

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: FREO SOCIAL HALL PTY LTD

PREMISES: FREO SOCIAL HALL

PREMISES ADDRESS: CORNER OF QUEEN AND HOLDSWORTH STREETS,
FREMANTLE

APPLICATION ID: A000181226

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

DATE OF DETERMINATION: 05 FEBRUARY 2016

1. This is an application by Freo Social Hall Pty Ltd (“the Applicant”) for the conditional grant of a tavern restricted licence for premises to be known as *Freo Social Hall* and situated at the corner of Queen and Holdsworth Streets, Fremantle. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (“the Act”)
2. On receipt by the licensing authority, the application was advertised for comment in accordance with instructions issued by the Director of Liquor Licensing (“the Director”). Pursuant to s 69 of the Act, the Executive Director Public Health (“EDPH”) and the Commissioner of Police (“the Commissioner”) lodged notices of intervention to assist the licensing authority’s determination of the application.
3. The application will be determined on the written submissions of the parties, pursuant to the provisions of ss 13 and 16 of the Act. Accordingly, the evidence and submissions of the parties are briefly summarised below.

The Applicant’s submissions

4. The Applicant submitted a Public Interest Assessment and other submissions, in which it:
 - (a) provided a comprehensive background on the contemporary live music scene in Western Australia;
 - (b) outlined the long association between live music and licensed services, particularly noting that contemporary consumers expect a permanent live entertainment facility to offer more than just basic licensed services;
 - (c) explained its proposal for the premises as a venue that will:
 - (i) be dedicated to live original music, both touring and local musicians;

- (ii) be a multi-faceted social and cultural space, offering places for consumers to socialise and to enjoy music, food and licensed services;
 - (iii) highlight the heritage charm of the historic building, an 95 year old building known as "Artillery Drill Hall", which is unique in terms of its history of uses, architecture and location;
 - (iv) provide a space suitable for private functions and community events in conjunction with the City of Fremantle; and
 - (v) be a safe, well controlled and female friendly premises;
- (d) outlined its intention to renovate, improve and re-activate the premises as a space to offer a range of quality dining and beverage services, albeit with a focus on live original music; and
- (e) outlined its intended manner of operation with the areas known as the:
- (i) "Main Hall", being used as the main performance space for live performances and private functions and events; and
 - (ii) "Small Hall", "Deck area" and "Courtyard" areas offering a combination of low key live entertainment and bar/dining services; with the volume of live acts in the open areas of the premises (i.e. the Deck area or Courtyard) being maintained at a volume that allows normal conversation to occur;
- (f) submitted a maximum accommodation number of 895 patrons, being comprised of:
- (i) 515 patrons in the "Main Hall", which will be limited to persons attending a ticketed live concert, a private function or other event; and
 - (ii) 280 patrons in the "Small Hall", "Deck area" and "Courtyard", which will be open to the public;
- (g) explained that when the Main Hall is closed, only the Small Hall and Outdoor area will be in operation;
- (h) undertook to provide at least 150 seats in the Small Hall, Deck area and Courtyard (combined), with the exception of private functions and events;
- (i) outlined the proposed trading hours for the premises and that live entertainment will be predominantly scheduled for the evening, with afternoon trade depending upon the level of patron demand for lunch and generally be limited to the "Small Hall" and "Deck area".
5. In terms of food services to be provided on the proposed premises, the Applicant submitted in its PIA that it is committed to offering dining during all trading hours by way of a combination of:

- (a) gourmet food trucks, which will provide evening dining services on every evening of trade, serving meals directly to the deck area from a specially designed food truck service bay; and
 - (b) in-house dining services, prepared in and served from the “Deck area” and “Small Hall” kitchen/bar serveries.
6. In order to establish that the proposed premises will be a safe and secure venue for patrons to resort to, the Applicant undertook to engage security guards, whenever the Main Hall is used for a concert or event, at a minimum of two licensed crowd control officers, as well as two approved managers who will exclusively perform security duties. The Applicant also proposed a “smart casual” dress code for the proposed premises, which will, in the Applicant’s opinion, ensure that the venue is attended by the desired demographic and minimise the likelihood of “high-risk” persons attending the premises.
7. The Applicant’s PIA also considered those matters prescribed in s 38(4) of the Act, as well as a number of conditions proposed for imposition on the licence, including trading hours, conditions surrounding the sale of liquor in the “Main Hall”, maximum numbers of patrons and minimum seating.
8. Accordingly, the Applicant submitted that the conditions proposed will operate in combination to:
 - (a) ensure that the business operating under the licence will be conducted in a controlled and safe manner at all times;
 - (b) minimise the risk of excessive or irresponsible consumption of alcohol at any time and thereby minimise the risk of harm, ill-health or disturbance to the community; and
 - (c) provide a high degree of comfort that the intended manner of operation outlined in the Applicant’s PIA will be maintained at all times.

The Commissioner’s representations

9. The Commissioner made representations and submissions that the grant of the application would result in public harm and/or disturbance, if conditions are not imposed on the licence and on other matters relevant to the public interest.
10. In this regard, the Commissioner submitted that the security condition proposed by the Applicant does not meet the industry standard ratio of two crowd controllers for the first 100 patrons and then one crowd controller for each additional 100 patrons. According to the Commissioner, the proposal to employ only four security personnel would be inadequate to deal with the various different areas proposed at the premises, particularly given that the “Main Hall” is located adjacent to, but separate from the other areas of the premises. Furthermore, while being amenable to the concept of a portion of crowd controller duties being undertaken, the Commissioner indicated

concern if the number of approved managers exceeded the number of security personnel by 50 per cent.

11. Concerns were also expressed by the Commissioner that the CCTV coverage proposed by the Applicant would be insufficient, in that it does not comply with the requirements of the Director's *Minimum Standards – Closed Circuit Television (CCTV) Security System* policy.
12. Accordingly, the Commissioner recommended the imposition of conditions relating to the engagement of security personnel and installation of a CCTV system more closely in line with the standards set down in the relevant policy of the Director.

The EDPH's representations

13. The representations of the EDPH are premised on the following concerns:
 - (a) the Applicant is seeking the grant of a tavern restricted licence for a large format premises in Fremantle, with research identifying that tavern licences can be a higher-risk licence type for harm;
 - (b) the proposed premises has a large patron capacity of up to 795 people, which can be a high-risk feature for harm; and
 - (c) there is a history of alcohol-related harm in the suburb of Fremantle.
14. To address these concerns, the EDPH submitted that the conditions volunteered by the Applicant in its PIA should be imposed on the licence as an important harm minimisation approach.

Determination

15. An applicant for the grant of a tavern restricted licence must, pursuant to section 38(2) of the Act, satisfy the licensing authority that granting the application is in the public interest. The Act as a whole establishes a regime for the control and regulation of the sale, supply and consumption of liquor; and does not proceed on the basis that there is any presumption in favour of the grant of a licence, but rather the reverse: that an applicant must demonstrate that it is in the public interest that the application should succeed (refer *Woolworths Ltd -v- Director of Liquor Licensing* [2012] WASC 384).
16. 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).

17. The licensing authority should, when determining whether the grant of an application is in the public interest (refer s 38(4)), consider both the positive and negative social, economic and health impacts that the grant of the application will have on the community (refer s 19 of the *Interpretation Act 1994* and Parliamentary Debates, WA Parliament, Vol 409, p 6342). In this regard, advancing the objects of the Act as set out in s 5, is a mandatory public interest consideration (refer *Palace Securities* supra).
18. In my view, the grant of the application will promote one of the primary objects of the Act, namely object 5(1)(c), which relates to catering to the requirements of consumers for liquor and related services. Furthermore, the evidence also suggests that object 5(2)(a) is also relevant, which relates to facilitating the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of consumers in the State.
19. In terms of potential harm or ill-health arising from the grant of the application, the Applicant has proposed a number of conditions around which it proposes to conduct business under the licence; and has consented to those conditions being formally endorsed on the licence, if granted, so as to provide a high degree of comfort that the intended manner of operation outlined in the Applicant's PIA will be maintained at all times. I also note that these conditions were effectively endorsed by the submissions of the EDPH.
20. In relation to the concerns raised by the Commissioner in relation to the security and CCTV conditions, the Applicant submits that the Director's relevant *Safety and Security at Licensed Premises* policy generally only applies to licences that trade beyond 1 a.m. and that the present application does not propose trade past midnight.
21. Notwithstanding this, the Applicant further noted there is general discretion provided by the policy, having regard to:
 - (a) the level of risk to the community the premises/events may present;
 - (b) nature of the licensed premises/event; and
 - (c) initiatives proposed by the applicant to mitigate risk,and that consideration of all of these factors points to a conclusion that the proposed premises will operate in a relatively low risk category; given that it will predominantly be a live music venue with a focus on original live music and evidence suggests that original live music patrons can be categorised as 'low-risk' in terms of excessive consumption of alcohol and associated anti-social and aggressive behaviour. The Applicant further submits that the proposed premises is not likely to include any significant proportion of patrons in "at-risk" categories and will be likely to attract persons covering a broad range of ages and not just young adults.
22. Additionally relevant factors highlighted by the Applicant include:
 - (a) the quality of the fit out will be of a high standard;

- (b) the venue will have a significant food focus, with hot food being available during all trading hours;
 - (c) the application involves trade during normal permitted trading hours for taverns and does not include late trading;
 - (d) a substantial quantity of seating will be offered at all times; and
 - (e) an additional range of initiatives to mitigate risks, such as RSA initiatives and a lock out condition.
23. Accordingly, the Applicant submits that when the “Main Hall” is closed, the venue will trade as a 280 capacity, low risk tavern, which does not necessitate additional security, over and above the two volunteered security personnel. However, the Applicant did concede that with the “Main Hall” open, a premises with a capacity of 795 patrons warrants careful management consideration and resolved to increase the originally proposed minimum security presence at such times (i.e. on any day that the Main Hall is open for use by the public) to:
- (a) a minimum of three security personnel for the first 300 patrons;
 - (b) a minimum of four security personnel for 301 to 600 patrons; and
 - (c) a minimum of five security personnel for 601 to 795 patrons.
24. In relation to the proposed CCTV system, the Applicant agreed to the imposition of a condition that is consistent with the relevant policy of the Director.
25. Furthermore, in relation to my query regarding how the Applicant proposes to ensure that patrons do not remove liquor from the licensed premises by way of the food truck service bay, the Applicant advised that sections of portable fencing will be in place to prevent the exit or entry of patrons via this area, regardless of whether a food truck is in position or not.
26. I also note that the premises is currently subject to special facility licence number 6090032979 held by The National Trust of Australia (WA), who has consented to the surrender of that licence, should the current application be successful.
27. Accordingly, after consideration of all of the evidence submitted by the parties, I am satisfied that the Applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted and that the grant of the application is in the public interest.
28. Therefore, a tavern restricted licence is conditionally granted, subject to the contemporaneous surrender of special facility licence number 6090032979 and the imposition of 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 premises;
 - (c) all work being completed within 12 months in accordance with the plans and specifications dated 10 June 2015;
 - (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements dated 6 August 2015 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 03 February 2017, pursuant to s 62(4)(c) of the Act.
29. On confirmation of the conditional grant, the following conditions will be imposed on the issue of the licence:
- (a) Trading Hours:
The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.
 - (b) Trading Conditions:
 - (i) 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.
 - (ii) During the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises.
 - (iii) The sale of packaged liquor for consumption off the licensed premises is prohibited.
 - (iv) The focus of the business must always remain on the provision of live music.
 - (v) The sale or supply of liquors is prohibited in the area marked on the plans of the licensed premises as "Main Hall" to any person other than a person who will attend, is attending or has attended a pre-arranged ticketed concert or private function held in the "Music Hall" on that date, except in the case of a specific community event organised in conjunction with the City of Fremantle.
 - (vi) The maximum number of persons permitted to be on the licensed premises at any time is:
 - (1) 795 patrons when the entire licensed premises is open for business; and
 - (2) 280 patrons when the areas marked on the plans of the licensed premises as "Small Hall", "Deck Area" and "Courtyard" are in use.

- (vii) Seating and associated table arrangements for at least 150 persons is to be provided in the areas marked on plans of the licensed premises as “Small Hall”, “Deck area” and “Courtyard” during all trading hours, except in the case of a pre-arranged private function or special event.
- (viii) Food must be available during trading hours.
- (ix) 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.
- (x) The licensee shall not promote or sell drinks which offer liquor by virtue of their ‘emotive’ titles such as (but not exclusive to) ‘laybacks’, ‘shooters’, ‘slammers’, ‘test tubes’ and ‘blasters’.
- (xi) The licensee is to provide a reasonable range of non-alcoholic and low-alcohol liquor products to be available during all trading hours.
- (xii) On any day that the “Main Hall” is open for use, the licensee is prohibited from causing, suffering or permitting any person other than an authorised person, as defined in section 3 of the Act, from entering or re-entering the licensed premises after thirty (30) minutes prior to the close of trading as specified on the licence.
- (xiii) The licensee is prohibited from causing, suffering or permitting the volume of live or pre-recorded music in any outdoor area of the licensed premises to be played above a volume that allows normal conversation to occur.
- (xiv) Security:
 - (1) On any Friday or Saturday that the Main Hall is not open for use by members of the public, the licensee will arrange for two security personnel to be present and on duty on the licensed premises from 8pm until 30 minutes after closing.
 - (2) On any day that the Main Hall is open for use by members of the public, the licensee will arrange for security personnel to be present and on duty on the licensed premises from 30 minutes prior to opening of the Main Hall until 30 minutes after closing of the Main Hall in the following ratios, for:
 - a) the first 300 patrons, a minimum of three security personnel;
 - b) 301 to 600 patrons, a minimum of four security personnel;
and
 - c) 601 to 795 patrons, a minimum of five security personnel.
 - (3) For the purpose of this condition, “Security Personnel” is defined as either a crowd control officer licensed under the *Security and Related Activities (Control) Act 1996* (“Crowd Control Officers”) or an approved manager employed by the licensee who is identifiable as exclusively performing security and/or responsible service of alcohol duties at the relevant time.

- (4) At all times that this condition applies, no less than 50% of Security Personnel are to be comprised by Crowd Control Officers
 - (5) Security personnel are to be easily identifiable by the word "SECURITY" on their uniform.
 - (6) The licensee will maintain a roster of approved managers performing security duties and will make such roster available for inspection upon request by an authorised officer.
- (xv) A video surveillance system must be in place and operational. The system must comply with the minimum requirements identified in the *Minimum Standards - Closed Circuit Television (CCTV) Security System Policy*.
- (c) Dress standard (Outlaw Motor Cycle Gangs):
- (i) The following dress standard applies during the permitted trading hours:
 - (1) jackets or any other clothing or accessory, or any clearly visible body marking, bearing patches or insignia of any Outlaw Motor Cycle Gangs not limited to, but including, the following listed Outlaw Motor Cycle Gangs, are not permitted to be worn or to be visible on the licensed premises:
 - a) Coffin Cheaters;
 - b) Club Deroes;
 - c) Gods Garbage;
 - d) Gypsy Jokers;
 - e) Outlaws;
 - f) Finks;
 - g) Rebels;
 - h) Comancheroes;
 - i) Hell's Angels;
 - j) Rock Machine;
 - k) Mongols and
 - l) Lone Wolf.
 - (2) A notice is to be displayed at all entrance to the licensed area/event reflecting this condition.
- (d) Entertainment Condition:
- (i) 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:
 - (1) be immodestly or indecently dressed on the licensed premises, and/or
 - (2) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
 - (ii) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:

- (1) 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
 - (2) 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
 - (3) 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.
- (iii) In this condition "licensed premises" includes any premises, place or area:
- (1) which is appurtenant to the licensed premises; or
 - (2) 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.

(e) 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.

30. Pursuant to s 127(2) of the Act, a prescribed licence fee will be payable prior to the operation of the licence.
31. The Applicant is reminded that trading may not commence without the prior written approval of the licensing authority.
32. 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.
33. This matter has been determined by me under delegation pursuant to s 15 of the Act.


Brett Snell
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING