

**Liquor Commission of Western Australia
(Liquor Control Act 1988)**

Applicant: O'Hanlons (WA) Pty Ltd
(represented by Mr Mike O'Hanlon, Director)

Interveners: Director of Liquor Licensing
(appeared in person at the hearing)

Executive Director Public Health
(not represented at the hearing)

Commission: Mr Jim Freemantle (Chairperson)
Mr Eddie Watling (Deputy Chairperson)
Mr Greg Joyce

Date of Hearing: 13 April 2010

Date of Determination: 13 April 2010

Date of Reasons published: 16 April 2010

Premises: The William Street Bird

Matter: Application for the conditional grant of a tavern licence pursuant to sections 41 and 62 of the *Liquor Control Act 1988*.

Determination: The application is granted.

Authorities cited in decision:

Palace Securities Pty Ltd –v- Director of Liquor Licensing [1992] 7WAR 241

Executive Director of Health -v- Lily Creek International Pty Ltd & Ors [2000] WASCA 258

Introduction

- 1 On 14 October 2009, O'Hanlons (WA) Pty Ltd lodged an application, pursuant to sections 41 and 62 of the *Liquor Control Act 1988* ("the Act"), for the conditional grant of a tavern licence in respect of premises to be known as The William Street Bird and located at 181 William Street, Northbridge.
- 2 The application was advertised to the general public in accordance with instructions issued by the Director of Liquor Licensing. There were no objections to the application, however, the Executive Director Public Health lodged a Notice of Intervention pursuant to section 69(8a) of the Act.
- 3 On 9 February 2010, the Director of Liquor Licensing, pursuant to section 24 of the Act, referred the application to the Commission for determination. Pursuant to section 69(11) of the Act the Director of Liquor Licensing intervened in the proceedings before the Commission.
- 4 A hearing was conducted on 13 April 2010.

Submissions on behalf of O'Hanlons (WA) Pty Ltd

- 5 According to the Applicant's submission, the proposed venue aims to become an intimate and inviting venue that showcases work of local performing artists. The expected capacity of the venue is 150 patrons and although the application is for a tavern licence, the general tone of the venue will be more akin to a small bar.
- 6 The venue's focus will be the enjoyment of live entertainment, with the consumption of liquor being simply an ancillary component of the business. Tapas style finger food will be available and the Applicant will adopt responsible service of alcohol policies such as not serving energy drinks mixed with liquor, drinks with emotive titles such as shooters and slammers or using marketing tools such as happy hours. Crowd controllers will also be engaged. The Applicant proposes to provide an alternate, mature option to the culture that dominates Northbridge on busy nights.
- 10 It is submitted that the proposed venue will simultaneously compliment the new state theatre and cultural centre as a whole, the Northbridge Link, EPRA'S revitalisation project and the City of Perth's four year and 2029 vision. The venue will be compatible with the Northbridge festival as well as the PIAF festival and will provide an atmosphere and entertainment which would complement a night out at the new performing arts centre being built directly opposite.
- 11 The proposed venue will be situated in Northbridge, a suburb with a high density of tourists and tourist accommodation. The proposed venue will offer tourists a familiar, casual yet sophisticated small-bar-with-live-music atmosphere that showcases local artists.

- 12 According to the Applicant, there is no comparable venue in Perth to what it is proposing; where accomplished musicians and sophisticated music fans can gather in a small intimate venue catering to no more than 150 persons. In addition, entry to the premises for a high percentage of the live entertainment program will be subject to ticket purchase, both in advance from a support base and at the door.
- 13 Numerous letters of support from the local performing artist's industry and the public were submitted. The West Australian Music Industry Association Inc (WAMI) also provided strong support for the application. According to WAMI, it is essential for the local music industry that a particular area gain recognition as an "original music precinct." In this regard, the proposed nature of The William Street Bird as a presenter of live, original music acts will complement the emergence of other venues in the immediate locality, thereby creating a critical mass of venues which supports a change in attitude for this "original music precinct" to become a sustainable reality.
- 14 The Applicant acknowledges the alcohol-related problems (short term social and long term health) that currently exist in the locality where the licence is to be located. However, the Applicant submits that its proposed venue will encourage a moderate and mature drinking attitude, where alcohol is accompanied by food and entertainment, thereby attracting people who would otherwise avoid Northbridge due to the scarcity of such options.

Submissions on behalf of the Executive Director Public Health (EDPH)

- 15 The purpose of the intervention from the EDPH was to make representations regarding the high risk aspects of the application and to recommend that, should the application be granted, harm minimisation conditions be imposed on the licence.
- 16 According to the EDPH, there are a number of high risk aspects associated with this application for a tavern licence, including:
- research shows taverns are high risk for harm when compared to other licence types;
 - the granting of the application would increase the outlet density of licensed premises in Northbridge, which already has a high outlet density;
 - there are high levels of violence and alcohol-related problems occurring in both the immediate locality of the proposed venue, as well as the suburb of Northbridge; and
 - the existing high levels of alcohol-related harm is consistent with research which shows outlet density of licensed premises is associated with levels of alcohol-related harm

- 17 The EDPH submission provided details of existing outlet density in Northbridge and in the immediate locality of the proposed premises together with data on existing levels alcohol-related problems in the area.
- 18 In consideration of the risk factors inherent in the grant of a tavern licence and the high levels of existing alcohol-related harm in Northbridge, the EDPH recommended that, if the application was approved, the following conditions be imposed:
- a) the maximum patron numbers for the premise be 150;
 - b) the venue is to retain a focus on promoting local arts;
 - c) the licensee is not permitted to promote or sell drinks which offer liquor by virtue of their 'emotive' titles such as "laybacks", "shooters", "slammers", "test tubes", "blasters" or "Jager bombs" and no liquor is to be mixed with energy drinks;
 - d) a range of light and mid strength liquor products must be available for purchase during all trading hours;
 - e) bar snacks are to be available at all times; and
 - f) strict dress and behaviour code signage displayed at the entrance of the venue.

Applicant's responsive submission to the intervention from the EDPH

- 19 By email dated 10 March 2010, Mr Mike O'Hanlon, a director of the Applicant company, indicated his consent to the licence conditions proposed by the EDPH.

Submissions by the Director of Liquor Licensing

- 20 The Director of Liquor Licensing provided oral submissions at the hearing before the Commission. The Director raised concerns about the implications that the grant of the licence may have for Northbridge, particularly in view of evidence submitted in this case and others highlighting the extent of alcohol-related harm in the area.

Determination

- 21 Pursuant to section 38(2) of the Act, an Applicant for the grant of a tavern licence must satisfy the licensing authority that granting the application is in the public interest.
- 22 Furthermore, pursuant to section 33(1), the licensing authority has an absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest; the discretion being only confined by the scope and purpose of the Act (refer *Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR 241*).

- 23 When considering the public interest, the licensing authority is bound by the objects of the Act as set out in section 5. In respect of this application, the objects set out in sections 5(1)(b) and (c) and 5(2)(a) are particularly relevant.
- 24 Where there is conflict between the various objects of the Act, the licensing authority needs to weigh and balance those competing interests (refer *Executive Director of Health –v- Lily Creek International Pty Ltd & Ors [2000] WASCA 258*).
- 25 The evidence submitted by the EDPH is compelling and has not been refuted by the Applicant. Consequently, the Commission finds as a matter of fact that the locality of Northbridge experiences a significant level of alcohol-related harm. However, this conclusion does not in itself immediately lead to an outcome that the application should be refused. Each application must be considered on its merits (refer section 33(2) of the Act) and the licensing authority must weigh and balance all relevant considerations.
- 26 One relevant consideration is the level of alcohol-related harm, due to the use of liquor, which is likely to result from the grant of the application and whether the possibility of harm or ill-health is of a such a serious nature to be sufficient for the licensing authority to impose stringent conditions on a licence or refuse the grant absolutely. The outcome will turn on the facts and particular circumstances in each case.
- 27 In this context, the Applicant seeks to establish a venue where the primary focus will be the provision of various forms of entertainment, and therefore the proposed venue will be more than just a ‘place to drink’. Importantly, the relatively small patron capacity of the venue; the strong focus on the provision of entertainment by local performing artists; and the likely demographic of persons to be drawn to the premises, differentiate this venue from the traditional tavern licence. According to WAM, the proposed premise will provide important support for the development of live original music and performing artists, particularly in the “original music precinct” in which the premises is located.
- 28 In weighing and balancing the conflicting objects of the Act identified in paragraph 23 above, the Commission is of the view that when regard is given to the particular evidence and circumstances in this case, the imposition of stringent conditions on the licence can minimise and mitigate the potential for alcohol-related harm to occur (refer *Lily Creek supra*). This approach is also consistent with research evidence which indicates that “*the characteristics of the bar itself, independent of the clientele also predict the likelihood of violence taking place,*” (Stimson et al, 2007 “Drinking in Context”).
- 29 Accordingly, the Commission is satisfied that the Applicant has discharged its onus under section 38 of the Act and the conditional grant of the licence, subject to appropriate conditions, is in the public interest. Furthermore, the Commission is also satisfied that the Applicant has complied with all the necessary statutory criteria, requirements and conditions precedent to the application being granted.

- 30 The tavern licence will be subject to the following trading conditions:
- a) The maximum number of patrons permitted on the premises at any one time is 150;
 - b) The venue is to retain a focus on promoting local arts;
 - c) Seating must be available for 50 per cent of patron capacity.
 - d) Other than when provided in conjunction with a performing artist or as a headline act, any pre-recorded music is restricted to low-level conversational background music only.
 - e) The provision of music by 'cover bands' is prohibited.
 - f) The licensee is not permitted to promote or sell drinks which offer liquor by virtue of their 'emotive' titles such as "laybacks", "shooters", "slammers", "test tubes", "blasters" or "Jager bombs" and no liquor is to be mixed with energy drinks;
 - g) A range of light and mid strength liquor products must be available for purchase during all trading hours;
 - h) Bar snacks are to be available at all times; and
 - i) Strict dress and behaviour code signage must be displayed at the entrance of the venue.
- 31 The conditional grant of the licence is also subject to the standard conditions imposed by the Director of Liquor Licensing and trading may not commence until those conditions have been satisfied.

A handwritten signature in black ink, appearing to read 'Jim Freemantle', written over a horizontal line.

**JIM FREEMANTLE
CHAIRPERSON**