

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: BRIAN ROSS KLOPPER

PREMISES: LAURA'S

PREMISES ADDRESS: CORNER OF GORDON PLACE AND MINSON AVENUE,
NORTHAM

APPLICATION ID: A000057270

NATURE OF APPLICATION: **APPLICATION FOR CONDITIONAL GRANT OF A
SMALL BAR LICENCE**

DATE OF DETERMINATION: 26 MAY 2015

Introduction

1. This is an application by Brian Ross Klopper ("the Applicant") for the conditional grant of a small bar licence for premises to be known as *Laura's* and situated at the corner of Gordon Place and Minson Avenue, Northam.
2. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* ("the Act") and was advertised in accordance with instructions issued by the Director of Liquor Licensing, which resulted in the lodgement of notices of objection by:
 - (a) Justin Thomas Murphy; and
 - (b) Robert John Cramer, on behalf of Melglow Pty Ltd.
3. To give effect to the provisions of s 16 of the Act, a document exchange process was initiated between the parties in order to ensure that each party was given a reasonable opportunity to present its case.
4. Pursuant to ss 13 and 16 of the Act, the application will be determined on the papers, which have been summarised below.

Submissions of the Applicant

5. The Applicant seeks the grant of a small bar licence, with a focus on wine, beer and snack food, with a maximum capacity of only 50 patrons at any one. The Applicant submitted that the building, which he designed and built, is bright and open and constructed of recycled bricks, with vaulted ceilings and whitewashed interior walls, creating both a Mediterranean feel and a connection to "traditional Avon Valley buildings", while contrasting with conventional Australian or English styled pubs.
6. According to the Applicant, the premises will provide a service to professional and semi-professional workers in the nearby offices, as well as residents of Northam within walking distance of *Laura's*. The Applicant further submitted that its target market,

which is predominantly women in the 30 to 50 age group, are reluctant to drink in any of the existing traditional style pubs in Northam.

7. The Applicant formed this view as a result of the responses to a survey he conducted of 390 adults, who either reside or work within a three kilometre radius of the proposed premises. A total of 91% of respondents indicated that they would attend a small wine bar after work in Northam, of which:
 - (a) 28% indicated that they would be attracted to such a venue if it had a quiet atmosphere;
 - (b) 25% indicated they would be attracted to such a venue with good wine and/or food; and
 - (c) 17% indicated that they would be attracted to such a venue in order to meet friends.
8. Additionally, 225 respondents agreed with the statement that the opening of a small wine bar in the Northam CBD would offer the semi-professional and professional community a much needed alternative in the area.
9. In relation to the types of products to be offered at the premises, the Applicant submitted that he will offer red, white, sparkling and mulled wines, premium beer and half strength beer in glasses, as well as espresso coffee, soft drinks in glasses and snacks, such as cheese platters. It was also submitted that it is not intended to sell mixed drinks, alcopops, shooters or similar styled drinks. The Applicant further submitted that there will be no live music provided, except for a possible occasional busker, with music being background in nature. A combination of regular seating, high seating and standing room will be provided, to strike a balance between comfort and providing for people to intermingle.
10. The Applicant's PIA also provided a brief consideration of the matters prescribed in s 38(4) of the Act.

Submissions of the objectors

11. The objection of Mr Murphy is that the grant of the application would not be in the public interest (s 74(1)(a) refers) because the average family income in Northam is less than the average adult income, which leads Mr Murphy to question the ability of the community to support another service-focussed industry, without placing additional stress on existing businesses. As such, Mr Murphy submitted that another liquor licence in the town would result in a situation that is not sustainable.
12. The objection of Mr Cramer, on behalf of Melglow Pty Ltd, is based on the grounds that the grant of the application:
 - (a) would not be in the public interest and would otherwise be contrary to Act (s 74(1)(j) refers) because Northam is currently grossly over licensed;

- (b) would cause undue harm or ill-health to people, or any group of people, due to the use of liquor (s 74(1)(b) refers);
 - (c) would likely result in undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to any person in or travelling to or from an existing or proposed place of public worship, hospital or school (s 74(1)(g)(i) refers); and
 - (d) would in some way lessen the amenity, quiet or good order of the locality in which the premises are to be situated because there is no adequate parking facilities in the proposed area and no potential for supplying this without encroaching on the facilities of neighbouring businesses.
13. Mr Cramer further submitted that Northam is a community in decline, with more than 300 homes currently on the market with little prospect of being sold and an ever declining population. Mr Cramer further submitted that the Applicant can only succeed at the expense of existing operators and that the investments of existing operators must be afforded some protection by the licensing authority.
14. Mr Cramer also submitted that the issues raised in his letter dated 9 April 2010 regarding his earlier objection to an earlier application for the grant of a small bar licence in respect of premises to be known as *Mon Petite*, are also relevant to the determination of this matter.

Responsive and closing submissions

15. The Applicant's responsive submissions noted that both Mr Murphy, as owner of the *Commercial Hotel* and Mr Cramer, as a representative of the licensee of the *Commercial Hotel*, have direct pecuniary interests in the refusal of the application and that Mr Murphy's objection essentially repeats that of Mr Cramer.
16. The Applicant also submitted his understanding that the number of vacant shops in Northam is primarily as a result of large commercial developments and that, according to local agents, there are closer to 200 houses for sale in Northam, with the majority of these being investment/rental properties.
17. The Applicant also noted that while Northam did suffer a population decline in the past, there has been a reversal of this trend since Northam was declared a Super Town, with projected population growth supported by the findings of the Western Australian Planning Commission's *Current Projections - Western Australia Tomorrow, Population Report No.7, 2006 to 2026, February 2012* for the Northam Local Government Area.
18. The Applicant also submits that consumers can only benefit from more competition in the liquor industry and that any action to limit the number of outlets would be contrary to the public interest.

19. It was also noted by the Applicant that it will provide a different service to that provided at the *Commercial Hotel* and that it is highly unlikely that *Laura's* will take existing customers away from that hotel. The Applicant also responded that not all existing licensees in the town feel the same way as Mr Cramer, with the licensee of *Duke's Inn* supportive of the application on the basis that similar venues will be beneficial to the local liquor industry and the public interest generally.
20. The Applicant also noted that parking arrangements have been approved by the Shire of Northam and Mr Cramer's objection to *Mon Petite* is not a relevant matter to the determination of this application.
21. In conclusion, the Applicant submitted that the interest of the local community is not threatened by the application; but rather that the public interest is well served by there being more competition.

Determination

22. An applicant for the grant of a small bar 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 a presumption in favour of a grant of a licence; but rather the reverse: 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).
23. 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 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).
24. Advancing the objects of the Act, as set out in s 5, is also mandatory to the public interest considerations of the licensing authority (refer *Palace Securities supra*). The primary objects of the Act are:
 - (a) to regulate the sale, supply and consumption of liquor;
 - (b) to minimise harm caused to people, or any group of people, due to the use of liquor; and
 - (c) 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.

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25. The second reading speech on the introduction *Liquor and Gaming Legislation Amendment Bill 2006* made clear the government's intention to amend the State's liquor laws to provide greater flexibility in meeting the needs of consumers and tourists, while promoting the consumption of liquor in low risk drinking environments.
26. Accordingly, when determining whether the grant of an application is in the public interest (refer s 38), the licensing authority should 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).
27. In this regard, while I note that the granting of new licences, particularly in country towns, should be approached with a degree of caution so that the level of services for consumers in the community is not diminished, it must also be appreciated that the Act's public interest test does not proceed on the basis of potential competitive impact on other liquor merchants.
28. One of the primary objects of the Act is to cater for the requirements of consumers for liquor and related services. Accordingly, it is my view that the grant of the application will promote this object and also provide consumers in Northam with an alternative style of licensed premises in Northam.
29. While the subjective requirements of the public for alternative licensed premises in Northam is made clear in the consumer evidence lodged by the Applicant, I have also noted the following positive aspects of the proposal:
- (a) the small number of patrons permitted at any one time (i.e. no more than 50 patrons at any given time);
 - (b) the provision of food on the premises; and
 - (c) music being background in nature, so that normal conversation can occur between patrons.
30. I therefore accept that the proposed premises will promote one of the primary objects of the Act, namely object 5(1)(c) and meet the needs of consumers, while promoting the consumption of liquor in a low risk drinking environment. I also accept that the grant of the small bar licence will not negatively impact on alcohol-related harm or ill-health in Northam or on the amenity of the locality. The evidence likewise suggests that object 5(2)(a) regarding facilitating the use and development of licensed facilities to reflect the diversity of consumers, is also a relevant consideration.
31. While the objectors' have claimed that the grant of the licence would not be in the public interest because Northam is over licensed and the grant of the application would damage existing stakeholders, the Act requires the licensing authority to consider the substantial merits of the case; make its determinations on the balance of probabilities

and consider the public interest, which should not be confused with the private interests of individuals.

32. In my view, the matters raised by the objectors predominantly relate to their private commercial interests offer little in terms of probative value. Accordingly, I therefore find that the objectors have failed to discharge their onus under s 73(10) of the Act.
33. 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.
34. Accordingly, the licence is conditionally granted, subject to 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 premise;
 - (c) all work being completed within 12 months (i.e. by 26 May 2016) in accordance with the plans and specifications dated 28 November 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 26 May 2016, pursuant to s 62(4)(c) of the Act.
35. 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 small bar licence.
 - (ii) During the permitted trading hours, 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.

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- (iv) The maximum number of patrons permitted to be on the licensed premises at any time is 50 patrons.
 - (v) Food must be available during trading hours.
 - (vi) 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.
 - (vii) 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’.
- (c) 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) (ii) 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.
- (d) 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.

36. Pursuant to s 127(2) of the Act, the prescribed licence fee is payable prior to the operation of the licence.
37. The applicant is reminded that **trading may not commence** without the prior written approval of the licensing authority.
38. 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.
39. 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