

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICANT:** HEATHER MACFARLANE PTY LTD

**PREMISES:** YOURS OR MINE

**PREMISES ADDRESS:** 24 VICTORIA ST BUNBURY WA 6230

**APPLICATION ID:** A000057262

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

**DATE OF DETERMINATION:** 26 March 2015

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### **Introduction**

1. This is an application by Heather MacFarlane Pty Ltd (the applicant) for the conditional grant of a small bar licence for premises to be known as *Yours or Mine* and situated at 24 Victoria Street, Bunbury.
2. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (the Act).
3. The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. A Notice of Intervention was lodged by the Commissioner of Police (Commissioner), pursuant to s 69 of the Act. In addition, an objection to the grant of the application was lodged by the following entities (Objectors):
  - PDR Pty Ltd trading as Fitzgerald's Irish Bar;
  - Vardaro Nominees Pty Ltd trading as Barbados;
  - Croweaters Pty Ltd trading as Prince of Wales Hotel;
  - Casella Enterprises Pty Ltd to trade as Sala Wine Lounge;
  - Mayne Enterprises Pty Ltd, Vanessa De Bono, Jennifer Mayne, Mark Mayne and William Mayne trading as the Burlington Hotel; and
  - Bismite Pty Ltd trading as Indian Ocean Lounge Bar & Bistro.
4. Both Vardaro Nominees Pty Ltd and Casella Enterprises Pty Ltd subsequently withdrew their objection.
5. Pursuant to ss 13 and 16 of the Act the application will be determined on the papers. The submissions of the parties are briefly summarised below.

### **Submissions on behalf of the applicant**

6. The applicant, who currently operates the award winning *Vat 2 Restaurant* in Bunbury is seeking the conditional grant of a small bar licence to establish an intimate venue in the

Bunbury CBD offering a high class food and beverage service aimed towards mature drinkers and consisting of the following features:

- a premier waterside venue with views across the Jetty Baths;
  - a year round breakfast, lunch and dinner menu with a focus on small and share plates;
  - an extensive wine and beer menu, with a focus on local purveyors as well as a premium cocktail menu;
  - a reputation as an established South West events venue with annual beachside concerts featuring national and international music acts; and
  - an outdoor eating area situated at the front of the building on the footpath that passes by the bar.
7. The applicant intends on displaying an 'industrial vintage' theme with furniture consisting of quality, new and reclaimed items to create a warm and cosy feel.
8. In the applicant's Public Interest Assessment (PIA) submission lodged with the application the applicant submitted the following:
- the director of the applicant company has 25 years experience in managing and owning venues and speaks volumes for her capacity and capability in establishing and managing safe dining and drinking venues for the South West community;
  - the city of Bunbury is considered 'inner regional' according to the Accessibility/Remoteness Index of Australia and is the third largest city in Western Australia;
  - the venue will focus on the provision of a quality alcohol service, matched to the South American flavoured food menu and the overall aesthetic of the venue;
  - the wine list will feature both local and South American wines, focusing on those products from smaller producers and those that utilise organic practices, with the aim of showcasing liquor products for less well known producers throughout the region;
  - there will also be an assortment of international and craft beers including local tap beer that will change from month to month, evolving and adapting to the demand of the venue's clientele. Moreover, a quality spirit and cocktail menu will include items not seen elsewhere in Bunbury, including the serving of Argentinian punch in carafes;
  - a quality food service will be the feature of the venue at a standard seen in the applicant's other previous and current venues;

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- the applicant is committed to showcasing local musicians aimed towards solo, acoustic talent with the music creating a 'laid back' environment contributing to the ambience and aesthetics of the venue and being distinct from other music acts offered at other venues in the Bunbury CBD and within the locality;
  - it is the aim of the venue's aesthetic and quality food and drink service to appeal to a target clientele that have the following characteristics:
    - has an interest in quality food and drink;
    - is familiar with venues like *Yours and Mine* and seeks them out for an intimate and ambient dining and drinking experience;
    - is in their late twenties to late fifties; and
    - has a comfortable income.
9. The applicant proposes to trade during the following trading hours:
- Monday to Saturday: 11.30 a.m. to 12 midnight
  - Sunday: 11.30 a.m. to 10 p.m.
10. The applicant's PIA addressed the matters set out in s 38(4) of the Act stating that the locality relevant to this application includes the suburbs of Bunbury, South Bunbury, East Bunbury, Carey Park, and Vittoria and submitted statistical data<sup>1</sup> for the locality in respect of at-risk groups; tourist/visitor numbers; social health indicators in respect of alcohol related hospitalisations and deaths and crime rates, making the following observations:
- there are less children in the area when compared to the State average and the average median age of persons in the locality is greater than the State average;
  - there are less aboriginal and Torres Strait Islanders living in the locality when compared to the State average;
  - there are less 'couple families with dependents' in the locality, however, there are more 'one parent families' compared to the State average;
  - whilst it would appear at first glance that the locality is of a lower socio economic status than the rest of WA when comparing incomes and rent/mortgage payments, the cost of living in the locality is lower than the State at large. Moreover, lower weekly incomes can also be explained by the higher proportion of retirees in the

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<sup>1</sup> The suburb of Vittoria was not included within the statistics provided as the suburb does not have any residential dwellings located in it.

locality compared to the State as a whole with the assumption that these individuals are living on a pension or a lower income alternative to salary;

- whilst not as popular with interstate and international visitors as towns further south (the Margaret River wine region) Bunbury is a popular tourist destination; a gateway to the Ferguson Valley wine region and host to a number of popular events;
- the rate of alcohol-related hospitalisations in Bunbury for the period 2005-2009 was significantly higher for males (1.11 times) than the corresponding State rate. The rates of alcohol related hospitalisations for females, and for males and females combined were similar to the corresponding State rates;
- Bunbury is at risk of alcohol related harm, however, venues like this one proposed will contribute positively to addressing a change in the drinking culture in a city or town; and
- In respect of crime rates, when comparing the locality to southern metropolitan regions or other regional cities the crime rate of the locality is low.

11. The applicant also submitted the following in respect of the potential impact on the amenity and offence, annoyance, disturbance or inconvenience that may be caused:

- the population of Bunbury recorded in 2011 Census was recorded at just over 31,000 and it is forecast to grow to as much as 45,200 in 2026;
- the City of Bunbury has outlined future plans for the development of the Bunbury CBD, creating a vibrant tourist destination and atmosphere. The applicant's proposed venue would contribute to the vibrant atmosphere of the Bunbury city centre and contribute to lifting the profile of the Bunbury CBD among the tourist population;
- the venue is located just over 300 metres from the Bunbury Bus Station with services running to the station until 7 pm weekdays; 6 pm on Saturday and 4 pm on Sundays and public holidays. Moreover, services run from the station until 9.30 pm weekdays; 8.30 pm on Saturday and 4.30 pm on Sunday and public holidays;
- a recently upgraded taxi rank is located approximately 100 metres from the venue, including improved CCTV in the location and additional lighting;
- street parking is available on Victoria Street; an additional 301 bays in the immediate vicinity and a further 109 bays available on Wellington Street;
- the proposed venue will contribute positively to the aesthetic of the Bunbury CBD adding character and charm to the streetscape through its proposed features both internally and externally;

- the immediate surroundings of the proposed venue are not residential or sensitive to the business of a small bar and considering the number of loud pub and nightclub venues within the immediate vicinity of the proposed premises the negative impact of the venue will be minimal;
  - the proposed venue will not house pool tables or a dance floor or other features that generate excessive noise;
  - the targeted clientele are those who will be drawn to a venue with a quality drink and food menu and of a design that encourages intimate conversation with friends and family;
  - the increase in staff and CCTV provided by the proposed venue can only increase the security in the immediate area; and
  - according to the WA Planning Commission's Designing out Crime Planning Guidelines opportunities for crime are reduced by increasing the range of activities in public spaces.
12. The applicant also specified other licensed premises nearby to the proposed premises arguing that the proposed venue will bring real diversity to the area and offer an intimate dining and drinking environment.
13. The applicant submitted a number of strategies in order to reduce the harm or impact that may be caused to patrons or the surrounding businesses. A risk assessment report was also carried out by the applicant. The applicant also submitted a number of trading conditions it would commit to if the licence was granted in order to minimise harm including seating for patrons; restrictions on selling liquor that encourages rapid consumption and the sale of energy drinks; CCTV monitoring; and the provision of a full menu during all trading hours.
14. To demonstrate that the grant of the application will cater to the requirements of consumers (objects 5(1)(c) and (2)(a) of the Act) the applicant submitted 40 witness questionnaires and a number of letters of support from local businesses.

#### **Submissions on behalf of the Commissioner of Police**

15. The Commissioner lodged a Notice of Intervention in order to provide information to assist the licensing authority in making an informed decision. The Commissioner intervened on the grounds that if the application was granted and conditions not imposed, public disorder or disturbance would be likely to result. Accordingly, the Commissioner submitted that if the licence was granted conditions relating to trading hours, seating, restriction on the number of patrons, dress standards, the provision of CCTV, and the responsible service of liquor should be imposed on the licence in order

to minimise any potential negative impact that may result from the grant of the application.

### **Submissions on behalf of the Objectors**

16. The Objectors lodged an objection based on the grounds that the application would not be in the public interest or would otherwise be contrary to the Act and submitted the following:

- the applicant's PIA reveals that apart from the City of Bunbury, there has been little or no consultation with various statutory authorities and the community;
- the Liquor Enforcement Unit (LEU) has stated that that the proposed premises at the Victoria Street location falls within the notorious triangle in the Bunbury CBD, which has the second highest level of alcohol related anti-social incidents in Western Australia; and
- the applicant has failed to examine the 34 existing services and facilities (excluding liquor stores and producer licences) within the locality and the impact an additional licence would introduce on an economic, social and community basis;
- the existing services and facilities in the locality are multi-levelled with many of the outlets updating their licensed premises to incorporate facilities such as small bars and boutique sections of licensed premises to create a more intimate and sophisticated ambience, including:
  - a matrix of different food and beverages who have their origin in many different countries, not just Australia, and diverse food menus ranging from finger foods to fine dining;
  - variable trading hours being virtually 24 hours a day at the different venues;
  - diverse and broad entertainment ranging from intimate small boutique bars/restaurants to nightclub loud styled music;
  - accommodation, on licensed premises where the licence provides a diverse range of meals from breakfast to dinner for both lodgers and patrons visiting the hotel;
  - the provision of liquor for consumption on and off the licensed premises; and
  - function facilities available for special events and small to large gatherings;
- the locality is adequately serviced, if not, over serviced by the existing licensed premises and hospitality outlets, including unlicensed restaurants and cafes, some of which are in close proximity to the proposed premises;

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- little is known of the services and facilities to be provided by the applicant beyond quality food being a major feature and the provision of entertainment except local solo or acoustic talent. The limited services and facilities to be available at the proposed premises are already fully catered for in the locality;
  - the services and facilities appear to be that of a defacto restaurant, which services and facilities are already catered for in the restaurant, hotel and taverns within the locality; and
  - there is no substantive evidence from the applicant to show there is a consumer requirement at the proposed premises as the market survey submitted by the applicant is flawed in that the survey questionnaire was distributed to a small “supportive” section of the community.
17. The Objectors listed the licensed premises located within the locality and also provided a comparison of the services and facilities between a limited number of restaurants with liquor without a meal permits existing in the locality and the applicant’s proposed premises, arguing that a review of these restaurants shows that a number of the restaurants already provide the key products and services proposed by the applicant.
18. Statistical data was submitted by the Objectors comparing the locality and the State and submitted that the incomes of those who reside in the locality are well below the WA statistical average. According to the Objectors, given the applicant’s target client being people with ‘comfortable incomes’ it is unclear as what geographical area the applicant’s target market will be drawn from.
19. According to the Objectors the applicant has failed to provide the most recent data on alcohol-related hospitalisations in the City of Bunbury. The Objectors submit that the level of alcohol-related hospitalisations are statistically significantly higher in the locality than the WA statistical average and has been over a long period of time.
20. The Objectors also submitted the following:
- the introduction of the applicant’s proposed premises will result in a duplication of services and facilities in the locality, which will cause detriment to the existing operators of the outlets. This will lead to a diminution of their existing services and facilities, causing unnecessary economic detriment to these operators and is not in the public interest. Moreover, it will lead to an increase in anti-social behaviour and general larrikin behaviour in the notorious triangle;
  - the proposed small bar and any new outlets will have a deleterious impact on the outlets in the area and will result in a loss of revenue for existing outlets and lead to

certain outlets becoming financially marginalised and others resulting in inadequate and a lower level of services being provided; and

- the reduction in the existing, good and broad range, of services/facilities on the consumers will impact negatively on the locality.

#### **Responsive submissions on behalf of the applicant**

21. The applicant submitted further evidence in support of the application and to demonstrate a consumer requirement including 809 hard copy surveys; an online petition containing 551 responses in support of the application; various media articles showing positive support for the application and further letters of support.

#### **Responsive submissions on behalf of the Objectors**

22. The Objectors also submitted witness statements from Directors of the licensee companies operating Fitzgerald's Irish Bar and Prince of Wales Hotel, including information relating to existing licensed premises located in the area, particularly restaurants.
23. According to the Objectors the applicant has not provided sufficient evidence in respect of the positive and negative aspects of the application or that any consumer requirement currently exists for a small bar licence.
24. In contrast, the Objectors submit that the evidence they have submitted does not show there is a consumer requirement in the locality for a small bar; there is already a diverse and broad range of services and facilities existing within the locality that meet the expectations of a broad range of different groups; the competition between the licensed outlets is fierce, to the point where certain of the business operations are being marginalised; there is a clustering of licences in the area described as the triangle, which clustering is causing some difficulties in the area and has reached saturation point.

#### **Closing submissions on behalf of the applicant**

25. In response to the submissions lodged by the Objectors, the applicant submitting the following:
  - the proposed small bar will respond to an overwhelming demand by the community for venues of this nature;
  - Bunbury is no longer a small coastal town but rather a thriving growing city with a diverse community seeking out mature, exciting and unusual venues like those that can be sampled in other cities;



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- the 'country pub' with its live acts, pool tables and TAB will always have its place in the regions but consumers are entitled to greater choice, particularly where there is the population growth to sustain all ventures;
  - the objectors are short in their vision for the City of Bunbury and objected out of fear rather than seeing this new venture as an opportunity to bring new patrons to the CBD, those currently not catered for; and to grow the City's tourism potential. Bunbury is much more than a stop on the way to Margaret River and it is time for local operators to grow with consumers changing demands and not allow the City to be left behind while the rest of the South West flourishes;
  - the argument by the Objectors to the establishment of a new small bar in the 'notorious triangle', where the Objector's licensed premises operate is ironic given that the proposed venue is not yet operational and therefore the conclusion must be drawn that the objecting venues themselves are responsible for the existing problems;
  - there is not an 'existing, good and broad range of services' in the area and with steady population and economic growth and an absence of small bars currently in the locality, this can only mean that current venues are not meeting the consumer need. If venues are in decline, the responsibility of this rest with the venues and their owners;
  - venues like the applicant's proposal have the capacity to promote a more responsible drinking culture in the City of Bunbury; and
  - the Objectors have attempted to unobtrusively masquerade their commercial interest as 'public interest', however, commercial interest is not grounds for objection.
26. The applicant also argues the PIA submitted lists the existing services within a 500 metre radius of the proposed premises with some licensed premises the Objectors refer to falling outside this area. Moreover, the PIA extensively describes the impact on amenity from an economic, social and community perspective.
27. Further statistical data was submitted by the applicant comparing the population numbers between Perth (postcode 6000) and Bunbury arguing that the area within Bunbury is not over-serviced. In addition, the applicant referred to information on the South West Development Commission's website evidencing population growth in the South West, including Bunbury with the biggest expected population increases to be in the Shire of Busselton and the Greater Bunbury area.

### Closing submissions on behalf of the Objectors

28. The Objectors reiterated the same arguments previously made and further added that there is a large number of restaurant licences in the locality that are permitted to serve liquor without a meal by way of a permit and the applicant's proposed premises will provide similar products and services to these restaurants and therefore, there is no consumer requirement for the proposed premises in the overtraded, high 'outlet density' area.

### Determination

29. An applicant for the grant of a small bar licence must, pursuant to ss 38(1) and (2) of the Act, satisfy the licensing authority that the grant of the application is in the public interest. 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).

30. 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."*

31. The scope and purpose of the Act can be ascertained from its objects, which are set out in s 5. The primary objects of the Act 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.

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32. Pursuant to s 33 of the Act, the licensing authority must deal with each application on its merits 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).
  33. The licensing authority is entitled, but not bound, to take into account the matters set out in s 38(4) of the Act as part of the public interest considerations.
  34. The applicant seeks the conditional grant of a small bar licence to be located in the Bunbury CBD to establish an intimate venue displaying an 'industrial vintage' theme and offering a high class food and beverage service aimed towards mature drinkers.
  35. The applicant has provided submissions relating to the proposed style of operation. Moreover, the applicant has included evidence that the grant of the application will cater to the requirements of consumers for liquor and related services.
  36. Having regard to the applicant's evidence as a whole, I am satisfied on the evidence submitted by the applicant that the grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act.
  37. However, all parties have provided information relating to the existing level of alcohol-related harm or anti-social behaviour in the area. The Commissioner has recommended conditions to be imposed on the licence if granted in order to reduce the likelihood of public disorder or disturbance from occurring.
  38. In carrying out its functions under the Act, the licensing authority is obligated to have regard to the primary and secondary objects of the Act (refer to *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227).
  39. Catering to the requirements of consumers for liquor and related services and facilitating the use and development of licensed facilities, reflecting the diversity of the requirements of consumers are amongst the objects of the Act. However, minimising alcohol-related harm in the community is also one of the primary objects of the Act.
  40. In my view, the evidence submitted establishes that there are competing interests in respect of the promotion of the objects of the Act and therefore, the licensing authority is required to weigh and balance those interests (refer *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258). In *Lily Creek Ipp J* stated that it is significant that the primary object in s 5(1)(b) is to 'minimise' harm or ill-health, not to prevent it absolutely. Although harm minimisation is a primary object of the Act it does not necessarily mean that where harm or ill-health may be caused to people by the grant of a licence, no licence should be granted. However, the potential of harm or ill-

health to people, irrespective of whether the harm or ill-health is proved on a balance of probabilities, is a powerful public interest consideration.

41. The weighing and balancing of the competing interests depends on the degree of importance to be attributed to each of the relevant factors in the proven circumstances of a particular application and involves an element of predicting the future (refer *Malec v JC Hutton Pty Ltd* (1990) 169 CLR). Therefore, it is necessary that I consider the level of alcohol-related harm which is likely to result from the grant of the application and whether the possibility of harm or ill-health is of such a serious nature for the application to be refused.
42. I accept the evidence in respect of the level of alcohol-related hospitalisations being higher in the locality compared to the WA average and acknowledge that crime rates in the locality in comparison to the other southern metropolitan regions or other regional cities are low. Conversely, I accept the evidence submitted by the applicant in respect of the positive aspects of the proposed venue and the overwhelming demand by the community for the establishment of a venue proposed by the applicant that will offer a quality food and drink service in an intimate and ambient dining and drinking environment.
43. Having considered the information presented by all parties I am of the view that the existing level of alcohol-related harm in the locality of the proposed small bar is no more than that which is commonly accepted in the community. Moreover, no evidence has been submitted that would suggest the proposed venue will contribute to the existing level of alcohol-related harm in the locality. In any event, both the Commissioner and the applicant have submitted trading conditions should the licence be granted in order to minimise any potential impact.
44. Therefore, for the above reasons I consider that the potential risks associated with the grant of the application are outweighed by the likely benefits to the community, now and in the foreseeable future.
45. In accordance with s 73(10) of the Act, the burden of establishing the validity of any objection lies on the objector. Commercial interests and competition is not a ground for objection under the Act. In any case, the Objectors have failed to lodge any compelling evidence to suggest that certain services and facilities may diminish as a result of the application being granted. Moreover, comparing a restaurant licence (without or without a permit to sell liquor without a meal) to a small bar licence is flawed as the fundamental difference between the two is that a restaurant licence, pursuant to s 50 of the Act, is subject to a condition that the business conducted at the licensed premises must consist primarily and predominantly of the regular supply to customers of meals to be eaten there. This is different to a small bar operator proposing to offer food at all times, which is not a requirement of the Act. Therefore, the objection is not made out.

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46. As mentioned earlier, the applicant and Commissioner have each proposed various conditions to be imposed on the licence. In this case I consider it necessary to impose general harm minimisation conditions relating to security; responsible service of alcohol; music restrictions; seating; and the availability of food to help mitigate the risks associated with the operation of the premises in this location.
47. In terms of seating capacity, I concur with the information submitted by the Commissioner that the provision of seating for patrons at the proposed premises will assist in the avoidance of alcohol related disturbance and annoyance to those frequenting the premises. It is well documented that patrons who are seated to consume food and alcohol do so at a more relaxed pace. However, I am also mindful of the limitations on the premises set out in the Building Code of Australia in respect of maximum patron numbers and seating requirements as specified in the report from the Inspector of Licensed premises. Therefore, I consider it necessary to impose a seating capacity for 40 persons, except during pre-arranged functions or events; a maximum number of patrons permitted inside the licensed premises to 70 at any one time and no more than 75 patrons at any one time on the entire licensed premises (including the alfresco dining area).
48. Accordingly, I am satisfied on the evidence submitted that the grant of the application is in the public interest and that the applicant has complied with all the statutory criteria, requirements and conditions precedent to the application being granted. Therefore, a small bar licence is conditionally granted to the applicant subject to the following:
- a Certificate under s 39 of the Act being lodged before the operation of the licence;
  - compliance with the *Local Government Act 1960*, *Health Act 1911* and any written law relating to the sewerage and drainage of these premises;
  - all work being completed within twelve (12) months by in accordance with the plans and specifications dated 17 November 2014;
  - 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;
  - a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
  - the applicant seeking confirmation of the grant on or before 26 March 2016 pursuant to s 62(4)(c) of the Act.

49. When the licence commences operation it will be subject to the following conditions:

Trading hours

1. The permitted trading hours are as follows:

- Monday to Saturday: 11.30 a.m. to 12 midnight;
- Sunday: 11.30 a.m. to 10 p.m; and
- Good Friday: 12 noon to 10 p.m., but only for liquor sold ancillary to a meal supplied by the licensee.

No trading is permitted before noon on ANZAC Day.

2. The applicant is permitted to sell and supply liquor in accordance with s 41 of the Act as it relates to small bar licences.
3. The sale or supply of liquor for consumption off the licensed premises is prohibited.
4. The licensee must maintain an 'industrial vintage' theme at the licensed premises.
5. The maximum number of patrons permitted to be inside the licensed premises at any one time is 70 and no more than 75 patrons at any one time on the entire licensed premises (including the alfresco dining area).
6. Seating for 40 patrons shall be set up at all times, except during pre-arranged functions and events.
7. Food must be available at all times when liquor is being sold.
8. Low strength beer and non-alcoholic drinks must be available at all times.
9. The sale of liquor in jugs is prohibited.
10. The sale and supply of beverages in such a way that would encourage rapid consumption of liquor (e.g. but not limited to; unadulterated spirits or liqueur in a shot glass); or drinks known as 'laybacks', 'shots', 'shooters', 'test tubes', 'jelly shots', 'blasters', or 'bombs' or any other emotive title, is prohibited.
11. The offer, promotion or advertising of free or reduced price liquor, or any promotion or practice that may encourage irresponsible drinking is prohibited.
12. 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.

13. Music is not permitted to be played through speakers in the alfresco area or external areas of the premises.
14. The following dress standard applies during the permitted trading hours:
  - Jackets, or other clothing or accessory, bearing patches or insignia of any Outlaw Motor Cycle Gangs, not limited to but including the following listed Gangs, are not permitted to be worn on these premises at any time:
    - Coffin Cheaters
    - Comancheros
    - Club Deroes
    - Finks
    - God's Garbage
    - Gypsy jokers
    - Outlaws
    - Rebels
    - Mongols
    - Hell's Angels
    - Rock Machine
    - Bandidos
    - Lone Wolf
15. A CCTV video surveillance system that records continuous images throughout the premises including all entrance and exit points to the premises shall operate and allow for clear identification of patrons. Images that are recorded are to be retained for 28 days and made available to Police or other persons authorised by the Director of Liquor Licensing.

#### 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.

#### 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.

#### **Application for an Alfresco Dining extended trading permit**

7. The applicant also sought approval pursuant to s 60(4)(h) of the Act to operate an alfresco dining area on the footpath adjacent to the premises permitting the sale, supply and consumption of liquor in that area.

8. Accordingly, the application is granted pursuant to s 60(4)(h) of the Act subject to the applicant lodging approval from the City of Bunbury prior to the issue of the liquor licence. The extended trading permit will be subject to the following conditions:

1. The permit will authorise the licensee to sell and supply liquor to a person within the area outlined in yellow on the plan date as specified by the licensing authority for consumption in that area.

2. The trading hours in respect of this permit will be same hours as specified in the liquor licence.

3. The serving of alcohol will be limited to table service by staff of the licensee.



4. The permit will be valid for a period of 5 years provided the approval from the City of Bunbury for the alfresco dining area remains current.

General

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

The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.

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.

This matter has been determined by me under delegation pursuant to s 15 of the Act.



Richard Gregor  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING  
26 March 2015