

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: NIXWA PTY LTD
PREMISES: iDARTS NIX
PREMISES ADDRESS: 101 JAMES STREET, NORTHBRIDGE
APPLICATION ID: A000057276
NATURE OF APPLICATION: **APPLICATION FOR GRANT OF A SMALL BAR LICENCE**
DATE OF DETERMINATION: 2 JULY 2015

Introduction

1. This is an application by NIXWA Pty Ltd (“the Applicant”) for the grant of a small bar licence for premises to be known as *iDarts NIX* and situated at 101 James Street, Northbridge.
2. The application is made pursuant to s 41 of the *Liquor Control Act 1988* (“the Act”) and was advertised in accordance with instructions issued by the Director of Liquor Licensing (“the Director”). While there were no objections to the application, a notice of intervention was lodged by the Commissioner of Police (“the Commissioner”), pursuant to the provisions of s 69(3) of the Act.
3. Pursuant to the provisions of ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties, which are summarised below.

Submissions of the Applicant

4. The Applicant submitted that it will operate *iDarts NIX* pursuant to a franchise agreement with the Australian franchisor, which will allow it to bring an international dart bar franchise to Perth. According to the Applicant, the iDarts model represents a novel bar concept based on the electronic dart board system developed by DARTSLIVE, the darts industry market leader from Japan. The Applicant further submitted that the key to the concept is the synergy between DARTSLIVE consoles and the iDarts lively atmosphere, created by the premises fit-out, lighting, furniture and the bar component.
5. The Applicant submitted that the premises will comprise approximately 132 m² in total and allow a patron capacity of approximately 70 patrons at any one time.
6. To support its application, the Applicant lodged a Public Interest Assessment (“PIA”) and other submissions, in which it was submitted that *iDarts NIX* will provide a new and unique feature to the well-established James Street streetscape and also complement nearby businesses.

7. It was submitted that:

“iDarts NIX will be a highly active and interactive adult entertainment and hospitality facility.

The iDarts model has revolutionised an age-old sport for the modern era. The main darts operating system is based on DARTSLIVE electronic darts machines using soft-tipped darts. These machines use sensors, lights, audio and CGI to further increase playability and interest.

...players are able to challenge each other on DARTSLIVE machines across the globe through the DARTSLIVE network, creating a cross-cultural community of darts players.”

8. The Applicant also submitted that:

- (a) in addition to the darts games, the DARTSLIVE package will also include 30 touch-screen game options and other electronic games; and
- (b) pre-recorded music will be played throughout the premises, as well as screens displaying soft-tip darts performances from around the world, music videos and sports.

9. The Applicant’s proposed manner of trade will involve offering a food and beverage service to its patrons, inclusive of “comfortable, easy to eat food items, as well as a range of beers, wines and spirits”. In relation to food items, it was submitted that some food will be prepared on the premises, while other food items will be purchased from neighbouring restaurants or caterers. It was also submitted that a bar and table service will be provided and that seated patrons will be provided with menus and other relevant information by wait staff.

10. To help establish that the grant of the application will further the Act’s object of catering to the requirements of consumers for liquor and related services, the Applicant submitted that public consultation, in the form of a survey of 141 people and a questionnaire of 44 people, showed a wide catchment of support for the proposed premises, with respondents and participants revealing that they reside in different parts of the metropolitan area. Ten letters of support were also obtained.

11. The Applicant also submitted that:

- (a) 191 of the 195 people expressed support for the *iDarts NIX* proposal;
- (b) 78% of people who supported the application indicated that they would attend the premises at least on a monthly basis, although some indicated they may attend more often;
- (c) the average age of survey participants was 27; and
- (d) 100% of respondents considered the proposal to be unique.

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12. In terms of its proposed customer base, the Applicant submitted that its target market will be a multi-cultural mix of customers who enjoy playing darts, drinking and socialising in a trendy and fun-filled environment with entertainment. In particular, some of its customers will be:
- (a) similar to that of the Australian iDarts franchise, which consists of non-gender specific groups, ranging in age from 18 to 35 years and consists principally of international students or residents from countries where darts is particularly popular; and
 - (b) pre-existing traditional steel-tip dart players, particularly given that iDarts Australia has collaborated with some well known steel-tip players on a national level.
13. The following special trading conditions were proposed by the Applicant:
- (a) the premises shall provide facilities for the playing of darts at all times;
 - (b) food shall be available at the premises at all times when open to the general public;
 - (c) drinks will not be promoted or sold that offer liquor by virtue of 'emotive' titles, such as, but not limited to, 'laybacks', 'shooters', 'slammers', 'test tubes' and 'blasters';
 - (d) drink options that contain light and mid-strength alcohol content, as well as a range of non-alcoholic drinks shall be available for purchase at all times;
 - (e) a CCTV video surveillance system that records continuous images throughout the premises, including all entrance and exit points to the premises, shall be installed;
 - (f) any patron who appears to be younger than 25 years of age will be asked for identification to prove that they are over the age of 18, whether they are consuming alcohol or not;
 - (g) it will participate in the local Liquor Accord (Perth Accord); and
 - (h) litter inspections will be regularly carried out, with any litter immediately outside the premises being cleaned-up.

Representations of the Commissioner

14. 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.

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15. While acknowledging that the application appears to be well supported by consumers, the Commissioner submitted that it is in the public interest to ensure that the premises trades in a manner that will not cause disturbance or public disorder, complements the primary objects of the Act and also conforms with the public interest evidence lodged by the Applicant.
 16. In this regard, the Commissioner noted that one of the biggest challenges facing small bar operators is ensuring that the maximum number of patrons is not exceeded. To this end, the Commissioner recommended that the engagement of security staff is effective at ensuring patron capabilities are not exceeded, as well as performing a range of other functions, including acting as a deterrent to anti-social behaviour.
 17. In respect to entertainment at the premises, the Commissioner submitted that in order to ensure that the:
 - (a) Applicant adheres to the style of entertainment proposed in its PIA; and
 - (b) premises attracts predominantly low risk patrons,the licence should be conditioned, if granted, to prohibit the playing of nightclub style 'DJ' music at the premises and to restrict the playing of music to a level that would permit normal conversation to occur.
 18. It was also submitted by the Commissioner that the special trading conditions proposed by the Applicant in its PIA should be imposed on the licence in order to minimise the potential risk of the premises, with an exception to the proposed condition relating to food. In this regard the Commissioner noted that the Applicant proposes that 'food shall be made available at the premises at all times when open to the general public', which, the Commissioner submitted, implies that the Applicant would be able to host 'private events and functions', without the need to provide food. The Commissioner further submitted that patrons of private functions are not immune from the negative aspects of alcohol consumption and therefore submitted that food should be made available at all times.
 19. Accordingly, the Commissioner recommended the imposition of conditions relating to trading hours, licensed security requirements, the use of a CCTV system, entertainment at the premises, food, dress standards targeted at members of Outlaw Motor Cycle Gangs ("OMCGs") and a number of general conditions reflecting the conditions proposed by the Applicant in its PIA.

Further submissions of the Applicant

20. In its responsive submissions dated 7 April 2015, while the Applicant noted the Commissioner's endorsement of the special conditions proposed in its PIA, it opposed three of the conditions recommended by the Commissioner.

21. First, the Applicant opposed the proposed condition compelling the Applicant to engage crowd controllers at the premises, submitting that:

- (a) the level of security proposed by the Commissioner would be overbearing, intimidating and pose a significant cost to the Applicant;
- (b) the small size of the premises and the small number of total patrons likely to be at the premises at any one time should be easily managed and supervised by the Applicant and its staff;
- (c) s 115(4) of the Act provides for approved managers, as “authorised persons”, to perform the duties of a licensed crowd controller and the *Security and Related Activities (Control) Act 1996* specifically provides that approved managers are exempted; and
- (d) there will be at least one, often several, approved manager on site at *iDarts NIX* at all times to enable any requirement for crowd controlling duties to be properly filled.

22. Secondly, the Applicant also raised issue with the Commissioner’s recommended condition to prohibit live entertainment in the form of Disc Jockey music and to restrict entertainment to music played at a level that would permit normal conversation to occur, on the basis that:

“...the applicant requires the ability to have flexibility to provide background music as appropriate and suitable for changing consumer demands, as required by patrons and as may be demanded for private pre-arranged functions. Special events, finals of darts and other such occasions may require amplified announcements and commentating which may include some music.”

23. Thirdly, in relation to the Commissioner’s proposed condition regarding the provision of food at all time, the Applicant submitted that it “requires flexibility with private pre-arranged functions” and submitted that the provision of “food” should exclude functions, although it did note that, as “a matter of practicality, the applicant anticipates that function organisers would usually require food to be made available.”

24. In conclusion, the Applicant submitted that:

“Consideration must be given to the different style of licensed hospitality experience that *iDarts NIX* can offer, if operating pursuant to a small bar licence, compared to other small bars, taverns or hotels located elsewhere in Northbridge and the City. The evidence supports the alternative style of operation proposed. Just as Anderson, J stated in the *Big Bombers* case¹, there are sections of the public which prefer different styles in the form of liquor supply available to them.”

¹ *Liquorland (Australia) Pty Ltd v Austie Nominees Pty Ltd* (1999) 20 WAR 405

Determination

25. An applicant for the grant of a small bar licence must, pursuant to s 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).
26. 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).
27. 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).
28. 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 reflecting the diversity of consumers in the State.
29. I also accept the Applicant’s submissions that the proposed premises will bring an international dart bar franchise to Perth, which is a novel concept that will provide a new and unique feature to the locality.
30. After noting that the Commissioner’s intervention relates only to the imposition of conditions on the licence, 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.
31. Accordingly, it is only the issue of the contested conditions that remains to be resolved.
32. In this regard, after taking into account the submissions of the parties, I consider that the small size of the proposed premises, together with the limited number of total patrons likely to be present thereon, should make managing patron numbers a task that can be easily managed and supervised by the Applicant’s approved managers.

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33. Therefore, I do not intend to condition the licence with a requirement for the Applicant to employ security staff or crowd controllers licensed under *the Security and Related Activities (Control) Act 1996*.
34. However, the role of an approved manager (refer s 100(1) of the Act) is expansive and may include the effective management of the business under the licence, which may include undertaking duties such as:
- (a) the management and training of staff;
 - (b) dealing with situations lawfully and responsibly;
 - (c) ensuring the implementation of responsible server practices; and
 - (d) conducting the business on behalf of the licensee in accordance with the provisions of the Act.
35. As such, I do not consider that managing patron numbers is a task that can be dealt with by a sole approved manager at peak trading times. Therefore, in accordance with its submissions, the Applicant should ensure that more than one approved manager is present on the licensed premises at all peak trading times.
36. Similarly, I consider that the proposed manner of trade under the licence is incompatible with the Commissioner's recommended condition regarding entertainment/music at the premises.
37. However, the Applicant is advised that if the premises is operated in a manner that results in overcrowding or otherwise negatively impacts on the amenity of the locality, then restrictive conditions can be imposed on the licence in order to rectify such problems.
38. Conversely, I am not so convinced by the Applicant's responsive submissions to the Commissioner's recommendation that food being available at all times the premises is trading. While I have noted the Applicant's submissions regarding the flexibility sought for private pre-arranged functions, it is generally acknowledged that the provision of food at licensed premises is an important harm minimisation initiative. Furthermore, conditioning small bars, taverns (including tavern restricted licences) and other licence types with a requirement for food to be made available by the licensee during trading hours is a fairly consistent requirement of the licensing authority.
39. In this regard, I concur with the observations of the Commissioner that patrons of private functions are not immune from the negative aspects of alcohol consumption. Therefore, based on the evidence before me, I can see no practical reason not to impose a condition requiring that food be made available at all times, particularly after noting the Applicant's submission that it anticipates function organisers would usually require food to be made available.

40. In my view, nothing in the Applicant's submissions, proposed manner of trade or in the Commissioner's representations, have established a connection between the premises and OMCGs.

41. Accordingly, the licence is granted, subject to the following conditions:

(e) Trading Hours:

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

(f) 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 small bar licence.

(ii) The sale of packaged liquor for consumption off the licensed premises is prohibited.

(iii) During the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises.

(iv) The maximum number of patrons permitted to be on the licensed premises at any time is 70.

(v) The premises shall provide facilities for the playing of darts (i.e. electronic iDarts and traditional steel-tip) at all times.

(vi) Food must be available during trading hours.

(vii) Drink options that include low alcohol liquor, as well as a range of non-alcoholic drinks, shall be available for purchase at all times.

(viii) 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'.

(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 must have and maintain a CCTV system compliant with the policies of the Director of Liquor Licensing.

(xi) The licensee shall carry out litter inspections regularly and clean-up any litter immediately outside its premises.

(g) 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.

(h) 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

42. Pursuant to s 127(2) of the Act, the prescribed licence fee is payable prior to the operation of the licence and I am satisfied that the licence fee has been paid.
43. The licensed premises are defined as the area outlined in red on the plans attached and dated 4 December 2014. A copy of that plan is to be retained on the premises and produced to any authorised officer if required.
44. Pursuant to s 116(3) of the Act, the premises' trading name of *iDarts NIX* 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.
45. Pursuant to s 116(4) of the Act, the licensee must ensure a copy of the licence is displayed in a readily legible condition and in a conspicuous position in the licensed premises.
46. Additionally, the Applicant must ensure that the signage required under s 116(5) of the Act is displayed on the licensed premises within 14 days of the date of this decision.
47. 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.
48. 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