

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: GUILDERTON COUNTRY CLUB INC
PREMISES: GUILDERTON COUNTRY CLUB INC
PREMISES ADDRESS: WEDGE ST GUILDERTON
APPLICATION ID: A000205961
NATURE OF APPLICATION: APPLICATION FOR THE GRANT OF A TAVERN LICENCE
DATE OF DETERMINATION: 30 JUNE 2017

Introduction

1. On 15 June 2016, the Guilderton Country Club Inc (“the applicant”) lodged an application for the grant of a tavern licence in respect of premises situated at Wedge Street, Guilderton and known as the Guilderton Country Club Inc.
2. The application is made pursuant to ss 41 and 68 of the *Liquor Control Act 1988* (“the Act”).
3. Pursuant to s 67 of the Act, the application was required to be advertised by way of a notice in *The West Australian* newspaper on or before 22 July 2016; by way of a notice on the site of the premises for a period of 28 days commencing on 22 July 2016; 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. Pursuant to s 73 and s 74 of the Act, objections to the grant of the application were lodged by Josephine Ann Baum, Stephen Eric Jones, Phillip Geoffrey Rouse, Allan Arthur McLeay, Dorothy J Branch, Eric Douglas Corke, Ian Byron Collard, John Branch, Kerry Nichols Enright, Nicole Joy Corke and Sue Lynette McLeay (“the objectors”).
5. By letter dated 16 November 2016, a document exchange process was initiated between the parties. Each party was afforded the opportunity to lodge any further submissions and evidence; and any closing submissions to be taken into consideration in the determination of the application.
6. Pursuant to ss 13 and 16 of the Act the application will be determined on the papers and by me under delegation pursuant to s 15 of the Act. The submissions of the parties are briefly summarised below.
7. **Submissions on behalf of the applicant**
8. The applicant is currently the holder of a club licence No 6040013946 issued in respect of the proposed premises.

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9. Under its club licence, the applicant is authorised to sell and supply liquor on the licensed premises in accordance with s 48 of the Act, principally to members of the club and their guests.
10. The proposed tavern comprises approximately 1489 m², similar in size to the existing club's premises, and includes:
- an internal patron area of approximately 525 m²;
 - kitchen of approximately 87 m²;
 - an external patron area, including bowling green, of approximately 606 m²;
 - an external patron "BBQ" area of approximately 135 m²; and
 - other relevant facilities such as cool room, store rooms, toilets, office & etc.
11. In respect of its application for a tavern licence, the applicant submitted:
- "The main reason, amongst others provided in this PIA, for applying to change the class of licence from a club licence to a tavern licence is not to radically alter the premises. Rather it is to enable it to operate under a class of licence that is more suitable according to the current liquor licensing system and laws in a technical sense."*
12. According to the applicant, in supporting the motion to seek the grant of a tavern licence, club members were advised of the following reasons:
- 1 Primarily, to ensure that the Club complies with the current Rules & Regulations set out by the Department of Racing, Gaming & Liquor.*
 - 2 As a holiday and tourist destination, the Club will be able to welcome non-members for meals and refreshments.*
 - 3 The Club can be available for many non-membership functions such as Christmas parties, birthdays, anniversaries etc.*
 - 4 The additional turn over will help cover our Club operating costs for the members.*
 - 5 Being able to welcome non-members will enable the Club to be a social hub for the local community.*
 - 6 The Club is unable to operate solely for the declining membership of the two sports clubs. (Currently there is a combined membership of only 104 players)"*
13. The applicant also submitted that it expected that the premises, trading under a tavern licence, will continue to attract a similar patron mix as it does under its club licence, namely, persons of all ages including family groups, residents of Guilderton and surrounds, members and their guests, tourists (both day and short stay) as well as the traditional sporting and similar groups using the venue and its ancillary facilities.
14. The applicant's Public Interest Assessment (PIA) and accompanying submissions provided information on the locality, its intended manner of trade at the venue, harm minimisation initiatives to be adopted, social health indicators and demographics of the area and the likely impact the grant of the tavern licence would have on the amenity of the area.

15. To demonstrate support for the tavern licence, the applicant lodged, together with letters from local businesses, landowners and associations, a petition with many signatories, under the heading:

"HOLIDAY MAKERS, VISITORS AND TOURISTS TO GUILDERTON AND SURROUNDS

The Guilderton Country Club will shortly, having gained the approval of its members at a special general meeting to do so, apply for a Tavern Licence in lieu of its current Club Licence. If successful the Guilderton Country Club will remain just that; a Country Club managed by its members albeit with a tavern rather than a club licence.

A significant part of the reason for the Club to take this approach is so that holiday makers, tourists and occasional visitors to Guilderton and surrounds will be able to attend the Club and utilize its facilities without putting the Club at jeopardy because it has inadvertently failed to comply with its Club Licence.

We seek your support for the Club's application for a Tavern Licence."

Submissions of the objectors

16. The objectors, in their notices of objections oppose the grant of the application on one or more of the following grounds:
- the grant of the application would not be in the public interest (s 74(1)(a) of the Act);
 - the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor (s 74(1)(b) of the Act);
 - if the application were granted undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur (s 74(1)(g)(i) of the Act);
 - if the application were granted – the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be situated would in some manner be lessened (s 74(1)(g)(ii) of the Act); and
 - the grant of the application would otherwise be contrary to the Act (s 74(1)(j) of the Act).
17. The objectors raised many similar concerns including matters relating to the manner that the applicant manages its business under its club licence and its constitution; and its decision to lodge an application for a tavern licence.

Josephine Ann Baum

18. Ms Baum expressed "deep concern" for the proposal to change the licence type to a tavern and would not be in the best interests for the community generally as anti-social behaviours would become more prevalent citing examples whereby vehicles "are being driven slowly/suspiciously along our street...which is unnerving – so what

could/would happen with the introduction of a tavern licence?”. Ms Baum concluded “we may as well live in the suburbs in the big smoke”.

Stephen Eric Jones

19. According to Mr Jones, the grant of the application is not in the best interests of the local community and whilst citing progress in the community over the years, the advent of a tavern licence would only increase crime and disorder and in view of the liquor outlets already in Guilderton, “the purchase of alcohol and hot beverages is truly covered”.
20. Mr Jones also suggested that there was a lack of community consultation with regard to this application and that perhaps signage advertising the meeting was “destroyed”.

Phillip Geoffrey Rouse

21. Mr Rouse, a home owner in Guilderton since 1982, objected to the grant of the licence on the basis that the requirement for a tavern is “very limited in that apart from school holiday periods, the remaining 66% of the year is extremely quiet”. Moreover, Mr Rouse made reference to a special general meeting called by the Guilderton Country Club to vote on the current application proposal but “for the first time in the 45-year history of the club, the committee banned the use of proxy votes. As 80% of the members live in the metro area or wheatbelt, the ability of these people to vote was denied unless they made a trip to Guilderton. Furthermore, it was submitted that the conversion to a tavern would cause considerable annoyance and disturbance to the users it was designed for. Mr Rouse concluded that the “Guilderton Country Club is broke and has been for the past 2 years.”

Allan Arthur McLeay

22. Mr McLeay is a resident of Guilderton for over 40 years and has had prior involvement with the Guilderton Country Club for most of those years in his capacity as committee member, President and Life Member. Mr McLeay suggested that the management team of the Guilderton Country Club is attempting to “expel” him because he has “asked too many questions re the finances of the club” and is currently involved in a litigation with the Club. He concluded that a tavern licence would not solve the “current financial problems” and steps must be taken to resolve these problems.

Dorothy J Branch

23. Ms Branch is an owner/ratepayer of Guilderton since 1964 and objects to the grant of the application citing membership denial to their constitutional rights to inspect financial records and committee meeting minutes. In addition, many adults and children reportedly frequent the area and additional vehicles coming and going for take away alcohol would create a dangerous environment for pedestrians.
24. Ms Branch also stated that a tavern would provide an open invitation to all and in this situation, unruly and other anti-social behaviour suddenly becomes a distinct possibility, especially in a holiday environment. Ms Branch also echoed previous objector’s sentiments with specific regard to “members being denied their constitutional right to inspect financial records and minutes of meetings by the

committee. Support garnered from residents/homeowners and others by way of signed petition was also submitted by Ms Branch in support of her objection.

Eric Douglas Corke

25. The substance of Mr Corke's objection was that the "current Guilderton Country Club Licence is more than the Club requires to meet its objective per the constitution". If a tavern licence were to be granted, it would attract undesirables from the surrounding areas to frequent the site more often, therefore taking away from the community feel and putting pressure on "this way of life" for youngsters and elderly alike.

Ian Byron Collard

26. Mr Collard, a long-time resident of Guilderton has expressed concern for the grant of the application holding the belief that it is essentially unnecessary as there are two other licensed liquor outlets in town. In addition, Mr Collard expressed concerns that proxy voting was not permitted and voting was therefore not a true representation of community consensus.

John Branch

27. Mr Branch, a long-time resident of Guilderton has expressed his grounds for objection on the basis that the Club has been "successful for the past 45 years so why change?". He described the application as deceitful and incorrect detailing many examples of inconsistencies with regard to a lack of community consultation concluding that the process was "non-democratic".

Kerry Nichols Enright

28. Ms Enright stated that if a tavern were included in addition to an already existing liquor store and licensed café, there would be an excessive amount of visitors making use of the tavern and then driving home putting other road users at risk. Ms Enright also indicated that the application has caused divide amongst the community and there are a lot of people who do not support the application but do not want to come out publicly against it; and do so as they are worried about the fallout from the people who are in favour.

Nicole Joy Corke

29. Ms Corke indicated that granting the application would not be in the public interest for the reasons that (a) there has been insufficient community consultation; (b) impact negatively on youth; and (c) there are already sufficient liquor outlets in the community. Ms Corke also attached a signed petition in support of her objection.

Sue Lynette McLeay

30. Ms McLeay, a ratepayer of Guilderton since 1972 objected to the grant of the application stating it is not in the public interest. Further liquor outlets would escalate the social problems that are reportedly already on the increase.

Applicant responsive submissions

31. The applicant in its responsive submissions detailed further letters of support from representative community groups, business proprietors and others with respect to matters of public interest in that the proposed change of licence type is so as to enable the operation at the Club's premises under a class of licence which would enable it to meet the requirements of consumers; and be in keeping with the current liquor licensing system and its laws.
32. In response to the objections lodged, it was submitted that there was no evidence or factual information to support the assertions made by the objectors.

Determination

33. The applicant seeks the grant of a tavern licence in respect of premises which are currently approved as licensed premises and trading under a club licence.
34. 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 is in the public interest. In this regard, the licensing authority, however constituted, makes its determination on the balance of probabilities.
35. In determining whether an application should be granted "in the public interest" the licensing authority, is required to exercise a discretionary value judgement within 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; and *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241. That is, consideration must be given to the objects of the Act as specified in s 5 and regard may be given to the matters prescribed in s 38(4) of the Act.
36. 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.

37. Pursuant to s 33 of the Act the licensing authority has an absolute discretion to grant or refuse an application under the Act on any ground, or for any reason, that the licensing authority considers in the public interest, provided that the application is dealt

with on its merits within the scope of the Act (refer *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC; and *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).

38. The primary objects of the Act, as set out in s 5 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.
39. The secondary objects as set out in s 5(2) 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 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.
40. The applicant in its application submitted the reasons for seeking a tavern licence for premises which have been trading under a club licence since 1970. In this regard, the applicant submitted that the application should be granted, in the public interest, to meet the requirements of persons resorting to the locality and to the premises for liquor and related services.
41. Objections were lodged by Josephine Ann Baum, Stephen Eric Jones, Phillip Geoffrey Rouse, Allan Arthur McLeay, Dorothy J Branch, Eric Douglas Corke, Ian Byron Collard, John Branch, Kerry Nichols Enright, Nicole Joy Corke and Sue Lynette McLeay in accordance with s 74 of the Act.
42. In respect of the objections lodged, s 73(10) of the Act provides that the burden of establishing the validity of any objection lies with the objector.
43. In considering this application and in particular in view of some of the matters raised by the objectors regarding the applicant, its constitution and its decision to seek the grant of a tavern licence, I consider that it is appropriate to state from the outset that on the basis of the information before me, I am satisfied that the applicant has proceeded with its application for a tavern licence in compliance with its constitution and rules, albeit that some members do not agree with its decision to do so.
44. In this regard, while I acknowledge that the applicant has complied with its constitution, I conclude that not all of the members of the Guilderton Country Club (“the Club”) agree with the resolutions to change the Club’s constitution; and to seek the grant of a tavern licence. However, these are matters for the Club’s members to determine and are not matters relevant in the determination of this application.
45. The applicant, in this case, submitted that the restrictive nature of its club licence does not allow it to meet the requirements of those persons (non-members) who resort to

the locality and to its licensed premises for their liquor requirements and related services.

46. The applicant therefore seeks the flexibility of a tavern licence which would allow the sale and supply of liquor to any person who resorts to the licensed premises and not just its members, guests of members and other specified persons as set out in s 48 of the Act.
47. The objectors submitted that the grant of the application is not in the public interest, on many grounds including that if the application was granted it would result in offence, annoyance, disturbance or inconvenience to residents; and the amenity, quiet or good order of the locality would in some other manner be lessened.
48. In responding to the objections lodged, the applicant in its submissions reiterated its intended manner of trade under the tavern licence and that the business to be conducted under the proposed tavern licence, at the premises, will not change in any significant way other than that it will be able to sell and supply liquor to persons without the restrictions that apply to the holder of a club licence.
49. Section 37(3) of the Act, provides:

“An application shall not be granted where the licensing authority is satisfied that an undue degree of offence, annoyance, disturbance or inconvenience to –

(a) persons who reside or work in the vicinity of the place or premises to which the application relates; or

(b) persons in, or travelling to or from, an existing or proposed place of public worship, hospital or school,

would be likely to occur.”

50. In respect of the objections lodged, while I acknowledge the concerns of the objectors, it is worth noting that the premises are already the subject of a liquor licence, albeit a club licence; the proposed tavern licence meets the local authority’s planning requirements; and business has been conducted at the premises by the applicant as licensee since 1970. Also, many of the matters raised by the objectors do not relate or support the grounds of objection under s 74 of the Act.
51. Therefore, on the basis of the information presented, I am not satisfied that the grant of a tavern licence, at these premises, would cause:
 - undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed premises, would be likely to occur;
 - the amenity, quiet or good order of the locality of the proposed premises, would in some other manner be lessened.
52. Also, based on the evidence submitted, I am satisfied that the grant of the application, would be in keeping with object 5(1)(c) of the Act and in the public interest.

53. Accordingly, I am prepared to exercise my discretion under s 33 of the Act and grant the application for a tavern licence.
54. However, it may be worthy for the applicant to note that a tavern licence is what may be considered to be a “commercial liquor licence” under the Act; and the Act imposes specific obligations and responsibilities on the licensee as to the conduct of the business under such a licence. For example, as to whom liquor may be sold and supplied, the circumstances under which a person may be refused entry to the licensed premises, and juveniles being permitted to enter and remain on licensed premises.
55. In this regard, it is also worthy for the applicant to bear in mind that while the Club’s constitution remains relevant in respect of the management of the club it may have no relevance in respect of the licensed premises operating under a tavern licence granted under the Act.
56. Nevertheless, as 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, the application for a tavern licence is granted subject to the following:

TRADING HOURS

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

TRADING CONDITIONS

1. The applicant is permitted to sell and supply liquor in accordance with the provisions of s 41 of the Act as it relates to a tavern licence.
2. The number of persons that may be accommodated on the licensed premises, at any one time, must not exceed 253 persons.
3. The consumption of liquor on the bowling green is only permitted during social and corporate bowls.
4. Only patrons participating in social and corporate bowls are permitted to consume liquor on the bowling greens.
5. Food must be available during trading hours to at least 1 hour prior to closing.
6. Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available at all times.
7. The licensee shall not promote drinks which offer liquor by virtue of their ‘emotive’ titles such as, but not limited to 'laybacks', 'shooters', 'test tubes', 'shots'; 'jelly shots', 'blasters', or 'bombs'.

ENTERTAINMENT CONDITION

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.

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 film or computer game or "Category 1 – Restricted" or Category 2 – Restricted" publication, or extract therefrom; or
- (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.

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 Director's Harm Minimisation Policy

57. 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.

Fencing and glass screens

58. Within one (1) month of the grant of the tavern licence, the installation of the proposed fencing and glass screening as specified on plans dated 1 August 2016 and confirmed by the applicant in its email dated 12 August 2016 must be completed; and the licensee must notify this office within fourteen (14) days of its completion.

Licence Fees

59. Pursuant to s 127(2) of the Act the prescribed licence fee payable in respect of this licence is \$438.00. However, this amount payable prior to the grant of the licence is waived as this amount equals the annual licence fee paid by the applicant in respect of its club licence for the 2017 licence period which will be cancelled contemporaneously with the grant of this licence.

General

60. The licensed premises are defined as the area outlined in red on the plan attached and dated 15 June 2016. A copy of that plan is to be retained on the premises and produced to any authorised officer on request.
61. Pursuant to s 116(3) of the Act, the premises' name "Guilderton Country Club Inc" is approved. The licensee shall not subsequently conduct business at the licensed premises under any other trading name, without the prior approval of the Director of Liquor Licensing.
62. The applicant must ensure that the signage required under ss 116(4) and 116(5) of the Act is displayed on the licensed premises within fourteen (14) days of the date of this decision.
63. Additionally, pursuant to s 116(4) of the Act, the applicant must ensure a copy of the licence is displayed in a readily legible condition and in a conspicuous position in the licensed premises.
64. The club licence No 6040013946 is cancelled contemporaneously with the grant of this tavern licence.
65. 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