

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

Applicant: Tybel Nominees Pty Ltd
*(represented by Mr Peter Fraser of Dwyer Durack
Lawyers)*

Interveners: Director of Liquor Licensing
*(represented by Mr Andrew Mason of State
Solicitor's Office)*

Commissioner of Police
*(represented by Mr Gregory Stockton of State
Solicitor's Office)*

Objectors in attendance: Mr Wyndand van Niekerk
Ms C J Jean

Other Objectors: Ms Jody Bart
Ms Kirsty-Lee McKenzie
Ms Della Foxglove
Ms Cate Vose
Mr Heath Pilton
Mr Jacobus Klopper
Mr Dean Groetzinger
Mr Gerold Lingg and Ms Irene Lingg
Ms Nicole Summers
Paster Phillip Chia on behalf of Zion Fellowship
Ms Caitlin Roper on behalf of Collective Shout
Ms Dahlia Messiha on behalf of Australia Christian
Lobby

Commission: Mr Michael Egan (Presiding Member)
Dr Eric Isaachsen (Member)
Ms Mara Barone (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of a decision by the delegate of the Director of Liquor Licensing to refuse an application to vary a condition of the tavern licence in relation to premises known as *The Sixty 30*.

Premises: The Sixty 30, 36 Baltimore Parade, Merriwa

Date of Hearing: 10 July 2017

Date of Determination: 14 November 2017

Determination:

By a decision of the majority of members of this Commission, Member Ms Mara Barone dissenting, the application to vary a condition of the tavern licence in relation to premises known as *The Sixty 30* is refused.

Authorities referred to in the majority determination:

- *Lonergan v The Commissioner of Police*, Unreported Supreme Court of WA, #960309, 12 June 1996
- *Keft v Fraser* Unreported Full Court of the Supreme Court of WA, #6251, 21 April 1986
- *Crowe v Graham* [1969] 121 CLR 375
- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Australian Leisure & Hospitality Group Pty Limited v Commissioner of Police* [2017] WASC 88
- *ALDI Foods Pty Ltd* LC 09/2017
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227

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

**REASONS FOR DETERMINATION OF MR MICHAEL EGAN
(PRESIDING MEMBER) AND DR ERIC ISAACHSEN (MEMBER)**

Background

- 1 On 17 June 2017, Tybel Nominees Pty Ltd (“the applicant”) lodged an application, pursuant to section 64 of the *Liquor Control Act* (“the Act”), seeking a variation to the entertainment condition attached to the applicant’s tavern licence in respect of premises situated at 36 Baltimore Parade, Merriwa and known as TheSixty30 (“the licensed premises”).
- 2 Under section 38(1) the Act, the Delegate of the Director of Liquor Licensing (“the Director”) determined that the applicant must satisfy the licensing authority that the grant of the application is in the public interest.
- 3 The application was advertised in accordance with the requirements of the Director and fourteen notices of objection were received from members of the public.
- 4 The Commissioner of Police (“the Police”) lodged a notice of intervention pursuant to section 69 of the Act.
- 5 The Director determined the application on the papers and published his decision on 27 February 2017 (decision reference: A206321).
- 6 The applicant lodged an application pursuant to section 25 of the Act seeking a review of the Director’s decision on 24 March 2017.
- 7 The Director lodged a notice of intervention in respect of the review application pursuant to section 69(11) of the Act on 21 April 2017.
- 8 The Liquor Commission of WA (“the Commission”) conducted a hearing of the review application on Monday 10 July 2017.

Submissions on behalf of the applicant

- 9 The original application “seeks to vary the entertainment condition imposed on the licence so that the reference to “immodest” is removed, permitting waitresses, barmaids and/or adult performers (the adult performers) to expose their breasts and/or wear lingerie underwear exposing a significant portion of their buttocks, in that part of the venue known as the “Dining Room””.

- 10 Subsequent to the lodgement of the application, the applicant agreed to accept a policy of the Director, partly attributable to health regulations, that any modification to the entertainment condition, if approved, would prevent “all bar staff and other persons who sell or serve liquor...from being immodestly dressed” – in other words, that waitresses and barmaids would not be permitted to be immodestly dressed.
- 11 The applicant, therefore, proposes to provide adult entertainment only. The entertainment, if approved, would be provided for a maximum of three sessions a week at unspecified times between Thursday and Sunday, inclusive, with each session not exceeding two hours.
- 12 According to the applicant, it is not possible to specify the exact times at which the entertainment will be held as this will depend on a range of factors including the booking of the adult performers.
- 13 It is proposed that the adult performances be conducted in the “Dining Room” at the licensed premises, which will be isolated by covering the two doors (and any windows) with curtains so that the entertainment is not visible from outside the room. Access to the room will be secured by posting an Approved Manager at the entrance.
- 14 Advertising of the entertainment will be limited to the entertainment service provider’s Facebook Page. Signage relating to the entertainment will be posted internally to the licensed premises so that patrons are aware adult entertainment is occurring and may make an informed decision about whether to attend and view the entertainment.
- 15 The licensed premises have hosted “skimpy’s entertainment” in the past (for approximately 8-12 months in 2014) under the existing entertainment condition. No incidents of anti-social behaviour were experienced at that time and it is submitted the grant of this application will not cause offence, annoyance, disturbance or inconvenience to residents, business owners or persons passing through the locality having regard to the fact that:
 - a) the applicant does not seek to increase trading hours, the size of the venue or the number of patrons the licensed premises may accommodate;
 - b) the entertainment is separate from the other areas of the licensed premises;
 - c) the entertainment will be performed in a controlled environment not visible from the exterior of the Dining Room; and
 - d) the licensee’s proven record of a zero tolerance to antisocial behaviour.
- 16 The applicant contends that the type of entertainment proposed is not associated with the greater consumption of liquor and that the grant of the application will have no impact upon existing levels of alcohol-related harm or ill-health.

- 17 The applicant characterises the licensed premises as “the neighbourhood local pub” largely attracting patrons who reside and work in the locality.
- 18 In contrast to a previous decision of the Commission to reject a similar application from the applicant in 2013, which the applicant contends was refused on the basis of the quality of the consumer requirement evidence, the applicant submits the evidence of the consumer surveys and patron statements lodged with the application on this occasion demonstrates “a strong demand” for the proposed entertainment.
- 19 The level of alcohol related harm occurring within the locality was considered by the licensing authority in decision A222528 (12 June 2013). Reference was made to the high rates of domestic and non-domestic assaults in the area, high rates of police attendances in the vicinity and the close proximity of various public facilities such as a nearby school, dance studio and retirement village. The applicant noted in its submissions that it was not aware of any changes to the level of offending, nor had there been any comment by the Police in this regard. The applicant noted that based on the above, it is open to the Commission to find that there is alcohol harm occurring in the locality, the data, however, being general in nature.
- 20 The applicant submits that in the circumstances pertaining to this venue and the licensee’s management record the grant of the application will not result in any harm, nor will there be any change in the existing level of harm.

Objections

- 21 The basis of the various objections from members of the public, including the nearby Cambrai Retirement Village may briefly be summarised as follows:
 - a) the potential adverse impact on nearby residents from noise, increased traffic, undesirable, rowdy and disorderly behaviour likely to be associated with entertainment of the nature proposed;
 - b) the reputation the tavern will develop for hosting adult entertainment, notwithstanding the limitations on external advertising, and the potential threat to young women, and negative impact on the well-being of the community generally;
 - c) the incongruence of the proposed entertainment with the residential nature of the locality and the close proximity of the community facilities, such as a retirement village, preschool, primary school, child care centre and children’s dance studio;
 - d) the conflict between the type of entertainment proposed and the initiatives undertaken by government, educational institutions, community

organisations and families to promote attitudes of respect towards women and gender equality in the community – in this regard, the nature of the objection is, perhaps, best encapsulated by one objector in particular, who states:

“nearby Merriwa Primary School (for example), has had, in the past, to confront many issues relating to family and domestic violence and abusive behaviours – as indicated in Education Department Audits (2010/11). While some considerable effort has been undertaken by parents and teachers to improve circumstances of entrenched cultures of disrespect, bullying and violence – this is an ongoing challenge which requires constant reinforcing and basic awareness of acceptable and empathic behaviours. Clearly none of these aspirations is in any way assisted by having any local venues employing young women for so-called “skimpy” work. The messages sent to young women and girls in the area are absolutely in strong contradiction to any efforts made to reduce the exploitation of women and girls...”;

- e) the exploitation of, and the potential harm to, women working in the sexualised entertainment industry in which women are viewed as sexual objects;
- f) the potential negative effects on all women, including strong links to violence against women;
- g) the association of the licensed premises with an entertainment provider that lists on its website sex acts, including live sex shows; and
- h) the offence and potential negative impacts the adult entertainment performances, if only by reputation, will cause the predominantly residential and family orientated community.

Intervention by the Commissioner of Police

- 22 The Police have intervened in the application pursuant to section 69(6)(c) of the Act, principally in relation to the times and days on which the adult entertainment is proposed to occur.
- 23 In the view of the Police, if the performance times are not mandated, any condition is virtually unenforceable.
- 24 It is submitted that it would be more appropriate to designate the time and day to ensure potential patrons become aware of the time the entertainment is provided to be able to choose an alternative venue should they be accompanied by children (who may be inadvertently exposed to the entertainment) or otherwise be affected by the entertainment.

- 25 The Police also submit it would be more appropriate to utilise licensed Crowd Controllers rather than an Approved Manager to monitor entry into the entertainment area, and control patron activity surrounding the proposed entertainment, particularly having regard to the fact some research suggests “a highly sexualised atmosphere has implications for aggression towards staff as well as patrons” (Graham and Homel (2008) “Raising the Bar”).
- 26 In addition, it is contended by the Police that:
- a) despite efforts to seek out female support for the application, the consumer evidence comprises survey responses from only a small percentage of the population in the locality, the majority of whom are male; and
 - b) while some females have expressed a willingness to attend the proposed entertainment, the small number is outweighed by those who will not attend or will decide to leave because of the nature of the entertainment.

Responsive Submissions on behalf of the applicant

- 27 In response to the various objections, the applicant submits that the majority can be characterised as moral objections to the proposed entertainment and that it is not the role of the licensing authority to pass moral judgement on the form of entertainment proposed.
- 28 The applicant points out that while one objector refers to reports detailing the experience of women who work in “strip clubs”, the proposal is not for a “strip club”. Rather, the application is to “host dance shows during the course of which the performers will expose their breasts and a portion of their buttocks”, and “similar dance shows have previously been held at the applicant’s venue, although the performers’ breasts and buttocks have been covered”.
- 29 The applicant also submits there has been no evidence presented to support the contention that:
- a) hotels and taverns that operate under a modified entertainment condition are associated with violence against women;
 - b) the proposed entertainment will result in increased domestic violence or negatively impact the community well-being or amenity;
 - c) intoxicated people in a sexualised environment place children of local residents at risk;
 - d) there will be an increase in the consumption of liquor by patrons who attend the performances;

- e) attitudes of the community will be influenced, impeding family relationships or the proposed entertainment will lead to the further breakdown of families;
 - f) the style of the proposed entertainment is associated with an increased risk of assaults, burglaries, robberies or theft of motor vehicles; or
 - g) “undesirable” patrons are attracted to the style of entertainment proposed.
- 30 In response to a concern from the Cambria Retirement Village that residents will be discouraged from having meals at the tavern, the applicant submits that :
- a) previous attempts by the licensee to promote the licensed venue as a family friendly venue have not been successful;
 - b) the demographic attracted to the tavern is blue collar workers; and
 - c) if families still come into the tavern, the applicant will exercise discretion and responsibility in scheduling the entertainment – for example, adult entertainment will not be scheduled on Mother’s Day or Father’s Day.
- 31 The applicant has also responded to the Police references and associated research relating to sexual aggression or inappropriate behaviour in discos and night club environments, observing that the situation described is a situation that would be applicable to any licensed venue patronised by single patrons – further, there is no evidence supporting a finding that dance reviews and performances of the type contemplated have been associated with any aggressive behaviours on behalf of patrons in the past, either towards performers or staff.

Intervention by the Director

- 32 The Director submits that there is insufficient evidence to establish there is a consumer requirement for the provision of the proposed entertainment so that the grant of the application could be said to be in the public interest, primarily on the basis:
- a) as has been observed in previous decisions of the Commission, surveys and petitions should be treated with a degree of caution;
 - b) the respondents to the survey did not seek out the type of entertainment proposed, but responded to an approach from the applicant;
 - c) it appears the respondents to the survey are solely persons who presently attend the licensed premises, not persons generally in the locality; and
 - d) the surveys and statements do not reveal the attitude of the local community to the proposal, but, rather, the only evidence of the general

public's attitude comprises the objections which are opposed to the application.

- 33 In any event, notwithstanding the consumer evidence, the Director contends when considering the broader public interest and the positive and negative impacts the grant of the application may have in the locality, rather than expressing "moral objections", many of the objectors have highlighted the negative implications of granting the application, particularly having regard to the characteristics of the locality.
- 34 Furthermore, the Director submits that there is no presumption that no harm will result from the grant of the application or that the grant of the application is in the public interest.
- 35 In this regard, the Director contends that the absence of any evidence of a risk assessment by the applicant of the likelihood of harm or of the potential impacts on "at risk" groups, and in light of the fact there is evidence of, at least, the possibility of an increase in harm, insufficient evidence has been adduced to discharge the onus on the applicant to satisfy the Commission the grant of the application will not, or is not likely to, cause harm or ill-health to persons in the locality.
- 36 Further, beyond the assertion the grant of the application is consistent with the proper development of the liquor industry by catering to a diverse range of requirements of consumers, including a diverse range of entertainment, the applicant has not demonstrated how the proposal can be said to contribute to the proper development of the liquor industry.

Applicant's Submissions in support of Review Application

- 37 The applicant highlights the written submissions relied upon before the Director commenting that as those submissions form part of the "material that was before the Director when making the decision", the submissions will continue to be relied upon for the purposes of the section 25 review.
- 38 However, the applicant has proceeded to raise what the applicant has termed a "preliminary issue" to be determined by the Commission, namely, "whether or not a performer revealing her breasts and/or buttocks at a performance which is operated in accordance with the trading conditions proposed by the applicant (i.e. in a controlled environment where the performance is viewed only by those present) is indeed "immodestly dressed"" ("preliminary issue").
- 39 In support of this preliminary issue, the applicant has referred to a number of Supreme Court decisions canvassing the meaning of indecency and immodesty and the circumstances in which the nature of the dress of a woman may be considered to be immodest (*Lonergan v The Commissioner of Police*, Unreported Supreme Court of WA, #960309, 12 June 1996) and the nature of

language used in a performance may be regarded as obscene (*Keft v Fraser* Unreported Full Court of the Supreme Court of WA, #6251, 21 April 1986; *Crowe v Graham* [1969] 121 CLR 375).

- 40 Relying on these precedents and the fact the proposed entertainment would be in a discrete area with appropriate signage and controlled ingress and egress, visible only to attendees, the applicant contends that the performers in the proposed entertainment would not be immodestly dressed, obviating the need to vary the current entertainment condition.
- 41 Aside from the preliminary issue, the applicant further submits:
- a) the consumer evidence demonstrates there is a “sub-section of consumers who have a requirement to view entertainment of the type proposed”;
 - b) the primary object of the Act, section 5(1)(c), is directed towards catering for the requirements of consumers not the requirements of the locality or community;
 - c) notwithstanding there is alcohol-related harm occurring in the locality, the crime data is general in nature;
 - d) there is no evidence that viewing a performance which contains partial nudity is associated with a greater consumption of liquor or anti-social behaviour – indeed, the evidence of witnesses who have attended the “skimpy shows” confirms this contention; and
 - e) given the absence of evidence of any increase in harm and lack of impact on amenity in the locality the grant of the application is in the public interest.

Responsive Submissions of the Director and Police

- 42 Both the Director and the Police have responded to the preliminary issue raised by the applicant in the following terms:
- a) the originating application before the Director is to amend the entertainment condition attached to the applicant’s tavern licence pursuant to section 64 of the Act by removing the term “immodest” and is premised on the understanding that the proposed entertainment is immodest;
 - b) under section 64, the Director and/or the Commission may impose, vary or cancel a condition attached to a licence;
 - c) the review application under section 25 of the Act empowers the Commission to affirm, vary or quash the decision of the Director (section 25(4)(a)) or make a decision in relation to the application that should, in the view of the Commission, have been made by the Director;

- d) by seeking a determination of the preliminary issue, the applicant is, in essence, inviting the Commission to make a declaration or determination as to whether the proposed entertainment is “immodest”, in an application for a review under section 25; and
 - e) it is not open to the Commission to make such a declaratory judgement as the Commission can only “affirm, vary or quash the decision the subject of the review” which in this case is the decision of the Director under section 64 of the Act to refuse the application for a variation of the entertainment condition.
- 43 In any event, the Director and the Police contend the authorities relied upon by the applicant are distinguishable from the present circumstances and the proposed entertainment is immodest in nature. In support of this contention, the Director and Police:
- a) refer to the following extract from the decision of Lonergan (supra) which held that immodesty:

“...is a matter to be determined in light of prevailing community standards of decency and propriety. They will be standards which ordinary decent minded people accept, and regard will be given to the nature and quality of the conduct, or in this case the dress, as well as to the motive or purposes of the act or person concerned and to all the circumstances in which the conduct occurs or the dress is worn.”
 - b) highlight the circumstances of the present application and point out the incongruence between the proposed entertainment and the suburban area, the close proximity of numerous community facilities and the fact some persons attend the licensed premises with their family; and
 - c) submit the proposed entertainment, in these circumstances, is immodest having regard to the prevailing community standards of decency and propriety.

Determination

- 44 Section 25(2c) of the Act provides that 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 under section 25 of the Act, the Commission may –
- (a) affirm, vary or quash the decision subject to the review; and
 - (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; and

- (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 In conducting a review under section 25, the Commission is not constrained by a finding of error on the part of the Director, but is to undertake a full review of the material before the Director and make its own decision on the basis of those materials (refer *Hancock v Executive Director of Public Health* [2008] WASC 224).
- 47 The Commission has considered the submissions from the applicant and interveners in respect of the preliminary issue posed by the applicant.
- 48 The submissions were not made to the Director at first instance.
- 49 As was also acknowledged by the applicant at the Commission hearing, the objectors to the originating application would not necessarily be aware of the submissions in relation to the preliminary issue.
- 50 Accordingly, aside from the issue of whether it is open to the Commission to determine the preliminary issue, there is a real prospect that some, or even all, of the objectors would be denied the opportunity to address or respond to the amended submissions made by the applicant in support of the proposed entertainment.
- 51 Furthermore, although the applicant's submissions on the preliminary issue are confined to legal argument based on previous decisions of the Supreme Court, the submissions are entirely inconsistent with the originating application to vary the entertainment condition pursuant to section 64 of the Act and, as indicated, were not put to the Director.
- 52 When considering a review of a decision made by the Director, the Commission is required to have regard to only the material that was before the Director at first instance (section 25(2c) of the Act).
- 53 Moreover, the application was made to review a decision made by the Director and, in this case, the Director made a decision to reject an application to vary the entertainment condition attached to the applicant's licence.
- 54 The Director was not required, in respect of the original application to direct his mind to determining whether the proposed entertainment could be undertaken without an amendment to the entertainment condition.

- 55 Certainly the Director was not asked to consider the submissions and authorities to which the applicant has now referred in its submissions as to the preliminary issue.
- 56 It was also noted by the interveners that even if the Commission was to make a declaratory judgement, which it is not empowered to do, such a declaration would not be determinative in a Court called upon to adjudicate on the issue.
- 57 The Commission has concluded that in the circumstances of this application it would not be appropriate to consider and determine the application on the basis of the preliminary issue, and make what, in effect, would be a declaratory judgement on whether or not the proposed entertainment contravenes the existing entertainment condition.
- 58 The applicant has pointed to the consumer evidence with regard to the proposed entertainment as evidence of the application catering to the requirements of consumers of liquor having regard to the proper development of the liquor industry (section 5(1)(c)) and facilitating the use and development of licensed premises to reflect the diversity of the requirements of consumers in the State (section 5(2)(a)).
- 59 The most recent Supreme Court decision providing guidance on the application of the provisions of the Act in determining applications required to satisfy the Commission that the grant of an application is in the public interest is *Australian Leisure & Hospitality Group Pty Limited v Commissioner of Police* [2017] WASC 88 (“the Maylands decision”).
- 60 In the Maylands decision, Banks-Smith J was required to consider the proper construction of, and matters relevant to, section 5(1)(c) of the Act. Her Honour stated:
- [67] “ . . . I consider s 5(1)(c) requires regard to be directed to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State in considering the issue of catering for consumer requirements.
- [68] *Catering for consumer requirements is not to be considered in isolation. The potential and opportunity for proper development of the industry (including change) is not to be ignored.*
- [69] *Assuming there is appropriate probative evidence, the words invite a broader ambit of matters to be considered as part of assessing the diversity of consumer requirement and how they are catered for.”*
- 61 Further, Her Honour went on to say:

[101] *Whilst the Commission may not view all matters raised by the appellant to be relevant to its decision making process, it is obliged to turn its*

attention to catering for consumer requirements and with regard to proper development. Some matters will be particularly important in that process. It is not appropriate that the court prescribe what they might be. It is a matter for the Commission and will depend upon the circumstances of any application. However, in this case, it would seem that the changing demographic of a community and the introduction of a different offering in terms of consumer choice and diversity are important matters for the evaluation and the Commission ought to have proper regard to them, which means not only stating conclusions but revealing an analysis of the relevance of those matters.

- 62 Accordingly, the Commission must evaluate whether the evidence before it is such that the granting of the application will cater for the requirements of consumers of liquor and related services and provide for the development of the liquor industry.
- 63 The evidence of consumer requirement in this application takes the form, in large part, of surveys completed by, and statements from, patrons of the applicant's licensed premises.
- 64 The description of the entertainment proposed is similar to the entertainment provided when "skimpy" shows were held at the licensed premises in 2014, albeit with exposure of the performers' breasts and a portion of their buttocks (which were covered during the previous events).
- 65 In May and June 2015, there was a survey of 80 regular patrons who also currently attended the venue to view adult entertainment – 44 recorded this attendance as 'weekly/fortnightly' and 36 as 'monthly/ occasionally'. The interest of the former grouping would be given greater weight in support of the application than those who attended less frequently.
- 66 In June 2016, there was a second survey of 35 regular patrons and 3 visitors. The amended wording of the survey did not enable the reader to discern if these patrons already viewed adult entertainment at the venue; however, it did ask if they would view the proposed entertainment and how often. Of the 35 regular patrons, 22 intended to view the entertainment 'weekly/fortnightly' and 13 intended to view the entertainment 'monthly/occasionally'.
- 67 A third survey occurred in June 2016 and was conducted by the entertainment provider. There were 35 responses where half were regular patrons at the premises. The responses were split 50:50 as to intended viewing on a 'weekly/fortnightly' or 'monthly/occasionally' basis. This survey is viewed by the Commission as providing very limited support for the proposed entertainment.
- 68 Overall, these surveys do provide a measure of the level of support for the proposed entertainment from consumers of liquor who patronise, or intend to patronise, the applicant's premises.

- 69 The patron statements accompanying the application express a common theme that the presence of “skimpy’s” and dancing events creates a more vibrant and socially interactive atmosphere, and support the proposed entertainment.
- 70 In assessing the surveys and statements, the Commission accords some weight to the evidence available; however, it falls short of being determinative.
- 71 Further, as was stated by Banks-Smith J in the Maylands decision (supra), catering for consumer requirements is not to be considered in isolation – the potential and opportunity for proper development of the liquor industry, the tourism industry and other hospitalities industries in the State must also be considered.
- 72 In this regard, there is little, if any, evidence on how the proposed entertainment, in the circumstances of this application and more generally in the locality and broader community, will contribute to the proper development of the liquor, tourism and hospitality industries in the State.
- 73 The Commission agrees with the submission of the Director that the applicant has not undertaken a comprehensive evaluation of the risk of harm or ill-health associated with the application. When considering the evidence, the Commission is of the view that the risk of an increase in the level of harm cannot be fully excluded, but, in all likelihood, the risk would be low.
- 74 The mere fact that the applicant has not applied for an increase in the number of patrons to be accommodated on licensed premises or for an increase in the hours of trading does not, of necessity, lead to a conclusion that the level of offence, annoyance, disturbance or inconvenience to people residing or working in the vicinity of the applicant’s premises will not be adversely affected.
- 75 Although the applicant has submitted the proposed entertainment is intended for existing patrons, there is some evidence from the patron statements that the type of entertainment proposed will result in an increase in attendance, at least at the times of the entertainment. In the event that a concentration of patrons did occur, then some inconvenience may result, even though the event and patron numbers are within the approved operating conditions of the licence.
- 76 It is difficult to predict the possible impact of the applicant’s proposal on the amenity of the locality. However, the application certainly does not involve and will not, in the Commission’s view, result in any improvement in the amenity of the premises or the services offered to the general community in the locality.
- 77 Although the applicant has indicated the promotion of the premises as a family friendly venue has been unsuccessful, the venue is regarded as the local neighbourhood pub frequented by people living in the area, and the licence and the premises cater for the requirements of a broad cross section of the local community by providing meals and other liquor related services.

- 78 Further, as has been submitted by the applicant, the proposed entertainment is but one component of the patron and revenue base for the licensed premises. The use of the premises by patrons will continue to be an important social facility for the community more broadly, whether or not the application is approved.
- 79 The existing entertainment condition prohibiting, among other things, persons on licensed premises from being immodestly or indecently dressed, or from taking part in, or performing, any entertainment in a lewd or indecent manner is a condition attached to most liquor licences and can, in the Commission's view, be said to reflect prevailing community standards, certainly in respect of licensed premises that are frequented by a broad cross section of the community. Those prevailing standards would not be altered by the conditions presented by the applicant; rather, the conditions are designed to prevent inadvertent offence taking place.
- 80 Although the Commission has not been persuaded that any of the objectors have discharged the onus on them to sustain their objection, the views of the objectors are capable, in the Commission's assessment, of being seen as a reflection of the prevailing community standard with regard to the performance of the type of entertainment proposed.
- 81 In all the circumstances and having regard to the limited evidence relating to public interest matters in support of the application, the Commission is not persuaded the applicant has discharged its onus to demonstrate that the grant of the application is in the public interest.
- 82 Accordingly, the application is dismissed and the decision of the Director is affirmed.



MICHAEL EGAN
PRESIDING MEMBER