:05
To: Bettie Leedo <Bettie.Leedo@capetown.gov.za>; Rafeeq Fischer <Rafeeq.Fischer@capetown.gov.za>
Subject: RE: Business Licence Follow ups assistance

Dear Bettie

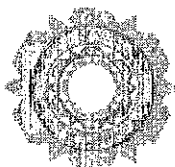
I had visited Dj Diner last week Friday, the Artificial ventilation is satisfactory on condition that the building is compliant. The corner coffee bar has still outstanding requirements, see below

The scutlery, being devoid of natural ventilation, must either be provided with natural ventilation to the satisfaction of the Environmental Health Practitioner or with an artificial ventilation system in compliance with regulation 01 of the National Building Regulations. Should the artificial ventilation route be taken, fresh filtered air must mechanically be brought into the rooms or spaces, either directly or via a ducted system, at the required air flow rate in accordance with SANS Code of Practice 10400-O: 2011.

2. Copies of the Mechanical Ventilation Plans, which have been drawn up by a professional engineer or other approved competent person and have been submitted to and approved by the local authority, are required to complete the site inspection to confirm that the Artificial Ventilation System has been installed in accordance with the approved plans.

Kind Regards,

Asanda Dubula
Senior Technician
Mechanical Ventilation
City of Cape Town
City Health – Specialised Services
Tel: 021 400 3799
Email: Asanda.Dubula@capetown.gov.za



CITY OF CAPE TOWN
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From: Bettie Leedo
Sent: 25 June 2018 02:48 PM
To: Rafeeq Fischer; Asanda Dubula
Subject: FW: Business Licence Follow ups assistance
Importance: High

Dear Asanda/Rafeeq

I know that you are both very busy, but can you please do what you can to finalise these two applications.

Kind regards
Bettie

From: Melanie Ramos [<mailto:MRamos@grandslots.co.za>]
Sent: Monday, 25 June 2018 8:13 AM
To: Colleen Fortune <Colleen.Fortune@capetown.gov.za>
Cc: Colin Abrahams <Colin.Abrahams@capetown.gov.za>; Jacqueline Peterson <Jacqueline.Peterson@capetown.gov.za>; Gerrie van der Spuy <gvanderspuy@grandslots.co.za>; Bettie Leedo <Bettie.Leedo@capetown.gov.za>; Asanda Dubula <Asanda.Dubula@capetown.gov.za>; Rafeeq Fischer <Rafeeq.Fischer@capetown.gov.za>; Rochelle Jones <Rochelle.Jones@capetown.gov.za>; Benito Cogill <Benito.Cogill@capetown.gov.za>; Shannon Maree <Shannon.Maree@capetown.gov.za>
Subject: RE: Business Licence Follow ups assistance
Importance: High

Good morning Colleen

Re: Business Licence Follow ups assistance

Thank you for your weekly feedback. Alas nothing has changed. I sent the attached email to Rafeeq and Asanda regarding DJ's Diner Kensington and Vasco Da Gama Taverna but have not received any response as yet.

Your or Bettie's assistance in getting these inspectors to advise would be appreciated.

Many thanks.



Kind regards

MELANIE RAMOS (Pr.Pl. A/2192/2015) | Business License Officer

1st Floor, Eagle Park

C/O Bosmansdam & Omuramba Road, Milnerton, Cape Town, 7447

Tel: +27 21 421 7771 | Fax: 086 584 3797

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From: Colleen Fortune [mailto:Colleen.Fortune@capetown.gov.za]

Sent: Friday, 22 June 2018 2:49 PM

To: Melanie Ramos <MRamos@grandslots.co.za>

Cc: Colin Abrahams <Colin.Abrahams@capetown.gov.za>; Jacqueline Peterson

<Jacqueline.Peterson@capetown.gov.za>; Gerrie van der Spuy <gvanderspuy@grandslots.co.za>; Bettie Leedo

<Bettie.Leedo@capetown.gov.za>; Asanda Dubula <Asanda.Dubula@capetown.gov.za>; Rafeeq Fischer

<Rafeeq.Fischer@capetown.gov.za>; Rochelle Jones <Rochelle.Jones@capetown.gov.za>; Benito Cogill

<Benito.Cogill@capetown.gov.za>; Justin Costello (justin@worldofsport.co.za) (justin@worldofsport.co.za)

<justin@worldofsport.co.za>; Shannon Maree <Shannon.Maree@capetown.gov.za>

Subject: RE: Business Licence Follow ups assistance

Good day

Kindly find attached, weekly comments for Grand Slots as requested below.

Thank you

Kind Regards

Colleen Fortune

Business Licence Official

Western Sub-District Table Bay

Media City

Cnr Adderley & Hertzog Blvd

2nd Floor

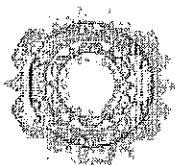
Foreshore

Cape Town

Tel: 021 400 6513

Fax: 021 419 4694

Colleen.Fortune@capetown.gov.za



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

From: Colleen Fortune

Sent: Tuesday, 19 June 2018 10:38 AM

To: 'Melanie Ramos' <MRamos@grandslots.co.za>

Cc: Colin Abrahams <Colin.Abrahams@capetown.gov.za>; Jacqueline Peterson

<Jacqueline.Peterson@capetown.gov.za>; 'Gerrie van der Spuy' <gvanderspuy@grandslots.co.za>; Bettie Leedo <Bettie.Leedo@capetown.gov.za>; Asanda Dubula <Asanda.Dubula@capetown.gov.za>; Rafeeq Fischer <Rafeeq.Fischer@capetown.gov.za>; Rochelle Jones <Rochelle.Jones@capetown.gov.za>; Benito Cogill <Benito.Cogill@capetown.gov.za>; 'Justin Costello (justin@worldofsport.co.za) (justin@worldofsport.co.za)' <justin@worldofsport.co.za>; Shannon Maree <Shannon.Maree@capetown.gov.za>

Subject: RE: Business Licence Follow ups assistance

Importance: High

Good morning Melanie

Thank you for your email. I hope this mail finds you well.

Kindly find attached, Requirement letter for DJ- Diner Kensington as discussed telephonically last week, as you advised that the Requirement letter be sent you via email.

Mr Rafeeq Fischer kindly give us an update regarding the comment for Building Development for DJ – Diner Kensington please- 459009.- as per attached Requirement letter. Also advise on the premises: Vasco Da Gama- 460132- as a matter of urgency please. Your kind assistance is highly appreciated.

Melanie, the client needs to read the Requirement letter carefully for DJ Diner Kensington and to kindly liaise directly, with Mechanical Ventilation in terms of their requirements and procedures.

Please note that my next update will be on Friday.

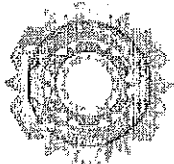
Thank you

Kind Regards
Colleen Fortune
Business Licence Official

Western Sub-District Table Bay

Media City
Cnr Adderley & Hertzog Blvd
2nd Floor
Foreshore
Cape Town

Tel: 021 400 6513
Fax: 021 419 4694
Colleen.Fortune@capetown.gov.za



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

From: Melanie Ramos [<mailto:MRamos@grandslots.co.za>]
Sent: Tuesday, 19 June 2018 7:55 AM
To: Colleen Fortune <Colleen.Fortune@capetown.gov.za>
Cc: Colin Abrahams <Colin.Abrahams@capetown.gov.za>; Jacqueline Peterson

<Jacqueline.Peterson@capetown.gov.za>; Gerrie van der Spuy <gvanderspuy@grandslots.co.za>; Bettie Leedo <Bettie.Leedo@capetown.gov.za>; Asanda Dubula <Asanda.Dubula@capetown.gov.za>; Rafeeq Fischer <Rafeeq.Fischer@capetown.gov.za>; Rochelle Jones <Rochelle.Jones@capetown.gov.za>
Subject: RE: Business Licence Follow ups assistance
Importance: High

Good morning Colleen

Re: Business Licence Follow ups assistance

Thank you for the attached update list. There does not appear to be any change from last week.

The Requirements Letter for DJ's Diner – Kensington is still awaited since May and the Building Inspector for Vasco Da Gama Tavern has still not been out and the site representative has tried contacting him without any success (I believe he was on leave but back yesterday).

Can you please follow up from your side as to what the delay is as these applications just seem to be standing still.

Your kind efforts are appreciated.



Kind regards

MELANIE RAMOS (Pr.Pl. A/2192/2015) | Business License Officer
1st Floor, Eagle Park
C/O Bosmansdam & Omuramba Road, Milnerton, Cape Town, 7447
Tel: +27 21 421 7771 | Fax: 086 584 3797

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From: Colleen Fortune [mailto:Colleen.Fortune@capetown.gov.za]
Sent: Monday, 18 June 2018 9:00 AM
To: Melanie Ramos <MRamos@grandslots.co.za>
Cc: Colin Abrahams <Colin.Abrahams@capetown.gov.za>; Jacqueline Peterson <Jacqueline.Peterson@capetown.gov.za>; Gerrie van der Spuy <gvanderspuy@grandslots.co.za>; Bettie Leedo <Bettie.Leedo@capetown.gov.za>; Asanda Dubula <Asanda.Dubula@capetown.gov.za>; Rafeeq Fischer <Rafeeq.Fischer@capetown.gov.za>; Rochelle Jones <Rochelle.Jones@capetown.gov.za>
Subject: RE: Business Licence Follow ups assistance

Hi Melanie

Apologies for the delay. Kindly find attached comments fyi.

Thank you

Kind Regards
Colleen Fortune
Business Licence Official

Western Sub-District Table Bay

Media City
Cnr Adderley & Hertzog Blvd
2nd Floor

ANNEXURE C

Business Licenses

CITY OF CAPE TOWN
ISIIXEKO SASAKAPA
STAD KAAPSTAD

Siyayitheni - join the movement

| CITYweb Home | Site Guide |

Thursday 31 May 2018

Home	Application	Assessment	Administration	Reports	Track Application Status	Liquor Application Admin	Profile	Logout
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VIEW REPORTING OFFICIAL REQUIREMENTS

	Application Number	Reporting Official Department	Reporting Official	Assessment Date
Select	459009	Building Development	Noer Soeker	2017/08/29 12:00:00 AM
Select	459009	Fire	John Jacobus Williams	2018/05/28 12:00:00 AM
Select	459009	Health	Akhona Nombombo	2018/02/26 12:00:00 AM
Select	459009	Mechanical Ventilation	Asanda Dubula	2018/02/22 12:00:00 AM
Select	459009	SAPS	Reporting Official SAPS	

Application Number	459009
Reporting Official	John Jacobus Williams
Reporting Official: Department	Fire
Reporting Official: District	Western
Reporting Official: Office	Western Office : Berkley Road, Maitland
Comments	No Objection
Reporting Official: Email	John.Jacobus.Williams@capetown.gov.za
Reporting Official: Tel	0214474747
Business License Official	Colleen Fortune
Business License Official: District	Western
Business License Official: Office	Western Office : Berkley Road, Maitland
Business License Official: Email	colleen.fortune@capetown.gov.za
Business License Official: Tel	021 400 65

[\[. help . \]](#)

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CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH

Lucille Symes

Specialist Clerk

Business Licence

Western Sub-District

Media City 2nd Floor

Cape Town

Tel 021 400 6513

Fax 021 419 4694

Lucille.symes@capetown.gov.za

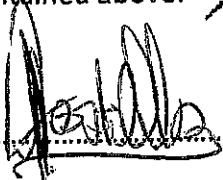
CONSENT FORM

APPLICATION FOR HEALTH FACILITIES OR ENTERTAINMENT LICENCE IN TERMS OF SCHEDULE 1 OF THE BUSINESSES ACT NO.71 OF 1991.

In providing the required information, I acknowledge and consent to its use for the following purposes:

1. All information provided will be used for the purpose of determining the suitability of the Applicant and to assess all matters relevant to this application.
2. The information may accordingly be shared or disclosed to all parties and institutions in the course of the business license application process and in consideration of the application.
3. This application and supporting documentation are considered by Sub-Councils at a meeting that is open to the public and the media.

I, (print name).....JUSTIN POWER COSTELLO....., the undersigned, confirm that I have read and understood the contents of this Application and as contained above.

..........

Signature of Applicant

.....11/08/2017.....

Date

.....DIRECTOR / MEMBER.....

Capacity of Applicant

FUNCTION NO : 4.21.13.1 (KRE3121)

SOUTH AFRICAN POLICE SERVICE
CRIMINAL RECORD SYSTEM
CLEARANCE REPORT
AFISWITCH

TASK NO : 34233406
PAGE : 1 OF 2
EPCRI
484295

DATE : 2019-05-10 (SAPS694)

REQUESTED BY: 6365621 CAPT D SYSTER

NAT HEAD OFFICE LCFC

OR NUMBER : AJ 60892
AFISWITCH FP NUMBER : 1965 496722

REFERENCE NUMBER : 20190509_LIN13638188

REQUESTERS DETAIL

NAME : Justin Power
SURNAME : Costello
ID/PASSPORT NUMBER : 6411045177089

ISSUED FOR : THE HEAD SAPS CRIMINAL RECORD CENTRE

CLEARANCE REPORT ATTACHED

FUNCTION NO : 4.21.13.1 (KRE3121)

SOUTH AFRICAN POLICE SERVICE

TASK NO : 34233406

CRIMINAL RECORD SYSTEM

PAGE : 2 OF 2

CLEARANCE REPORT

PRINT

DATE : 2019-05-10 (SAPS69H)

AETSMITH

484295

CONVICTIONS

1985-09-13 VREDENBURG 1644/85 (SENTENCE DATE, COURT- AND COURT CASE NO)

DATE GUILTY	OFFENCE	SENTENCE	NAME, FP- AND CAS/CR NO
1985-09-13	ACT/CRD 44 OF 1958 SEC/REG 92 SUBSEC 1(c) POST OFFICE ACT ENIGE ANDER HANDELING/UITVINDING/TOESTEL VERRIE/VERVAARDIG/ TOEPAS TOV GEEN UITDRUKLIKE STRAF VOORGESKRYF/DAREBY BETROCK- KE IS/WIDEREGBELIK HOOG OM BETALING VAN TARIWE/GELD ONDUIK - DATE COMMITED	R60 OF 30 DAE G/S.	COSTELLO JUSTIN POWER 1985 496722 CAPE TOWN CENTRAL 4/9/1985







1991-10-08 HILLEROW 63/1838/91 (SENTENCE DATE, COURT- AND COURT CASE NO)


DATE GUILTY	OFFENCE	SENTENCE	NAME, FP- AND CAS/CR NO
1991-10-08	ACT/CRD 29 OF 1989 SEC/REG 122 SUBSEC 1(a) ROAD TRAFFIC ACT DRIVING VEHICLE ON PUBLIC ROAD UNDER THE INFLUENCE OF IN- TOXICATING LIQUOR OR A DRUG HAVING A NARCOTIC EFFECT - DATE COMMITED - OF LIQUOR (0.08 GRAM PER 100 MILLILITER)	R800 OF 4 MNE G/S.	COSTELLO JUSTIN 1991 514383 YECVILLE 243/8/1991

EN
ART 149(1) GELEES MET ART 122
(1) OF 122(2) VAN WET 29 VAN
1989 - 6 MNE G/S WORD
OFGESKORT VIR 5 JAAR.

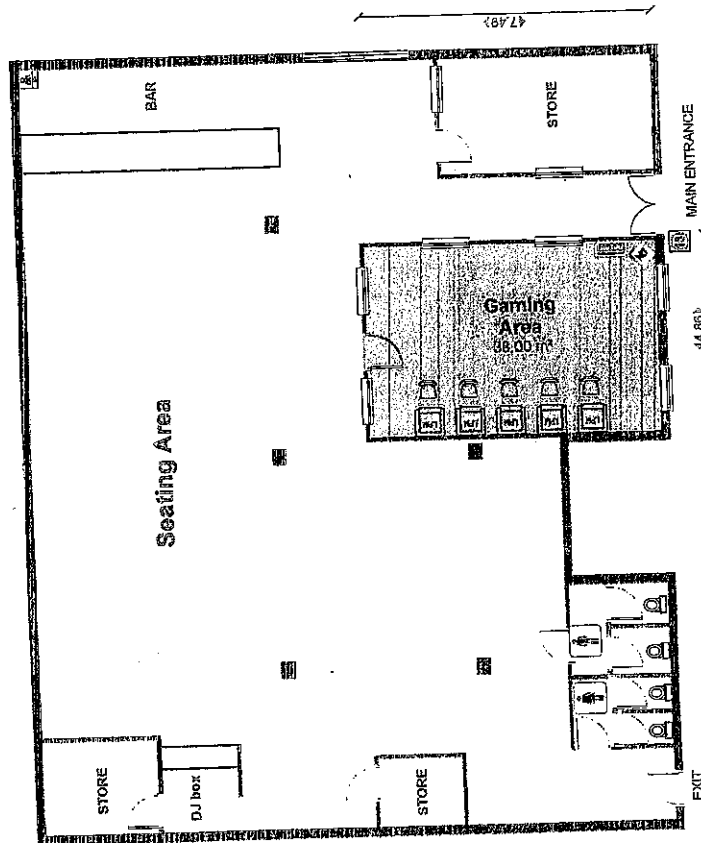
***** END OF REPORT *****

ANNEXURE E

MAP 1	
Symbol Legend	
Site Data logger in locked cabinet	
No under 18 sign	
Rope & rail demarcation	
Unlaid payout machine & chair	
CCTV Camera	
CCTV Monitor	
Premises Information	
Site accessible by persons under 18s.	NO
Total floor area of premises.	313 m ²
Enclosed off gaming area.	38
Gaming area % of premises.	12 %
Method of Supervision.	CCTV Monitoring



Premises Name & Address:	
DJ'S DINER-KINGSINGTON	
SHOP 5, SEVEN ELEVEN CENTRE, 553 VOORTREKER ROAD, KENSINGTON	
Contact Person:	AUSTIN COSTELLO
Contact #:	07 20555561
EPN #:	22760
Local Authority:	
Date compiled:	07/09/2017
Revision date:	
Revision #:	



ANNEXURE F



MALLINICKS

30 October 2007

OUR REF AT/SK/fs/159370
YOUR REF

Tel +27 21 410 9721
Fax +27 21 410 9000
Email skazee@mallinicks.co.za
Docex 34 Cape Town
3rd Floor Granger Bay Court
Beach Road, V&A Waterfront
Cape Town 8001 South Africa
PO Box 3667 Cape Town 8000
South Africa
www.mallinicks.co.za

CITY OF CAPE TOWN

ATTENTION: LES BARCHARD

PER EMAIL

Dear Mr Barchard

BUSINESS LICENSE REFUSALS

We have been requested to furnish the City of Cape Town ("the City") with an opinion on the application of section 4 of the Businesses Act, 71 of 1991 ("Businesses Act") when considering applications for the issuing of a business license in order to establish and operate a business which provides goods or services for adult entertainment.

We have been instructed that the Sub-Councils have now been delegated the function of approving business licenses and that applications for business licenses have been declined in circumstances where it appears that all the formal requirements necessary for the licenses to be issued have been met. We have been further instructed that applications are now increasingly refused because of an apparent failure to solicit the views of the community and/or because the proposed venue is in close proximity to certain kinds of establishments such as schools and places of worship. The City has therefore sought our view on whether the refusal of licenses on the varied grounds that have been given are *ultra vires* the Businesses Act.

The legislation

1. The Businesses Act states in section 2 that an Administrator (now the Provincial Premier) must appoint a Licensing Authority. The City is that Licensing Authority, and has delegated that power to the Sub-Councils. Therefore, the relevant Sub-Council is tasked

Directors: Michael Evans (Chairman), Justin Hardcastle (CEO), Barry Adams, Hendrik Bester, Alexia Christie, Coriaan de Villiers, Werner de Waal, Lynn February, Gavin Fitzmaurice, Lindsay Goldberg, Rael Gootkin, Nicolette Joubert, Lara Kahn, Des Kruger*, Vijay Moodaley, Leanne Mostert, Kate Reynolds, Jill Singer, Etienne Swanepoel, Achmat Toefy, Phila Vanda, Deon Visagie, Salim Young (non executive)
Associate Director: Martie Foster*
Consultants: John Levin, Gerald Mallinick, Michael Radomsky
Senior Associates: Brian Aronoff, Trudie Brockmann, Yasmina Mohamed, Graham Sonnenberg, Nicholas Traverso, Marina Vayanos
Associates: Carmen Abrahams, Alvin Adendorff, Guy Harker, Sha'ista Kazee, Sidney Pretorius, Zunaïd Rawoot
Business Manager: Robert Klein

with the assessment of an application in order to determine whether a business license should be granted.

2. The process to be followed starts when an applicant submits an application form to the City for the assessment of the proposed premises by the relevant inspectors (fire, safety, hygiene, etc). The relevant inspectors issue certificates confirming the suitability of the premises for the purposes applied for after information is assessed by the City officials to ensure that all necessary precautions have been taken and certifications complied with. The application, having complied with the formal requirements, is then sent to the Sub-Council for approval. The Businesses Act states in section 3 that, upon receiving an application, the Licensing Authority *shall* issue the license subject to four caveats, two of which are relevant to this opinion.

3. Section 2(4) of the Businesses Act states:

"A Licensing Authority shall, subject to the provisions of subsection (6), issue a license which is properly applied for unless –

(a) in the case of a business referred to in item 1(1) or 2 of Schedule 1, the business premises do not comply with a requirement relating to town planning or the safety or health of the public or any law which applies to those premises;

(aA) ...

(b) in the case of a business referred to in item 2 of Schedule 1, the Licensing Authority is satisfied that-

- (i) the applicant, whether or not he is or will be in actual and effective control of the business, or*
- (ii) if another person is or will be so in control, that person, is not a suitable person to carry on the business, whether by reason of his character, having regard to any conviction recorded against him, his previous conduct or for any other reason."*

4. Schedule 1 to the Businesses Act details the kinds of businesses in respect of which a license is required. Item 1 of Schedule 1 deals with the sale or supply of meals or perishable foodstuffs and Item 2, pertinent to this opinion, deals with businesses that

provide certain types of health facilities or entertainment. There are five descriptions of businesses that are pertinent to a business catering for adult entertainment. These are:

- "(a) ...
- (b) *providing massage or infra-red treatment;*
- (c) *making services of an escort, whether male or female, available to any person;*
- (d) *keeping three or more mechanical, electronic or electrical contrivances, instruments, apparatus or devices which are designed or used for the purpose of the playing of any game or for the purpose of recreation or amusement, and the operation of which involves the payment of any valuable consideration, either by the insertion of a coin, token coin or disc therein or in an appliance attached thereto or in any other manner;*
- (e) ...
- (f) *keeping or conducting a club or discotheque;*
- (g) ...
- (h) *conducting adult premises referred to in section 24 of the Films and Publications Act, 1996."*

5. Section 24 of the Films and Publications Act exempts persons who have been given a business license allowing them to conduct business of the kind contemplated in item 2 of the Businesses Act (ie. adult entertainment) from section 25 of the Films and Publications Act, which in turn prohibits persons from displaying various forms of visual presentation of sexually explicit nature.
6. Section 2(4)(a) requires that the business license must comply with the requirements relating to town planning and public health and safety requirements. Thus, if a town planning or zoning scheme stipulates that certain kinds of businesses listed in item 2 to the Businesses Act may not be conducted in certain areas or close to certain establishments, the Licensing Authority will then have grounds to refuse a business license in connection with such scheme. If however, such plans or schemes are silent on the matter, the Licensing Authority cannot then take into account considerations such as

location and the nature of other establishments in the area (we will return to this issue later).

7. Section 2(4)(b) requires that the Licensing Authority considers the character of the applicant (or other person who will be in control of the premises). The Licensing Authority must take into account the suitability of the person to carry on the business and in considering this issue, it may have regard to the person's character and to any reason other than the person's character.
8. In determining the suitability of the person, the Licensing Authority should consider the character of the person with reference to any previous convictions and/or previous conduct which reflects on the person's character. Even though the Businesses Act does not say so, it seems that the assumption being made by the legislation is that the suitability of the applicant has to be measured against the applicant's disposition to criminal activities and hence makes direct reference to the criminal record of the person. This will be based on the further supposition that the kinds of adult entertainment and businesses listed in item 2 are those that are generally prone to and associated with criminal activity. (Of course, we do not comment on the desirability of such a supposition except to state that the legislation appears to draw this link.)
9. This then raises various issues relating to the rights of the applicant not to be discriminated against based on past convictions or merely on the suspicion of being prone to criminal activity based on some or other character assessment. However, the constitutionality or otherwise of these provisions do not form part of this opinion.
10. The Licensing Authority must therefore attempt to access the criminal record of the applicant. If the person is a foreigner, it will fall within the powers of the Licensing Authority to request the criminal records from the applicant's home country. While such a move may delay the application, the request will be lawful, provided that other rules of just administrative action are upheld. For instance, the request may be challenged if the Licensing Authority is inconsistent when making such requests. Therefore, like cases must be treated in a like fashion. It may be an unreasonable exercise of this power if the person, for instance, came to the Republic of South Africa when she/he was still a child and lived in the Republic of South Africa for all his/her adult life. For a more recently arrived foreigner, it is likely to be reasonable to request the foreign criminal records.
11. It is important though that the Licensing Authority does not exercise its power merely to delay the application and therefore frustrate the process. The Licensing Authority would

then be exercising its power for an ulterior motive, an act which would be rendered unlawful.

12. The suitability of the applicant may be determined with reference to the person's character or with reference to '*any other reason*'. This latter phrase does not empower the Licensing Authority, however, to take into account a factor that is irrelevant or unimportant. The exercise of the discretion must, at all times, be reasonable and justifiable. The provision gives very little guidance on which factors may be relevant though. In this regard, the Licensing Authority may be made aware that the applicant is under police investigation for alleged unlawful activities taking place at other similar establishments for which the applicant is seeking a business license. It would not be unreasonable for the Licensing Authority to postpone the outcome of the application until the criminal justice system had run its course. It may even reject the application and direct the applicant to re-apply when the criminal investigation had been completed. There must, however, be a rational connection between the decision and the reason.
13. It may follow these options, however, only if adverse evidence has been placed before the Licensing Authority that places the suitability of the applicant in question. The applicant must then be given an opportunity to controvert such evidence. It is advisable that Applicants should be required, if they are not already required to do so, to address issues relating to good character and to place before the Licensing Authority any issue which reflects on his/her suitability to operate the business license applied for. A balance of probabilities is the applicable standard of proof.
14. If the applicant addresses the good character and suitability issues in the application, it would not be open for the Licensing Authority to conclude that there is insufficient proof of good character unless, of course, the evidence is controverted. Further, the premise must be that, where this issue is not addressed in any form (ie. there is no evidence against or in favour of the applicant's good character), the Licensing Authority cannot refuse the application on the basis that good character had not been proven. The application may only be turned down if the Licensing Authority is '*satisfied that the applicant is not suitable*'. No evidence either way cannot satisfy the Licensing Authority that the applicant is not suitable.
15. Because of the current lack of guidance, the City should exercise its discretion cautiously when deciding on whether a person is suitable or not when considering issues other than the good character of the applicant. Section 4(b) provides no guidance that limits the factors that can be taken into account. The Constitution of the Republic of South Africa (in

particular, section 33 as interpreted by the Constitutional Court) prevents legislation from being interpreted in a manner whereby the decision-maker is given unbridled discretion. Thus, we advise that section 4(b) of the Businesses Act be read down so that the discretionary powers contained in section 4(b) are interpreted and implemented cautiously and hence in a constitutional manner. Such an interpretation would ensure that the rights of affected parties, in this case the applicants for the business license, are protected and upheld despite the apparent broad discretionary power given to the Licensing Authority.

16. Over and above the problems relating to the broad discretionary powers when assessing the suitability of the applicant, we are instructed that other factors have been considered, which appear to fall outside of the purview of the Businesses Act. We have been instructed that the Licensing Authority has rejected applications on the basis that the proposed venue is close to schools or libraries (i.e. places frequented by children) and/or that there would be strong public objection. However, the Businesses Act does not make provision for these kinds of considerations. Therefore, in the current dispensation, the City risks legal challenges that the City would be hardpressed in defending as such decisions are unlawful and a court would set them aside. Such decisions are *ultra vires* the Businesses Act and would constitute grounds for review as set out in section 6(2)(e)(i) and (iii) of the Promotion of Administrative Justice Act. These sections state that it is a ground for review if the decision is taken for a reason not authorized by the empowering provision; and/or because irrelevant considerations were taken into account. It is therefore important for the City to ensure that issues of public participation and suitability of the location of the venue are not taken into account as they are not currently relevant and would render the decision reviewable.
17. This does not mean, however, that the issue of location could never be of importance. Section 4(a) makes direct reference to the business having to '*comply with a requirement relating to town planning*'. We are instructed that the current zoning and town planning schemes make no provision for and do not set any requirements relating to the kinds of businesses that may be conducted in particular areas. Thus, if the City seeks to address the suitability of the location of adult entertainment establishments it should do so via amendments to its zoning and town planning schemes.
18. The issues of public participation and the views of the community are less obviously catered for. While it will not be possible to establish and take into account the views of the public in relation to individual applications because the Businesses Act makes no provision for such participation, a more general public participation process may take place when amending the zoning schemes.

19. Another avenue may be that the City, because it is responsible for 'trading regulations' in terms of Schedule 4 Part B to the Constitution, may pass a by-law that set certain requirements and procedures to be complied with that are in addition to those set out in the Businesses Act. The City has previously been advised that the Businesses Act may well be unconstitutional to the extent that it impinges on its powers in respect of functional areas listed in Schedule 5 of the Constitution (see opinion of Adv E Fagan of 5 July 2001). Similarly, the Businesses Act may well be trumped by a by-law that the City passes in respect of trading regulations. It would be in this process that the City could require both issues of location and public opinion having to be considered in each application.
20. All three options mentioned in paragraphs 17, 18 and 19 above would need further legal consideration should the City seek to pursue them. Kindly contact us should you have any queries in respect of the above.

Yours faithfully
MALLINICKS INC



Per:
ACHMAT TOEFY / SHA'ISTA KAZEE