

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: STARBLADE CORPORATION PTY LTD

PREMISES: DUKE OF GEORGE

PREMISES ADDRESS: 36 DUKE ST EAST FREMANTLE WA 6158

APPLICATION ID: A000057207

NATURE OF APPLICATION: APPLICATION FOR CONDITIONAL GRANT OF A
TAVERN RESTRICTED LICENCE

DATE OF DETERMINATION: 20 April 2015

Introduction

1. This is an application by Starblade Corporation Pty Ltd (the applicant) for the conditional grant of a tavern restricted licence for premises to be known as the *Duke of George* and situated at the corner of George and Duke Streets (36 Duke Street) in East Fremantle.
2. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (the Act).
3. The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. A Notice of Intervention was lodged by the Commissioner of Police (Commissioner), pursuant to s 69 of the Act. In addition, 27 objections to the grant of the application were lodged by the following persons:
 - Peter and Lyn Callaghan
 - Annabel West
 - Sean Gorman and Monique Laves
 - Shane Turner
 - Jessamy Stirling
 - Robyn Travers
 - Patricia Glasgow
 - Robert Stevenson
 - Lynette Eastoe
 - Paul and Susan Filippin
 - David Foster
 - Sophie Foster
 - Margaret Thirsk
 - Janine Marshall
 - Ron and Jeanette Dickinson
 - Leigh Marshall
 - Bevan Abbott
 - Alex and Sandy Ogg
 - Luke Jackson
 - Russell Quinn
 - Andrew McNeill
 - Peter and Janet Jackson

- Claire McGowan
 - Gemma Murdoch
 - Jacqueline Abbott
 - Paul New
 - Ben Stott
4. Pursuant to s 74 of the Act the objections lodged by Mr Abbott and Mr Stott will not be heard due to their notices of objection being received after the closure of the objection period.
 5. Pursuant to ss 13 and 16 of the Act the application will be determined on the papers. The submissions of the parties are briefly summarised below.

Submissions on behalf of the applicant

6. The applicant is seeking the conditional grant of a tavern restricted licence to establish a multi-purpose licensed venue, incorporating a fully enclosed semi-basement bar; a cafe/restaurant; and an adjoining covered courtyard (alfresco dining).
7. The proposed venue will be located on the corner of George and Duke Streets, forming part of the George Street Precinct and will be established in the old "Brush Factory". In addition, the proposed venue will be part of a new development that will eventually include 13 apartments, with 12 of these to be located adjacent to the venue.
8. Above the proposed venue is an existing Performing Arts and Pilates Studio with a rear extension for tuition. Furthermore, situated overhead are two floors of office space and an apartment.
9. According to the applicant, its objective is to ensure that the venue has a strong link with the local community and, at appropriate times, cater for families.
10. According to the applicant, one of the main features of the proposed venue will be a variety of regular, quality live entertainment acts including jazz, blues, classical, folk, musical theatre and also modern music. The venue will distinguish itself from other licensed premises in the locality due to its focus on performing arts and live music.
11. The suburbs surrounding East Fremantle, within a 2km radius (the locality) of the proposed venue consist of:
 - Fremantle;
 - North Fremantle;
 - Bicton;

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- O'Connor;
 - Palmyra; and
 - White Gum Valley.
12. According to the applicant, the locality is predominantly a residential historic area where residents have easy access to local shopping centres and retail stores for day-to-day needs, with Fremantle being the main service centre. Moreover, George Street is defined as a mixed use area, which includes a combination of residential, commercial and community facilities and is considered the commercial hub within the Plympton Precinct.
 13. The applicant submits that there are a number of existing licensed premises in the area, including restaurants and a small bar and the venue will complement the mixed use zoning of the precinct and that of George Street, whilst at the same time offering a distinctly different type of licensed venue.
 14. The applicant submitted that the premises will retain its heritage brick and timber character, which will be complemented with character furnishings and fit-out, together with a modern bar, kitchen and toilet facilities to create a chic and stylish environment for patrons to enjoy.
 15. The applicant proposes to trade during the following hours:
 - Monday and Tuesday: 5 p.m. to 11 p.m.;
 - Wednesday to Friday: 5 p.m. to 12 midnight;
 - Saturday: 12 noon to 12 midnight; and
 - Sunday: 12 noon to 10 p.m.
 16. The applicant provided background details of the Directors of the applicant company with respect to their extensive hospitality experience and background in the field of performing arts.
 17. In the applicant's Public Interest Assessment (PIA) submission lodged with the application the applicant submitted the following:
 - it is not the applicant's intention to promote the venue as a local drinking establishment or as a 'traditional' tavern, with the style of operations conducive to a range of demographics including singles, couples, groups, families, seniors and tourists and catering to a wide range of age groups from 20 to 65+ years of age;
 - it is anticipated that the venue will have strong local and tourist appeal and a strong community base and focus;

- services offered will be orientated towards encouraging patrons to purchase a meal or at least a light snack as well as drinks, including a good selection of non-alcoholic drinks and coffees;
- the main sectors of the market the applicant wishes to attract to the venue are:
 - local residents, as well as the general public for dining, liquor and entertainment services throughout the week, including functions and special occasions servicing groups from 10 – 40 people at any one time;
 - local residents and the general public, including families for normal cafe/restaurant use on weekends during the day for light snacks, lunches and refreshments and in the early evenings to share a meal;
 - parents who attend the Performing Arts Studio with their children and those persons attending the Pilates Studio;
 - local community groups for informal social gatherings;
 - tourists for dining as well as liquor and entertainment services; and
 - business/corporate for meetings, lunches and corporate functions.
- patron numbers will be derived from the following main groups:
 - 70% residents and the general public;
 - 25% tourists; and
 - 5% corporate;
- the George Street Precinct is a popular destination point for visitors to Fremantle and the applicant intends to be actively involved in attracting visitors to the locality and helping to promote the George Street Precinct;
- the busiest trading periods are envisaged to be Thursday to Sunday evenings from 7 p.m. to 12 midnight;
- food will be available at all times during trading hours with a range of food options available including quality snacks and light meals, children's menu, tapas, sharing plates, two course dinner and show. The children's menu will be available during the day up until early evenings;
- entertainment selections will be carefully selected to suit the wide and diverse demographic of patrons that will be attracted to the venue;

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- entertainment suitable for families and children will also be offered at appropriate times during the day in order to encourage and establish a community atmosphere;
 - the internal live entertainment area can be closed off from the rest of the venue giving the venue flexibility to separate the live entertainment area from the rest of the venue for function bookings and shows. Moreover, the venue can be divided into three separate areas or operate as one area depending upon what entertainment is planned and functions booked;
 - some form of live entertainment will be provided during most opening hours comprising of solo performers to small groups covering jazz, blues, cabaret, folk and piano (acoustic and electric). In addition, occasional acoustic forms of entertainment will be offered in the roofed courtyard area such as Sunday afternoons;
 - dinner shows and late night supper club entertainment will be offered on Thursday through to Saturday evenings;
 - the venue has the following acoustic advantages:
 - semi-basement location;
 - few windows;
 - windows double glazed;
 - self closing door to courtyard; and
 - entry via George Street situated well away from residents and neighbours.
 - adequate parking for the venue will be available, including undercover, street and within the general vicinity as confirmed by way of a traffic report prepared by *Transcore* submitted with the application;
 - the venue will provide a taxi telephone call service and bus services run along Canning Highway with a bus stand approximately 200m away north and on Marmion Street, approximately 200m away south;
 - the applicant expects the venue:
 - to be well recognised for hospitality and tourism services exceeding patron expectations with respect to service and amenities;
 - to be a tourist attraction offering a unique experience to visitors; and
 - will provide an upmarket and unique offering for local residents to what is presently available in the locality.

18. The applicant's PIA addressed the matters set out in s 38(4) of the Act and submitted statistical data for East Fremantle in respect of at-risk groups; tourist/visitor numbers; social health indicators in respect of alcohol related hospitalisations and deaths and crime rates, revealing the following:

- the SEIFA Index of Disadvantage for the suburb of East Fremantle is 1,088.5 with a baseline of 1,000.00. This represents a significantly lower level of disadvantage compared to most other suburbs in the State;
- the locality has a high proportion of white collar workers, particularly professionals and also has high home ownership;
- based on 2011 Census QuickStats for the suburb of East Fremantle:
 - of the 6,930 residents in the locality, 0.05% are Indigenous;
 - the median age of the population is 42 years;
 - 14.5% of residents are over 65 years and 18.7% are between the age of 0 – 14 years;
 - the unemployment rate is 3.5%, which is significantly lower than both the State and National average; and
 - 37.3% of residents owned their home outright, which is significantly higher than the State and National averages;
- the rate of alcohol-related hospitalisations in East Fremantle in South Metro Area (which includes East Fremantle) for the period 2005-2009 was significantly lower than the State rate;
- in respect of crime rates, when comparing the locality to WA rates the overall crime rate of the locality is lower;
- the City of Fremantle is a very popular tourist precinct attracting people from all over the metropolitan area for day trips, as well as intrastate, interstate and international visitors due to the variety of liquor, dining, entertainment, retail and cultural attractions; and
- having considered the crime and health indicator statistics there are no at-risk groups for the purpose of the application, having taken into consideration the demographics of the locality and the style in which the venue will operate.

19. The applicant also submitted the following in respect of the potential impact on the amenity and offence, annoyance, disturbance or inconvenience that may be caused:

- there has been much interest in the application by local residents and business owners who support the granting of the application, which will enhance the amenity of the area by providing additional hospitality services as well as add a vibrant cultural setting within the precinct;

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- the redevelopment of the Old Brush Factory, including apartments and the proposed venue will greatly enhance Duke Street and add to the amenity of the precinct and locality;
 - it is hoped that the investment in the development of the Old Brush Factory and proposed venue will motivate the redevelopment of the Royal George Hotel, which is currently empty and in a state of disrepair;
 - the grant of the application will positively contribute to the amenity of the locality and precinct by:
 - supporting the further development of the locality, the precinct and the City of Fremantle;
 - providing additional hospitality services in the precinct and locality that will further enhance the facilities and services available, resulting in attracting a greater number of visitors to the locality;
 - provide additional hospitality services to be enjoyed by local residents and business owners; and
 - further activating and enhancing the streetscape along Duke and George Streets in the vicinity of the venue;
 - the location and design of the venue are within the guidelines and principles outlined in the 'Designing Out Crime Planning Guidelines'. Moreover, the venue will:
 - be compatible with neighbouring uses;
 - have specific entry/exit locations for patrons allowing areas to be easily monitored by staff and surveillance equipment;
 - be located in a well-defined private space and consist of well-defined areas with staff employed to service these areas and monitor patron behaviour; and
 - be monitored via passive surveillance of patrons and staff within the venue and CCTV.
 - an increase to activity in the locality and precinct will promote and endorse social infrastructure, thereby creating a safe and active street frontage along George Street and the surrounding area;

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- the venue will not share some of the features sometimes associated with other tavern licences such as unattractive, poorly furnished and maintained premises, which have been associated with alcohol-related anti-social behaviour and aggression, and will ensure that:
 - the venue will be developed into a well-maintained, highly-finished premises;
 - extensive seating is provided as well as an easily accessible bar;
 - the venue is air-conditioned and well ventilated including a roof-covered courtyard;
 - the playing of pool will not occur; and
 - food including full meals will be available.
 - the venue, particularly given the focus upon food and entertainment, will not have those characteristics that are commonly associated with anti-social or criminal behaviour and given the low risk factors associated with the operation of the venue, the application should be assessed as being at low-risk of causing alcohol-related harm within the locality;
 - the age range of patrons attracted to the venue will be varied and a family friendly environment will be fostered during appropriate trading periods where families are likely to attend;
 - the type of entertainment to be offered at the venue will be unattractive to the 18-21 year old age group, which is commonly associated with antisocial and violent behaviour;
 - The applicant submitted that the grant of the application will not result in harm or ill-health due to the consumption of liquor; will not have an adverse impact upon the amenity of the area but rather enhance the amenity of East Fremantle and the precinct and be in line with the vision of the Town of East Fremantle and City of Fremantle; and will not result in a increase in antisocial behaviour, noise or disturbance in the locality.
20. To demonstrate that the grant of the application will cater to the requirements of consumers (objects 5(1)(c) and (2)(a) of the Act) the applicant submitted 416 witness questionnaires from local residents and visitors with 117 of these consisting of person living and/or working in close proximity to the proposed venue. Furthermore, the applicant submitted a number of letters of support from local residents and businesses.

Submissions on behalf of the Commissioner of Police

21. The Commissioner lodged a Notice of Intervention in order to provide information to assist the licensing authority in making an informed decision. The Commissioner intervened on the grounds that if the application was granted and conditions not imposed, public disorder or disturbance would be likely to result. Accordingly, the Commissioner submitted that if the licence was granted conditions relating to trading hours, the provision of food, seating, entertainment, restriction on the number of patrons, the provision of CCTV, operation of an identification system and the responsible service of liquor should be imposed on the licence in order to minimise any potential negative impact that may result from the grant of the application.

Submissions on behalf of the Objectors

22. The objectors raised similar concerns and were predominantly opposed to the application on the grounds that the grant of the application would cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity; or the amenity, quiet or good order of the locality would be lessened. The relevant issues raised are:

- Duke Street is within a mixed use residential area and is not an entertainment precinct;
- there are a sufficient number of liquor outlets within the locality that already meets the requirements of consumers;
- potential noise from increased traffic, music emanating from the venue and from patrons attending and leaving the venue;
- potential anti-social behaviour associated with patrons attending and leaving the venue;
- increase in traffic congestion and a lack of parking, which is identified by many as already issues existing;
- rubbish left on the verge of residences including empty beer bottles and cans; and
- no area where taxis can alight or pick up passengers due to existing roads resulting in taxis using residential verges in order to turn around.

Responsive submissions on behalf of the applicant

23. The applicant provided a further 12 statements of support from local residents and submitted the following:

- the three main areas within the venue will be the courtyard; the 'Ruby Blue' music room (music room) and the dining room/function room (dining room);
- entrance to the venue will be gained through the semi-enclosed covered courtyard;
- the music room will be the main entertainment room and will incorporate a stage at the rear Duke Street end and consist of bench seating along the walls of the room opening into a comfortable lounge-style room of low and high tables with stools along the back wall for higher viewing;
- the dining room will be a separate room that can be closed off with bi-fold doors depending on need and will provide a separate dining area for patrons who wish to be able to talk comfortably over dinner, away from entertainment;
- a significant focus of the venue will be the provision of live entertainment consisting of the following:
 - free entertainment in the form of resident house bands and local solo, duo and trio acts;
 - dinner shows, a ticketed event at which patrons will also enjoy a two-course meal;
 - a supper club, which it is anticipated will occur weekly or monthly and involve a theatrical cabaret-style show; and
 - Sunday night jazz and blues nights with entertainment varying from solo acoustic folk artists to more sassy brass blues and honky tonk piano;
- the focus that the venue will place upon the provision of live entertainment is in keeping with the recent history of the proposed site of the venue and surrounding area, which has been closely linked with the performing arts. By way of example:
 - John Curtin High School, which is a specialised performing arts public high school, is only a few blocks away;
 - Ms Lulu's Tap Studio attracts 100 students attending regularly across ten classes with ballet established two years ago and proven to be very popular; and

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- the Penny Lane Music School, located adjacent to the Brush Factory enjoys 300+ students appreciating classes in guitar, bass drums, singing, piano and baby music sessions;
 - in addition to live entertainment, a significant focus of the venue will be the provision of food, which will be available at all times during which the venue will trade and include a range of food options including quality snacks and light meals, children's menu, tapas, sharing plates and two-course dinner and show; and
 - the directors of the applicant company through their long involvement within the locality anticipate that the venue will enjoy wide appeal amongst the local community and be embraced by the local community, including families. This is supported by the consumer requirement evidence lodged in support of the application.
24. According to the applicant, whilst the objectors have made reference to alternate licensed premises within the locality, the services provided under each licence are not comparable to that proposed by the applicant with respect to the proposed provision of food, the high standard of the fit-out and the proposed provision of live entertainment at the venue.
25. The applicant submitted that it is misleading for the objectors to state that the proposed venue is to be in a residential neighbourhood when in fact it is to be located on a street considered to be the commercial hub of the precinct and within a mixed use neighbourhood that already includes a variety of hospitality services within close proximity to the proposed venue.
26. With respect to the potential noise issues raised, the applicant stated that noise assessment reports were submitted with the application that addresses both the proposed venue and the dance studio that will be located above the proposed venue. Moreover, the recommendations made by the author of the reports to ensure compliance with the relevant noise legislation have been adopted by the applicant in the construction work completed to ensure compliance.
27. In response to the objectors' concerns regarding potential anti-social behaviour associated with patrons attending and leaving the venue the applicant submitted that the proposed venue is relatively small with a capacity of approximately 120 patrons and reiterated that the style of entertainment proposed will not be attractive to the 18-21 year old age group. Furthermore, the applicant anticipates that a significant percentage of trade will be derived from patrons who reside within the locality based on the consumer requirement evidence submitted.
28. According to the applicant, the grant of the application has a high level of support amongst local residents who have expressed a desire to be able to socialise at the proposed venue and given Duke Street is the nearest residential street to the proposed venue it is significant that almost every dwelling has indicated they support and want to

socialise at the venue. Therefore, given the expected high level of resident attendance at the proposed venue such persons are unlikely to be associated with any antisocial or unruly behaviour going to or from the proposed venue given that this is 'their neighbourhood'.

29. The applicant stated that the Commissioner did not raise any concerns with any existing alcohol-related offending or behaviour currently occurring within the locality. Conversely, the applicant conducted a search through Freedom of Information into existing licensed premises on George Street for the purpose of determining whether or not the operation of these licensed venues had been associated with any alcohol-related offending. The search revealed there were no alcohol-related offences associated with those premises during the period in question and therefore, according to the applicant, gives rise to an inference that persons whom are prone to such behaviour do not socialise within the George Street precinct.
30. The applicant submitted that given the immediate locale and wider locality contains a number of existing licensed premises, including small bars and restaurants, and has such has an active night time economy, there is no basis upon which it could be found that persons living, working or passing through the locality would be unduly disturbed due to the operation of the proposed venue.
31. To address the concerns raised with respect to traffic congestion, increased traffic noise and insufficient parking if the licence was granted the applicant stated that:
 - a traffic and parking assessment was undertaken on behalf of the applicant by *Transcore* as part of the mixed use development application in order to consider the impact that the entire development, including the proposed venue, would have upon traffic flow and parking. The author of the report formed the conclusion with respect to traffic flow that the "...George Street/Duke Street intersection will easily be able to accommodate the traffic flows from the proposed development and still have sufficient spare capacity to accommodate additional traffic from other development in the area, such as the proposed Royal George Hotel development";
 - given the findings of the above assessment the increase in noise associated with traffic is negligible. In fact the noise assessment report submitted with the application identified that a significant source of ambient noise within the locality is from Stirling Highway, located adjacent to the proposed venue. Therefore, it is difficult to determine upon what basis residents are submitting they may be unduly disturbed by the operation of the proposed venue and the accompanying noise of patrons arriving at or leaving the venue in their vehicles;
 - the above assessment report produced by Transcore, which the author's findings is consistent with the Town of East Fremantle George Street Access and Parking Management Plan, also address the issue of parking and concluded that that there is

more than sufficient parking available in the vicinity of the proposed premises to accommodate any potential overflow parking demand;

- based on the consumer requirement evidence submitted a significant proportion of patrons of the proposed venue will be derived from residents living in close proximity to the venue and it is likely that a significant proportion of consumers will in fact walk to and from the venue; and
- the services of Jeffrey Atkinson, a professional photographer, were secured by the applicant in order to illustrate the current level of parking available within the precinct. Based upon the evidence collected in respect of George Street showing an average of 27 bays available each night during the survey conducted by Mr Atkinson there is no basis for finding that there is insufficient parking for the proposed development.

32. With respect to the concerns raised by some objectors regarding rubbish being left on the verge of residences including empty beer bottles and cans the applicant stated that the application is for a tavern restricted licence, which will not permit the applicant from selling packaged liquor and therefore these concerns are unfounded. Moreover, there is no evidence that preloading occurs within the locality and therefore, no basis for finding that patrons may consume liquor before going to the proposed venue.

33. According to the applicant, despite the concerns raised by objectors in respect of the drop off or pick up of taxi passengers, the area in question is described in the *Transcore* traffic report as similar to a '*cul de sac bulb*' and is an ideal location for taxis to drop off or pick up passengers.

34. The applicant addressed the comments made in the intervention lodged by the Commissioner and referred to case law that the licensing authority should be mindful of when choosing to impose a condition on a licence, if granted, to ensure that the imposition of the relevant condition has an evidentiary connection or nexus between the conditions proposed and the harm sought to be addressed. Moreover, the applicant did not object to the imposition of some of the conditions recommended by the Commissioner, however, opposed other conditions recommended particularly in respect of the installation of an ID scanning device; restriction on entertainment provided and discounting liquor.

Responsive submissions on behalf of the Objectors

35. Further submissions were received from Peter and Janet Jackson and Robyn Travers, however, only Ms Travers provided further comments that added value to the application, which are summarised below:

- the eastern side of the building, what is described by the applicant as a basement, sits well above Stirling Highway and George and Silas Streets and therefore given

the attached courtyard will be enclosed but not sound proof, it is likely to affect residents east of Duke Street;

- a proposed development for the Old Royal George Hotel (on the opposite corner to the Brush Factory site) was roundly criticised by residents at a Council meeting in 2011 and was approved subject to additional car parking bays being provided, which were not forthcoming and the developer withdrew;
- Stirling Highway is not a barrier to sound from the Brush Factory site and for the last couple of years drum lessons can be heard from Penny Lane Music School in the afternoons from her property. Moreover, traffic along Stirling Highway abates considerably in the evening, which is the time when the proposed venue would be at its busiest; and
- concerts can clearly be heard from her property coming from The Fremantle Arts Centre, Fremantle Park and Fremantle Esplanade. Moreover, the prevailing winds are west to south west, which carry noise very effectively and therefore music will be heard coming from the proposed venue's courtyard.

Further and final submissions lodged on behalf of the applicant

36. The applicant submitted further comments in respect of the application and in response to Ms Travers further submission. Those relevant comments over and above what the applicant has previously stated are summarised below:

- the claim made that the proposed venue is not located in a basement is incorrect. The venue is clearly located in a fully enclosed semi-basement with an adjoining covered courtyard alfresco area. Further specific details were provided in order to prove this point including the statement that glass in the windows facing Duke Street will be thickened acoustic glass;
- although the proposed roofed courtyard is not below ground it will be enclosed on 3 sides; only open on the Northern (Royal George Hotel) side of the courtyard; and will have an additional 3 storeys of construction on top of it once the development is completed;
- the applicant has agreed to incorporate all of the noise control measures recommended in the noise assessment report in order to meet noise compliance requirements including:
 - the East sliding door to be a minimum 6.38mm thick glass (double glazed) with the glass being oversized so that the head and bottom tracks are recessed into the wall and floor and the door being self-closing;

- the East bi-fold door to be a minimum of 6.38mm thick laminated glass (double glazed) with full perimeter seals as well as seals between door panels;
 - outdoor speakers in the courtyard will be at a low music level with speakers facing inwards and away from noise sensitive premises; and
 - glass will not be emptied into bins at night;
- the intersection of George and Duke streets, being the proposed location of the venue is entirely commercial in nature and disputes the claim that Duke Street is exclusively a residential street but rather a mixed-use zone and therefore, only partially residential;
 - whilst the applicant agrees that traffic along Stirling Highway ebbs and flows throughout the day, it is a busy major arterial road with significant traffic both during the day and night; and
 - the applicant's vision for the proposed venue has always been to principally meet the consumer requirements of residents within the locality and the surrounding areas around East Fremantle, rather than be a destination attraction for the wider metropolitan community.

Determination

37. An applicant for the grant of a tavern restricted licence must, pursuant to ss 38(1) and (2) of the Act, satisfy the licensing authority that the grant of 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 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).
38. 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.”

39. The scope and purpose of the Act can be ascertained from its objects, which are set out in s 5. 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 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.
40. Pursuant to s 33 of the Act, the licensing authority must deal with each application on its merits but has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest (refer *Woolworths Ltd v Director of liquor Licensing* [2012] WASC; *Palace Securities v Director of liquor Licensing* (1992) 7 WAR).
41. The licensing authority is entitled, but not bound, to take into account the matters set out in s 38(4) of the Act as part of the public interest considerations.
42. The applicant seeks the conditional grant of a tavern restricted licence in order to meet the consumer requirements of residents and visitors within the locality and the surrounding areas around East Fremantle with a significant focus of the venue being the provision of live entertainment and food.
43. The applicant has provided submissions relating to the proposed style of operation and submitted noise, traffic and parking assessment reports in respect of the potential impact of not only the proposed venue but the entire development of the site. Moreover, the applicant has included overwhelming evidence that the grant of the application will cater to the requirements of consumers for liquor and related services, particular from those that reside in close proximity of the proposed venue.
44. On the other hand, the objectors have raised concerns regarding the potential impact the proposed venue may have on the amenity of the area.
45. In carrying out its functions under the Act, the licensing authority is obligated to have regard to the primary and secondary objects of the Act (refer to *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227).
46. Having regard to the applicant's evidence as a whole, I am satisfied on the evidence submitted by the applicant that the grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act (catering to the requirements of consumers for

liquor and related services and facilitating the use and development of licensed facilities, including the performance of live original music, reflecting the diversity of the requirements of consumers).

47. Minimising alcohol-related harm in the community is also one of the primary objects of the Act, however, in this case the evidence before me shows significant lower levels of harm occurring in the locality compared to the State.
48. In weighing and balancing the competing interests in this case, in my view, based on the noise assessment (which the applicant has agreed to comply with) and traffic and parking assessment lodged, together with the proposed manner of trade, it is likely that the proposed venue will have little negative impact. In contrast, the applicant will provide a high quality venue focussing on food and live original music likely to attract predominantly locals, creating a unique venue and adding vibrancy in the locality. Therefore, I am of the view that the long term benefits to the community outweigh the potential negative impact, if any, which may flow from the grant of the application.
49. In respect of the matters raised by the objectors, the burden of establishing the validity of the objection rests with the objectors (refer s73(10) of the Act). Whilst I acknowledge the comments made, the information submitted is not sufficient to satisfy me that the licence should not be granted. The objectors have failed to provide any objective evidence to support their claims, which are largely speculative. Many licensed premises operate in harmony with their local community providing a valuable service meeting the requirements of consumers. Accordingly, I find that the objectors have not established the validity of their objections.
50. Consequently, I am satisfied on the evidence submitted that the grant of the application is in the public interest and that the applicant has complied with all the statutory criteria, requirements and conditions precedent to the application being granted. Therefore, a tavern restricted licence is conditionally granted to the applicant subject to the following:
 - a Certificate under s 39 of the Act being lodged before the operation of the licence;
 - compliance with the *Local Government Act 1960*, *Health Act 1911* and any written law relating to the sewerage and drainage of these premises;
 - all work being completed within twelve (12) months in accordance with the plans and specifications dated 12 September 2014;
 - the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director of Liquor Licensing being notified in writing at least 21 days prior to applicant wishing to trade under the licence;

- a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- the applicant seeking confirmation of the grant on or before 19 April 2016 pursuant to s 62(4)(c) of the Act.

51. When the licence commences operation it will be subject to the following conditions:

Trading hours

1. The permitted trading hours are as follows:

- Monday and Tuesday: 5 p.m. to 11 p.m.;
- Wednesday to Friday: 5 p.m. to 12 midnight;
- Saturday: 12 noon to 12 midnight;
- Sunday: 12 noon to 10 p.m.;
- Good Friday: 12 noon to 10 p.m., but only for liquor sold ancillary to a meal supplied by the licensee;
- On a Sunday that is New Year's Eve: from 10 p.m. to 12 midnight;
- On New Year's Day: from immediately after 12 midnight on New Year's Eve to 2 a.m.

No trading is permitted before noon on ANZAC Day.

Trading conditions

1. The licensee is authorised to sell and supply liquor in accordance with the provisions of s 41 of the Act as it relates to a tavern restricted licence.
2. The sale of packaged liquor for consumption off the licensed premises is prohibited.
3. Food must be available at the licensed premises until 1 hour prior to closing time.
4. Low strength beer and non-alcoholic drinks must be available at all times.
5. The sale of liquor in jugs is prohibited.
6. The sale and supply of beverages in such a way that would encourage rapid consumption of liquor (e.g. but not limited to; unadulterated spirits or liqueur in a shot glass); or drinks known as 'laybacks', 'shots', 'shooters', 'test tubes', 'jelly shots', 'blasters', or 'bombs' or any other emotive title, is prohibited.

7. The advertising of liquor products on the external facade of the licensed premises or by A frames, billboards or the like within the vicinity of the licensed premises is prohibited.
8. The offer, promotion or advertising of liquor that that may encourage irresponsible drinking is prohibited.
9. Outdoor speakers in the courtyard must be at a low music level so that music is inaudible at the residences. Speakers must face inwards and away from noise sensitive premises.
10. A CCTV video surveillance system that records continuous images throughout the premises including all entrance and exit points to the premises shall operate and allow for clear identification of patrons. Images that are recorded are to be retained for 28 days and made available to Police or other persons authorised by the Director of Liquor Licensing.
11. No liquor is to be supplied mixed with energy drinks. For the purposes of this condition “energy drink” has the same meaning as formulated caffeinated beverage within the Australia New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater.

Entertainment Condition

1. A person resorting to, or on the premises, including the licensee or manager, or an employee or agent of the licensee or manager, shall not –
 - (a) be immodestly or indecently dressed on the licensed premises, and/or
 - (b) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
2. The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from -
 - (a) exhibiting or showing, or causing, suffering or permitting to be exhibited or shown, on the licensed premises any classified “R 18+”, “X 18+” or “RC” classified publication, film or computer game or extract therefrom;
 - (b) causing, suffering or permitting any person employed, engaged or otherwise contracted to undertake any activity or perform any entertainment on the licensed premises to be immodestly or indecently dressed on the licensed premises, or

(c) causing, suffering or permitting any person to take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.

3. 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.

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.

General

Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.

The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.

Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.

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



DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

20 April 2015