

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: LEON XAVIER CARROLL

PREMISES: YONDER BAR

PREMISES ADDRESS: 124 BUSSELL HIGHWAY, MARGARET RIVER

APPLICATION ID: A000231012

NATURE OF APPLICATION: CONDITIONAL GRANT OF A SMALL BAR LICENCE

DATE OF DETERMINATION: 08 JUNE 2017

Introduction

- 1 This is an application by Leon Xavier Carroll (the applicant) for the conditional grant of a small bar licence for premises to be known as Yonder Bar and located at 124 Bussell Highway, Margaret River. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. There were no objections or interventions to the grant of the application.
- 3 The application will be determined on the written material lodged by the applicant, as permitted under ss 13 and 16 of the Act.

Determination

- 4 The applicant proposes to establish a small bar in the main retail precinct of the Margaret River townsite. The proposed premises will operate as a "Neighbourhood Bar", catering to the growing local community and the influx of tourists to the town. According to the applicant, the venue will be a small, intimate space which will complement and add to the diversity of what is currently on offer in the town. The number of patrons permitted on the premises at any one time is restricted to 25 under the local government planning approval and there are also restricted trading hours.
- 5 It was submitted by the applicant that most patrons will be an ever-changing group; as after work customers move to go home for dinner, others will arrive on their way to dine in local restaurants while others will come later in the night after dining out. The second layer of patrons will be tourists that frequent the area throughout the year. The beverage offering (both alcoholic and non-alcoholic) will include locally sourced brands, as well as quality international brands.
- 6 There is no presumption in favour of the grant of the application. Notwithstanding that the application is uncontested, the applicant must satisfy the licensing authority that

the grant of the application is in the public interest: 38(2). Consequently, the applicant must adduce sufficient evidence to discharge this burden.

7 The factual matters which I am bound to consider, when considering the applicant's evidence and submissions, are those relevant to the primary and secondary objects of the Act. 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.

8 The secondary objects of the Act are:

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

9 Ultimately, 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 the 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).

10 The applicant submitted a Public Interest Assessment to support its application. I have considered the applicant's evidence in its totality, and I find that the grant of the application would be consistent with object 5(1)(c) of the Act and would also facilitate the use and development of licensed facilities reflecting the diversity of consumer requirements (object 5(2)(a)).

11 There is nothing in the evidence before me which would lead me to conclude that the grant of the application will cause undue harm or ill-health in the community due to the use of liquor. Consequently, I am of the view that in considering the merits of the application, conflict does not arise in promoting the various objects of the Act.

12 I also note that the proposed premises will be in the main retail area of Margaret River and there are no noise sensitive premises nearby. There will be no external patron

areas and the applicant does not intend to provide live entertainment. In my opinion, the operation of the premises is unlikely to negatively impact on the amenity of the surrounding area.

- 13 In weighing and balancing the evidence presented by the applicant, I find that the applicant has discharged his onus under s 38(2) and the grant of the application is in the public interest.
- 14 Therefore, I am satisfied the applicant has complied with all the statutory requirements and conditions precedent to the application being granted, and a small bar licence is conditionally granted to the applicant subject to the following:
- (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 29 March 2017.
 - (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; and
 - (f) the applicant seeking confirmation of the grant on or before **7 June 2018** pursuant to s 62(4)(c) of the Act.
- 15 On confirmation of the conditional grant, the following conditions will be imposed on the licence:

Trading hours

Monday to Sunday 5 p.m. to 12 midnight

No trading is permitted on Good Friday or Christmas Day

Trading conditions

- 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.
- The sale of packaged liquor for consumption off the licensed premises is prohibited.
- The maximum number of patrons permitted on the premises at any one time shall not exceed 25.

- The licensee shall not promote or sell drinks which offer liquor by virtue of their 'emotive' titles such as, but not limited to, 'laybacks', 'shooters', 'slammers', 'test tubes', and 'blasters'.
- Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available at all times.

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; or
 - (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

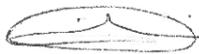
The licensee is to have a House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm

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.

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



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING