

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

- Applicant:** OPP Entertainment Pty Ltd
(represented by applicants Mr Ashley Ratten, Director and Ms Lindsay Marie Carroll, Company Secretary)
- Intervener:** Commissioner of Police
(represented by Mr James Bennett of State Solicitor's Office)
- Objectors:**
(not present at the hearing):
Burnells Pty Ltd
Garry Robert Strong
John Raymond Waddell
Bekhor Group
David James Hartree
Lorrel Ann Aphthorp
Jean-Paul Aphthorp
Cherilyn Miranda Randolph
Despina Litis and Jade Rubino (Venn Building)
Peter Bell as trustee for the Bridge Nine Trust and
Antonio Tricarico as trustee for the Jewel Trust Partnership
Club Capitol Pty Ltd
Alltop Holdings Pty Ltd
Giadina Pty Ltd
Hollywood Pty Ltd
- Commission:** Mr Jim Freemantle (Chairperson)
Mr. Eddie Watling (Deputy Chairperson)
Mr Seamus Rafferty (Member)
- Observers:** Sergeant Trevor Atkins of WA Police
Senior Sergeant Howard Kelly of WA Police
- Date of Hearing:** 18 April 2012
- Date of Determination:** 18 April 2012

Date of reasons published:

3 May 2012

Premises:

Club Mansion, 20 Queen Street, Perth

Matter:

Application for review of a decision of the Director of Liquor Licensing pursuant to section 25 of the *Liquor Control Act 1988*

Premises:

Club Mansion

Determination:

The application is refused

Authority considered in determination:

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

Background

- 1 On 20 May 2011, OPP Entertainment Pty Ltd lodged an application for the conditional grant of a nightclub licence before the Director of Liquor Licensing (“the Director”) for premises to be known as Club Mansion and situated at 20 Queen Street, Perth.
- 2 On 22 June 2011, the Commissioner of Police (“the Police”) lodged a notice of intervention.
- 3 On 29 June 2011, the Executive Director of Public Health (“the EDPH”) lodged a notice of intervention.
- 4 On 29 June 2011, 30 June 2011 and 1 July 2011 the applicant lodged letters of support from representatives of three retail businesses in the Perth CBD – these were additional to fifteen letters of support included with the Public Interest Assessment (“PIA”).
- 5 Over the period 1 July 2011 to 6 July 2011, twelve notices of objection were lodged – refer list of objectors at page 1.
- 6 Further submissions were received from a number of the objectors and the EDPH during December 2011.
- 7 On 22 December 2011, the applicant lodged a final submission in response to the objections that had been lodged.
- 8 On 23 January 2012, the Director issued a determination refusing the application on the basis that the applicant had not satisfied on the balance of probabilities that the granting of the application is in the public interest.
- 9 On 16 February 2012, the applicant lodged with the Liquor Commission (“the Commission”) an application for review of the decision by the Director. The grounds of the application being:
 - a) the Director erred in refusing to grant the application due to a misapplication of the public interest test and has acted contrary to the legislative intent of section 38 of the *Liquor Control Act (1988)* (“the Act”);
 - b) evidence submitted by the applicant in support of the application was inappropriately discounted and not afforded proper weight by the Director;
 - c) evidence submitted by the interveners (EDPH and Police) was inappropriately preferred by the Director and was not adequately contextualised to the particular proposed premises the subject of the application;

- d) the Director has failed to properly weigh the harm minimisation objects against other primary, relevant considerations and in doing so has adopted an unsatisfactory 'zero risk' approach;
 - e) the objection of Jean-Paul Apthorp and video records submitted in support of that objection were inappropriately relied upon by the Director.
- 10 A notice of intervention in respect of the application for review was lodged by the Police on 21 February 2012.
- 11 During April 2012, submissions to the review were lodged by the applicant and the intervener.
- 12 A hearing before the Commission was held on 18 April 2012.
- 13 After the hearing the Commission refused the application as it had concerns about the proposed location. The Commission now publishes its detailed reasons for its determination.

Submissions on behalf of the applicant

- 14 A PIA and a range of other supporting documentation had been submitted with the application setting out that Club Mansion:
- is a unique premises to Perth and can be differentiated from other licensed premises in the locality in regard to services, accessibility, harm minimisation strategies, fit-out and presentation;
 - will provide cultural and social services for not only residents of the locality, but the greater Perth metropolitan area;
 - will cater to the growing population of Perth;
 - will cater to the patrons residing outside the CBD who wish to enjoy premium products and services;
 - will assist in the development of tourism and will provide greater exposure to fashion and music performances, along with other cultural activities Perth is home to;
 - will be operated in a manner which ensures that no harm or ill health is caused, in particular the proposed fit-out and design will be critical in this regard;
 - is well serviced by public transport and has an abundance of parking facilities in close range;

- will be managed by operators from good family backgrounds who are committed to ensuring harm or ill health is not caused to patrons or the locality;
 - has been supported and welcomed by residents of Perth and key stakeholders;
 - will enforce stringent harm minimisation strategies;
 - will not operate in the manner of traditional nightclub venues, and will offer key additional services such as food and table services; and
 - will practice at all times the responsible service of alcohol and will liaise with the Drug and Alcohol Office and the Liquor Enforcement Unit on an ongoing basis to ensure the most effective harm minimisation strategies are practiced.
- 15 The applicant proposes to provide a state of the art high profile entertainment venue with services that are for the elite market and cultural savvy clientele. Club Mansion will be a themed venue, much like an upmarket Parisian style lounge and bar, where patrons can enjoy a high quality evening out to socialise and receive quality services and a premium product range.
- 16 Although Club Mansion will have the ability to house a maximum of 786 patrons, for operational purposes the maximum allowable capacity will be reduced to 650 patrons.
- 17 It was submitted that Club Mansion will appeal to the same high income, urban professional consumer which the new culture of small bar establishments attracts. This demographic currently has very limited high quality options post-midnight.
- 18 Tourists, both national and international are also likely patrons of Club Mansion due to the premises' strong ties with fashion, music and cultural aspects of the Perth CBD.
- 19 It was submitted that the unique aspects of the venue are;
- the venue is to be themed in a mansion style setting and consistent throughout. This is currently unavailable in any existing licensed entertainment venue in Perth;
 - addition of personalised and specialised table service through designated areas of the venue, with the inclusion of designated hostesses/waitresses for each table;
 - state of the art lighting and design, in a tasteful and classic manner;

- high quality restroom facilities, with the inclusion of bathroom attendants monitoring cleanliness, whilst also supplying patrons the use of a variety of perfumes, colognes and mints. This service is not currently available in any venue in Perth. The applicant believes that this service boosts the exclusivity and class of the proposed venue, whilst providing a hygienic and clean bathroom area;
- extensive and specialised non-alcoholic beverage selection, with the addition of a dessert and milkshake bar, not seen in Perth before;
- purse safes located in each lounge area of the mezzanine level;
- lighting and sound control in each booth area of the mezzanine level;
- provision of tapas style/canapé and basic menu, not often seen in traditional nightclub environments;
- all staff are easily identifiable in uniforms and name badges, fitting with the theme throughout the venue;
- a strict and high class dress code will be enforced at all times, encouraging a more mature demographic.

20 The PIA included further details in relation to:

- target market;
- product and service offering;
- food services
- entertainment and entertainment ancillary services;
- table service;
- bathroom service;
- license category and proposed trading hours;
- dress code;
- staff;
- harm minimisation strategies; (2100 hours to 0259 hours (sic.) on a Friday and Saturday)
- security; and
- premises design.

21 As well as providing letters of support, the applicant established an online and manual petition which collected a total of 1183 signatures of support for the proposed venue.

22 In regard to trading hours, the applicant advised a proposed closing time outside the historically high risk time (2100 hours to 0259 (sic) hours on a Friday and Saturday) in the direct area by ceasing to operate at 0400 hours with a 0300 hours lockout.

- 23 The applicant submitted that the later closing time will provide relief for taxi and food services; will assist in increasing the diversity of the licensed premises in the Perth CBD area; and will relieve frustration for patrons.
- 24 To further contribute to the management of potential anti-social activities in the area the applicant will provide:
- increased lighting onto Queen Street;
 - addition of continuous CCTV to assist with identification of offenders and furthermore deter potential offenders;
 - increase vibrancy with a high class patronage onto Queen Street which in turn will add more eyes onto the street and potentially discourage these crimes from taking place.
- 25 During the hearing the applicant advised that managing the outside area would be integral to the operations of the business.
- 26 It was submitted that the Queen Street premises and location were ideal for the proposed business and was selected as the best of four site options considered in the Perth CBD. In time, with the development of Perth Arena and the Perth foreshore project, Queen Street would provide a natural pathway between the two precincts.
- 27 The applicant proposes to provide a valet parking service and also negotiate with the neighbouring parking complexes to extend trading periods to be consistent with the operating hours of Club Mansion.
- 28 In regard to the narrow nature of Queen Street and its ability to cater for high traffic movements, it was submitted that there are many examples of laneway developments elsewhere which have been highly successful.

Submissions on behalf of Commissioner of Police

- 29 The validity of the online and manual petition submitted by the applicant was questioned due to the nature of its presentation. The wordage refers to the need for Perth to have a brand new, purpose built elite nightclub venue, without any indication of premises or location. As such the petition is of a very general nature and should be given a low weighting in the consideration of the application.
- 30 It was submitted that if this application was granted, public disorder or disturbance would be likely to result and further contribute to the alcohol-related problems occurring throughout the metropolitan area.
- 31 Perth CBD which is an area of high liquor outlet density, attracts large numbers of people to the locality and the granting of the proposed nightclub licence with an accommodation capacity of 786 patrons in a

high risk locality is of great concern to Police. Reported incidents and attendances indicate that the Perth Entertainment Precinct is already susceptible to alcohol related public disorder and harm.

- 32 Police Incident Management System and Computer Aided Dispatcher System data was submitted recording 612 incidents detected by Police in the 12 month period from 1 May 2010 to 30 April 2011 and 213 Police attendances over the same period in the immediate vicinity of the proposed premises.
- 33 It was submitted that an additional licence, in particular a late night nightclub venue, will have the propensity to exacerbate the existing alcohol problems in the area. The outlet density currently in this area is sufficient to service the needs of the public.
- 34 While the applicant has asserted that its management of the premises will ensure that no contribution is made to any existing anti-social behaviour in the locality, harm can arise irrespective of the strength of the management of licensed premises as a result of their location and nature. The question is not whether the licensee will trade responsibly, but whether the grant of the licence could contribute to public disorder or disturbance.
- 35 During the hearing the respondent confirmed that the main concern with the application was the proposed location, not the development concept.

Submissions on behalf of Executive Director of Public Health

- 36 The EDPH relies on the initial intervention submissions lodged at the time the application was before the Director.
- 37 The grounds of intervention are premised on the following factors:
 - the characteristics of the venue, which make it high risk for harm, including the large size of the premises (786 patron capacity), late night trading and the higher-risk licence type being applied for;
 - the granting of this application would increase the outlet density of licensed premises in the suburb of Perth, which already has a high outlet density;
 - there are high levels of alcohol-related harm occurring in the suburb of Perth, particularly late at night when the premises would be trading;
 - the existing high level of alcohol-related harm in the suburb of Perth is consistent with research, which shows outlet density of licensed premises and late night trading are associated with higher levels of alcohol-related harm; and

- the combination of risk factors that this application presents means there is greater potential for harm or ill health if this application was granted.

38 The EDPH submission made particular reference and provided additional comment to the potential harm and ill-health factors of the application associated with:

- the proposed large size of the venue incorporating 3 levels of bar operation;
- late night trading (albeit that management is amenable to a number of conditions being imposed);
- large areas of the premises being upright drinking space;
- the proposal to make such drinks as “shooters’ available even if not advertised;
- the lack of clarity as to entertainment style and the associated target market;
- level of alcohol-related harm already occurring in the vicinity of the proposed premises;
- lack of late night public transport options and increased risk of drink driving; and
- existing high outlet density in Perth – 176 active/conditional granted licensed premises.

39 It was submitted that the granting of a nightclub licence to Club Mansion does not support the minimisation of harm where the existing levels of alcohol-related harm occurring in the suburb of Perth are of concern.

40 Increasing the outlet density of a higher risk licence in this environment increases the likelihood of further harm occurring.

Submissions on behalf of the objectors

41 The twelve notices of objection lodged were all generally based on section 74(1)(g) of the Act which states:

that if the application were granted –

- (i) *undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would likely to occur; or*

(ii) *the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in some other manner be lessened.*

- 42 A number of the objectors referred to the proposed Queen Street location and the impact that a nightclub the size of Club Mansion would have on such a narrow roadway which already experiences a high level of anti-social behaviour related to alcohol consumption in the vicinity.
- 43 There was no representation of the objectors at the hearing and the Commission therefore relied on their written submissions before the Director.

Determination

- 44 Under section 25(2c) of the Act, when considering a review of a decision made by the director, the Commission may have regard only to the material that was before the director when making the decision.
- 45 On a review the Commission may, pursuant to section 25(4) of the Act:
- (a) *affirm, vary or quash the decision subject to the review;*
 - (b) *make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance;*
 - (c) *give directions –*
 - i. *as to any question of law, reviewed; or*
 - ii. *to the Director, to which effect shall be given;*

and
 - (d) *make any incidental or ancillary order.*
- 46 The Commission has considered all of the papers that were before the Director when making the decision (A219841 dated 23 January 2012) and heard the parties at the review hearing.
- 47 The applicant has presented a well-documented case to support the application to introduce a new nightclub concept for the Perth CBD area. Club Mansion is to be positioned in the market as an especially themed venue providing high levels of services and facilities with strong ties with fashion, music and the cultural aspects of the Perth CBD.
- 48 The applicant has submitted that Club Mansion will be a unique premises to Perth catering for the requirements of both the local market and interstate and overseas visitors.

- 49 In considering the application, the Commission recognises many positive aspects of the proposal including the intended management procedures aimed at minimising the harm and ill-health aspects associated with the location and the style of licence being sought.
- 50 The Police and EDPH interventions have drawn attention to the existing levels of harm, ill-health and anti-social behaviour in the locality resulting from alcohol consumption from current licensed venues and the adverse effects that will flow from increasing the liquor outlet density in the area.
- 51 The objectors similarly have expressed concerns as to the suitability of the Queen Street location for a licensed premises of this nature, which if approved will add to adverse impacts on the amenity of the area.
- 52 The online and manual petition which collected 1183 signatures of support, whilst giving an indication of the consumer requirement for the style of services and facilities to be provided by Club Mansion, was not location specific and very general in nature and as a consequence, carried a low weight in the Commission's deliberations.
- 53 The Commission acknowledges the level of support received for the project, particularly from the City of Perth which is seeking new developmental initiatives that will contribute to vitalising the city.
- 54 From the evidence presented in the papers and during the hearing, the Commission is concerned that Queen Street, being a narrow roadway, is not conducive to a development of this nature. It can be reasonably anticipated that with the approval of the Club Mansion application, Queen Street would be regularly subjected to a large number of persons being present in the area, significantly in the early hours of the morning and generally after the consumption of alcohol.
- 55 Both the Police and EDPH interventions have drawn attention to the existing high levels of alcohol-related harm, disturbances and anti-social behaviour in the immediate proximity to the proposed premises and despite the assurances of the applicant that an appropriate management structure will be put into place to minimise the impact, the Commission is not persuaded that the Queen Street location is such that adequate controls can be effectively engaged to the level that would meet the public interest requirements as specified in section 38(4) of the Act.
- 56 In discharging its functions under the Act, *"the mere possibility of harm or ill-health"* is a relevant matter for the licensing authority to consider (refer *Executive Director of Public Health v Lily Creek International Pty Ltd & Ors [2000] WASCA 258*).
- 57 The combination of the premises location, size of venue and existing level of alcohol related harm, disturbances and anti-social behaviour in the vicinity indicates that on the balance of probabilities, the granting of this

application for a nightclub licence at premises situated at 20 Queen Street is not in the public interest.

58 The application is therefore refused.

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a series of loops and a final vertical stroke.

JIM FREEMANTLE
CHAIRPERSON