

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: BRAHMS & LISZT (WA) PTY LTD

PREMISES: CORK AND BOTTLE OLD PERTH ROAD

PREMISES ADDRESS: LOT 144 77 OLD PERTH ROAD BASSENDEAN WA 6054

APPLICATION ID: A000057214

NATURE OF APPLICATION: APPLICATION FOR CONDITIONAL GRANT OF A
SMALL BAR LICENCE

DATE OF DETERMINATION: 30 March 2015

Introduction

1. On 23 September 2014 an application was lodged by Brahms and List Pty Ltd ("the applicant") for the conditional grant of a small bar licence in respect of premises to be known as the Cork and Bottle Old Perth Road and situated at Lot 144, No 77 Old Perth Road, Bassendean.
2. The application is made pursuant to ss 41, 62 and 68 the *Liquor Control Act 1988* ("the Act"). Together with the application for a small bar licence the applicant also lodged an application for an extended trading permit pursuant to s 60(4)(h) of the Act to conduct an outdoor eating facility on public land immediately adjacent to the proposed licensed premises.
3. Pursuant to s 67 of the Act, the applications were required to be advertised by way of a notice published in *The West Australian* newspaper; by way of a notice on the site of the premises for a period of 28 days commencing on 13 October 2014; by way of a notice to residents and businesses located within a 200 metre radius of the premises; and a general notice to educational, health care and local and regional government institutions, as well as community and church groups, within the locality.
4. No objections were lodged. However, the Commissioner of Police ("the Commissioner") lodged a Notice of Intervention pursuant to s 69(6)(c)(ii) of the Act.
5. Pursuant to ss 13 and 16 of the Act the applications will be determined on the papers and by me under delegation pursuant to s 15 of the Act. However in regards to the application for an extended *trading* (area) permit in accordance with s 60(4)(h) of the Act, as the applicant did not lodge the appropriate approvals from the local authority, this application is held in abeyance to be decided at a later date.

6. The submissions of the parties in respect of the application for a small bar licence are briefly summarised below.

Submissions on behalf of the applicant

7. The applicant seeks the conditional grant of a small bar licence for premises to be located at Lot 144, No 77 Old Perth Road, Bassendean.
8. The applicant's Public Interest Assessment (PIA), lodged in support of the application provided the applicant's overview of establishing a small bar in Bassendean; description of the premises; *intended* manner of trade; and brief submissions addressing the matters set out in s 38(4) of the Act.
9. In respect of the proposed small bar it was submitted:

"Bassendean to date has no small venue where the local residents can have a relaxing drink in a convivial and homely atmosphere. Currently there are two Hotels/Taverns in the 6054 postcode area and only one of these, The Bassendean Hotel, is within reasonable walking distance of the proposed small bar. Other licensed premises are members clubs such as the Swan Districts Football Club, Bassendean Bowling Club, RSL, two bottle shops, Liquorland in the Bassendean Shopping Centre and BWS in Old Perth Road.

The plan is to offer a cosy, comfortable atmosphere. The response by residents has been very positive...

The local area has large proportion of middle to high income earners of a professional, technical and clerical nature (...). The bar is aimed at catering for patrons 25 years old and above.

This will be a place for people to relax in a cosy 'front room' atmosphere whilst having a wine, craft beer, cider, spirit, soft drink or coffee. Snacks and light meals will be available and on occasion there will be entertainment in the form of acoustic guitar, singer and maybe some poetry reading etc. Book clubs, games groups, business groups and other communal activities at the bar will be encouraged. We also intend holding quiz nights, wine, beer, cider and spirit education evenings, and arts exhibitions and presentations.

The decor will be quality recycled furniture and fittings to enhance the warm and cosy feel. Books and board games, such as chess, draughts, Scrabble, Bananagrams, caroms, shove ha'penny etc., will be available for patrons to pass the time in a congenial and relaxed manner.

The drinks available will be high quality coffee, spirits, wines and craft beers and ciders.

The wine list will be heavily geared to support WA local producers but will also have a small, quality interstate and international selection.

The beers on offer will be craft beers from local, interstate and international producers. There will also be monthly guest beers to give patrons the chance to sample unique offerings.

SEATING: *The bar will have an average of 50-60 patrons at peak times.”*

10. The *proposed* small bar will comprise:
 - storage areas;
 - toilet facilities, including disabled access;
 - kitchen;
 - bar with seating;
 - function room; and
 - an alfresco of approximately 30m² (Extended trading permit not part of this application).

11. In regards to any *impact* on the amenity of the area, it was submitted:

“The impact of the bar on the local residents will be minimal and we have only had feedback from our direct neighbour at the rear of the property, 75 Hamilton Street, about the possibility of noise due to waste disposal, we have actioned a plan to minimise noise at the rear of the proposed bar. To this end we have provision for more sound proofing at the rear and we will also have a policy of not removing and emptying glass waste at the end of the night. We will always deal with the waste the following day.”

12. It was *also* submitted that the grant of the application will positively contribute to the amenity of the locality by the bar becoming a local focus and bring more of the local community together presenting a friendlier and more connected locale.

13. To demonstrate public *support* for the application, the applicant lodged a petition and many questionnaires from potential consumers.

Submissions of the Commissioner

14. The notice of intervention *dated* 4 November 2014 lodged by the Commissioner makes representations on the grounds:
 - a) on the question of whether, if a particular application was granted, public disorder or disturbance would be likely to result (s.69(6)(c)(ii) of the Act); and
 - b) any other matter relevant to the public interest (s.69(6)(c)(iv) of the Act).

15. The Commissioner also submitted:

“...that if this application is approved it is in the public interest to impose conditions on the licence in an effort to reduce the likelihood of offence annoyance and/or disturbance caused by the premises.”

16. The notice of intervention included a review of the application; observations; and seeks a range of conditions to be imposed including the installation of CCTV; employment of crowd controllers and dress standards, if the application is granted.

Responsive submissions by the applicant

17. In responding to the matters raised by the Commissioner in his intervention the applicant, generally was in agreement with the suggested trading conditions of the Commissioner, but submitted that management reserves the right to manage the proposed licensed premises in accordance with the requirements of the Act and its management plan.

Determination

18. In accordance with s 38 of the Act, the onus is on the applicant to satisfy the licensing authority that the grant of the application, for a small bar licence, is in the public interest. In this regard, the licensing authority, however constituted, makes its determination on the balance of probabilities.
19. In determining whether an application should be granted “in the public interest” consideration must be given to the objects of the Act as specified in s 5 and provisions contained in s 38 of the Act.
20. In considering the public interest, the licensing authority needs to consider both the positive and negative social, economic and health impacts, and exercise a discretionary value judgement as to whether the application should be granted (refer section 19 of the *Interpretation Act 1994 and Parliamentary Debates, WA Parliament, Vol 409, page 6342; Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR 241*).
21. 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.

22. In accordance with s 5 of the Act the primary objects are:
 - to regulate the sale, supply and consumption of liquor;
 - to minimize harm caused to people, or any group of people, due to the use of liquor; and
 - to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
23. Pursuant to s 33 of the Act, the licensing authority has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest, but must deal with an application on its own merits within the scope of the Act (refer *Woolworths Ltd v Director of liquor Licensing* [2012] WASC; *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).
24. The applicant seeks the conditional grant of a small bar licence pursuant to s 41 of the Act.
25. The applicant's PIA, while very brief, was supported by comprehensive evidence in the form of a petition and questionnaires from members of the public to demonstrate support for the application and the establishment of a small bar licence as proposed by the applicant in Bassendean.
26. The Commissioner, submitted that if the application, were granted, public disorder or disturbance would likely result and further submitted that if the application was granted suggested trading conditions to be imposed, which would assist to minimise the impact the grant of the licence would have on the amenity of the area; and be in line with the applicant's intended manner of trade. In this regard, the Commissioner as an Intervener to the application carries no burden of proof (per Greaves J. *Gull Petroleum (WA) Pty Ltd (1998) LLC No. 13/98*).
27. In considering all of the information presented, I am satisfied that the grant of the application would not impact unduly on the amenity of the locality and would be in keeping with object 5(1)(c) of the Act and in the public interest.

-
28. Therefore, I am prepared to exercise my discretion under s 33 of the Act and grant the application for a small bar licence subject to trading conditions which reflect the applicant's intended manner of trade.
29. In respect of the trading conditions to be imposed, I do not consider that it is necessary, at this time, to impose as trading conditions, conditions which generally reflect initiatives which may be regarded as good management practices of the licensee, such as the employment of crowd controllers, dress standards and etc. Also, I do not consider it necessary to restrict the trading hours from those permitted in s 98 of the Act.
30. Accordingly, as I am satisfied that the grant of the application is in the public interest and that the applicant has complied with all necessary statutory criteria requirements and conditions precedent to the application being granted, the application for a small bar licence is conditionally granted subject to the following conditions:
- a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
 - b) compliance with the Local Government Act 1960, Health Act 1911 and any written law relating to the sewerage and drainage of these premise;
 - c) all work being completed within 12 months in accordance with the plans and specifications dated 23 September 2014;
 - d) 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;
 - e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed;
 - f) the applicant seeking confirmation of the grant on or before 30 March 2016 pursuant to s 62(4)(c) of the Act; and
 - g) a copy of an executed lease or similar document verifying applicant's exclusive tenure to the proposed licensed premises in compliance with s 37(5) of the Act, to be lodged within 21 days of the date of this decision.

Conditions to be imposed on the issue of the licence

TRADING HOURS

The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.

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 small bar licence.
2. The sale of packaged liquor for consumption off the licensed premises is prohibited.
3. The number of persons to be permitted on the licensed premises (including any extended trading area), at any one time, must not exceed 120 persons.
4. The licensed premises must always be set up with tables, or a fixed structure used as a table and chairs to accommodate no less than 75 persons except for prearranged private functions or special events.
5. Food must be available during trading hours.
6. No liquor is to be supplied mixed with energy drinks. For the purposes of this condition 'energy drinks' 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.
7. A closed circuit television video ("CCTV") surveillance system, able to identify individuals and showing times and dates must be in place and operational. The CCTV system must comply with the requirements as identified in the Director's Policy 'Security at Licensed Premises'. It is expected that the system will provide and record continuous images of the entrances and exits to the premises during the normal trading hours and until one (1) hour after trading ceases. Images recorded via the CCTV system must be retained for, at least, twenty eight (28) days (or such other period as the Director of Liquor Licensing specifies) and must be made available for viewing or removal by the Police or other persons authorised by the Director.
8. All entertainment is restricted, to entertainment played at a level to enable normal conversation between persons to occur.
9. Noise emanating from the licensed premises must not exceed that permitted under the Environmental (Noise) Regulations 1987.

ENTERTAINMENT CONDITION

- (a) 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:

(i) be immodestly or indecently dressed on the licensed premises, and/or (ii) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.

(b) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:

(i) 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;

(ii) 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

(iii) 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.

(c) In this condition "licensed premises" includes any premises, place or area:

(i) which is appurtenant to the licensed premises, or

(ii) 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

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

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

33. 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.



Eric Romato
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING
30 March 2015