

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: BROCKWELL HOTEL GROUP PTY LTD

PREMISES: GLOBE BAR & EATERY

PREMISES ADDRESS: 140 WILLIAM ST PERTH

APPLICATION ID: A000056348

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

DATE OF DETERMINATION: 18 MAY 2015

Introduction

- 1 On 12 March 2014, an application was lodged by Brockwell Hotel Group Pty Ltd for the conditional grant of a tavern restricted licence in respect of premises to be known as the Globe Bar & Eatery and located at 140 William Street, Perth. 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 to the grant of the application, however pursuant to s 69 of the Act Notices of Intervention were lodged by the Executive Director Public Health (EDPH) and the Commissioner of Police (the Commissioner).
- 3 The application will be determined on the papers in accordance with s 16 of the Act. The submissions and evidence of the parties are briefly summarised as follows.

Submissions by the applicant

- 4 The applicant seeks to operate a tavern restricted licence in a heritage listed building (the Baird Building) located on the ground floor of 140 William Street, Perth. The applicant's vision for the proposed premises is to provide the Perth CBD with a vibrant new multi-use licensed venue which will have three distinct areas for patrons to enjoy:

- *Globe Main Bar / Lounge 1 & Globe Courtyard 1*

This is the largest area of the proposed venue and will be an area for patrons to meet, talk and relax within a casual and unpretentious environment. The design of this area will showcase the heritage and historical roots of the premises with special consideration given to extensively landscaping the outdoor space to provide patrons with an unmatched alfresco area to socialise within the Perth CBD.

- *Baird Building Bar / Lounge 3 & Laneway Courtyard 2*

Containing a themed bar (based on the premises' historical background) and casual eatery, this area of the proposed venue will have a multi-use function with a strong focus on ciders and classic cocktails, not unlike the Brunswick Cider House in Fitzroy, Victoria. It is intended to combine the focus on cider with tapas/share style food cuisine, which is consistent with the historical cider bar roots in the Spanish culture.

- *Baird Building Bar / Lounge 2*

An inside space that will be used as a multi-functional function space, seminar room and entertainment room.

5 It was submitted that the location of the proposed premises, being in a prominent position across from the Link Project Area, will attract a wide variety of patrons and cater to inner city residents, city workers and professionals, business owners and corporate clients and tourists and visitors to the Perth CBD.

6 The applicant submitted a Public Interest Assessment which provided details of the antecedents of the applicant; the intended manner of trade of the proposed premises including the provision of food and entertainment; data relating to the locality in which the premises are to be located; details of other key developments that are in progress in the area; tourism data; and addressed the matters set out in s 38(4) of the Act. The applicant also included various letters of support for its proposed development together with consumer requirement questionnaires.

7 It was subsequently submitted by the applicant that it is in the public interest for the application to be granted because:

- the grant will not result in harm or ill-health due to the consumption of liquor;
- there will be no adverse impact upon the amenity of the locality by granting the application;
- granting the application will improve the amenity of the locality;
- granting the application will add to the diversity and attractions within the locality, supporting the activation of the City;
- the application is in line with the visions of the relevant planning and tourism authorities for the locality; and
- the grant will not result in any anti-social behaviour, noise or disturbance through the operation of the venue.

Submissions on behalf of the Executive Director Public Health

- 8 The EDPH intervened in the application to make representations regarding the potential for the operation of the proposed premises to cause harm or ill-health to people, or any group of people, due to the use of liquor and the minimisation of that harm.
- 9 The grounds for intervention were premised on the following:
- the applicant is applying for a tavern restricted licence and research has identified that tavern licences can be a higher-risk licence type for harm;
 - there are existing levels of alcohol-related harm in the suburb of Perth, where the premises is proposed to be located;
 - according to the application, the venue is likely to attract to patrons over the age of 25 years who work or live in the city. Consideration has not been given to the residents and visitors to the locality who are under 25 years, nor that the demographic indentified by the applicant commonly drink at risky levels; and
 - if the licence is granted, harm minimisation conditions, including those stated within the applicant's PIA, would be an important harm minimisation approach.
- 10 The EDPH provided data on the existing level of harm in the locality and submitted that there are a large number of licensed venues currently trading within the suburb of Perth, and research shows that rates of alcohol-related problems are higher among localities where there are clusters of licensed premises. According to the EDPH experiences in other capital cities, such as Melbourne, are consistent with international research findings that, increasing licensed premises and the number of people who have been drinking in inner city areas, can lead to increases in alcohol-related harm.
- 11 Consequently, the EDPH recommended that appropriate conditions should be imposed on the operation of the venue, if the application is granted, in order to minimise the potential for any increase in alcohol-related harm in the locality.

Submissions on behalf of the Commissioner of Police

- 12 The Commissioner intervened in the application on the basis that if the application was granted and conditions not imposed on the licence, public disorder or disturbance was likely to result.
- 13 In this regard, the Commissioner provided data on offences in the suburb of Perth and the surrounding areas and asserted that there is an indisputable existing level of general and alcohol-related harm in the locality and the grant of the application may further elevate the alcohol-related harm in these areas.
- 14 According to the Commissioner, there is a strong relationship between licensed premises and alcohol-related harm in the locality. This is evident when consideration is

given to the operating times of most licensed premises in the area and peak times the existing premises are frequented by patrons compared to the peak times of police attendances in the area, as demonstrated in the data provided. The concentration of licensed premises in the area, outlet density, is a significant contributing factor to alcohol-related harm and adding a further tavern will only contribute to this existing harm.

- 15 The Commissioner does not dispute that some aspects of the application may be beneficial to the amenity of the area, however it was submitted that the potential increase in crime and harm outweigh the positive aspects of the application. Although the applicant has considered some measures to mitigate harm, these are not adequate and stronger measures are required.
- 16 The Commissioner submitted that one of the primary objects of the Act is to minimise alcohol-related harm in the community. Consequently, if the application is granted, it is appropriate conditions be imposed on the licence to minimise the potential risks associated with the operation of the premises. This includes conditions relating to a lockout, drink standards, dress standards, CCTV, security and the provision of food.

Determination

- 17 The applicant seeks to establish a new tavern, to operate under a tavern restricted licence, in the Perth CBD. The proposed premises will be located in a refurbished heritage listed building and provide a range of services to the public. The applicant has a long history in the operation of licensed premises in this State and elsewhere.
- 18 Pursuant to s 38(2) of the Act, an applicant must satisfy the licensing authority that the grant of the application is in the public interest. This involves considering both the positive and negative social, economic and health impacts that the grant of the application will have on the community.
- 19 The expression 'in the public interest' is not defined under the Act, but imports a discretionary value judgement 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).
- 20 The licensing authority, in its determinations, is bound to consider the objects of the Act which are set out in s 5. The primary objects of the Act 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.
- 21 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.
- 22 The licensing authority is also entitled (but not bound) to take in to account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.
- 23 The licensing authority must deal with each application on its merits (refer s 33) 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).
- 24 There is no onus on an intervener to establish their assertions of fact or opinion (refer *Re Gull Liquor* (1999) 20 SR (WA) 321).
- 25 The applicant has submitted a PIA which provided details on the benefits to the public if the application is approved. Alternatively, the interveners have highlighted the existing alcohol-related harm in the locality in which the premises is to be located and submitted that conditions should be imposed on the operation of the premises if the application is approved.
- 26 Based upon the evidence submitted by the applicant, I am satisfied that the grant of the application would be consistent with object 5(1)(c) and 5(2)(a) of the Act. However, minimising alcohol-related harm is also one of the primary objects of the Act. Where there is a conflict in promoting the objects of the Act, I need to weigh and balance those competing interests ((refer *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* [2000] WASC 258) and decide upon the degree of importance to be attributed to each of the relevant factors, as proven by the evidence in each case. However, it should be noted that the harm minimisation object under the Act is not about preventing harm absolutely. Nonetheless, the potential for harm to occur is a powerful public interest consideration (refer lpp J in *Lily Creek*). Consequently, I need to consider whether the harm or ill-health which may result from the grant of the application is so serious, when balanced against the other objects of the Act, that the application should be refused or, if granted, stringent conditions are

imposed on the licence. The decision in each case will depend on the particular circumstances.

- 27 Whilst the applicant recognises that there is alcohol-related harm occurring within the locality, it disputes the assertion by the EDPH and the Commissioner that such harm is at an unacceptable level. The applicant submits that alcohol-related crime in the locality has decreased in recent years, notwithstanding the grant of new licences in the area. Much of the applicant's responsive submissions critiqued the submissions and evidence of the interveners. In the most part, the applicant submitted that the evidence submitted by the interveners was not sufficient to justify the conditions that they proposed. Nonetheless, the applicant, either through its PIA or responsive submissions, agreed to various conditions or indicated it will implement various initiatives in order to minimise any potential negative impact that the operation of the premises may have on the locality. The applicant's agreed conditions and initiatives go a long way to meeting the conditions suggested by the interveners. I am also mindful of the applicant's experience in the liquor industry.
- 28 Consequently, in weighing and balancing the competing interests in this case I am of the view the proposed premises will contribute positively to the amenity of the CBD and the benefits to the community outweigh the risks associated with the grant of the application, and with appropriate conditions, trading under the licence can be conducted in a manner which should not negatively impact on the existing level of alcohol-related harm in the locality. I am therefore satisfied that the applicant has discharged its onus under section 38(2) of the Act and the grant of the application is in the public interest.
- 29 In respect of appropriate trading conditions which will minimise the risks associated with the operation of the premises, I have been very much guided by the applicant's PIA and submissions. In terms of the provision of security, in its PIA the applicant indicated it will engage security from 5 p.m. on Fridays and Saturdays until 30 minutes after closing, however in later submissions it was indicated security would be engaged from 8 p.m. I am of the view that the provision of security on Fridays and Saturdays from 5 p.m. is preferable, in the first instance. In respect of the provision of seating at the premises, the applicant proposes seating for 100 patrons, however the EDPH submits that this may be inadequate and the premises will have large vertical drinking areas which increase the risks of alcohol-related harm occurring. Having considered the submissions, I am of the view that minimum seating for 100 patrons is appropriate; however, it is open to the licensee to provide additional seating as part of its own responsible management practices. Also, I note the applicant provided an acoustic report which indicates that noise emissions from the premises and the associated courtyard will require stringent management control to maintain noise levels that are compliant with the Environmental Protection (Noise) Regulations. It is therefore appropriate for relevant conditions to be imposed to minimise any potential negative impact on the amenity of the surrounding buildings. Such conditions can be reviewed

in due course. The standard entertainment condition will also be imposed on the licence.

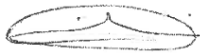
30 Consequently, the licence will be subject to the following trading conditions:

- The permitted trading hours under the licence will be those prescribed in s 98(1) of the Act.
- Crowd controllers (licensed under the *Securities and Related Activities (Control) Act 1996*) or Approved Managers exempt under the *Securities and Related Activities (control) Regulations 1997*, are to be employed at a ratio of two (2) personnel for the first 100 patrons, and one person for each additional 100 patrons or part thereof, from 5.00 p.m. (or the time of opening the premises if after 5.00 p.m.) each Friday and Saturday.
 - approved managers are not to exceed 50% of the required security numbers;
 - the additional managers engaged under the security condition are to be easily identified by way of increased visibility attire;
 - the primary focus of the additional managers is to be on patron behaviour and the responsible service of alcohol and they are not to undertake other activities such as serving alcohol behind a bar; and
 - the licensee is to maintain a management roster which can be viewed by the police on request.
- The external doors of the premises must be closed at 10 p.m.
- Noise in the courtyard must not incorporate audible music or be impulsive.
- Any recorded music is to be background in nature to allow normal conversation to occur. Any live entertainment is to be acoustic, instrumental, single and duo performances (e.g. jazz) on Friday, Saturdays and Sundays only.
- 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 strength alcohol content as well as a range of non-alcoholic drinks shall be available for purchase at all times.
- Promotions, advertising or incentives which encourage excessive or rapid consumption of liquor must not be conducted, except in accordance with any policies of the Director of Liquor Licensing.
- The provision of liquor in jugs is prohibited.

- The sale of pre-packaged canned drinks that are 'ready to drink' (RTD's) is prohibited.
- The licensee must have a closed circuit television recording device (CCTV) installed which complies with the minimum requirements detailed in the Director of Liquor Licensing's policy relating to CCTV.
- Minimum seating for 100 patrons must be provided up at all times.
- Subject to the premises being open for trade, lunch and dinner are to be provided 7 days a week and food is to be available at all times until 30 minutes before closing.
- 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:
 - Coffin Cheaters;
 - Club Deroes;
 - Gods Garbage;
 - Gypsy Jokers;
 - Outlaws;
 - Finks;
 - Rebels;
 - Comancheroes;
 - Hell's Angels;
 - Rock Machine; and
 - Mongols.
 - Lone Wolf
 - Bandidoes
- 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.
- 31 The conditional grant of the tavern restricted licence is 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 12 March 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; and
 - f) the applicant seeking confirmation of the grant on or before 18 May 2016 pursuant to s 62(4)(c) of the Act.

- 32 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 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.
- 34 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