

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: HYLIN PTY LTD
PREMISES: HYLIN
PREMISES ADDRESS: 3A, 178 RAILWAY PARADE, WEST LEEDERVILLE
APPLICATION NO.: 15211
NATURE OF MATTER: GRANT OF A SMALL BAR LICENCE

1. This is an application by Hylin Pty Ltd (“the Applicant”) for the grant of a small bar licence for premises to be known as *Hylin* and situated at 3A, 178 Railway Parade, West Leederville.
2. The application is made pursuant to ss 41 and 68 of the *Liquor Control Act 1988* (“the Act”).
3. The application was advertised in accordance with instructions issued by the Director of Liquor Licensing (“the Director”) and while no objections were lodged, a notice of intervention was lodged by the Commissioner of Police (“the Commissioner), pursuant to the provisions of s 69 of the Act.
4. Pursuant to ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties which are summarised below.

Submissions of the Applicant

5. To support the application and discharge its onus under s 38(2) of the Act, the Applicant lodged a Public Interest Assessment (“PIA”), which submitted that the proposed premises is both a low impact and low risk proposition. Furthermore, in an overview of the proposal, the Applicant identified that:

“West Leederville is a developing suburb, with numerous office and residential buildings under construction or receiving approvals to be built. Despite its proximity to the Perth CBD, there are limited licensed venues in the suburb of West Leederville itself. The attractive, inner city character of the houses in West Leederville, coupled with the commercial/light industrial and retail premises, makes it an ideal location for a cafe/small bar as the one proposed.

The 2011 Census data supports the finding that West Leederville is home to young professional couples, families and higher education students. The central location of West Leederville makes it an ideal location for people working in the City, West Perth and Subiaco, with this demographic set to increase as the new developments in West Leederville are completed.

Significant numbers of workers and visitors are attracted to, and pass through, the West Leederville locality, on a continuing and regular basis. In addition to the recent and continuing development of West Leederville, it is imperative that residents, workers and visitors to the area have a choice of cafes, eateries and small bars to attend and which cater to the diversity of consumer demand.”

6. It was also submitted that the target market for the premises will be people working in the nearby office buildings and local residents.

7. The Applicant further submitted that:

“...the Premises will cater to the requirements of consumers in the West Leederville area by providing consumers with a new and modern venue which offers delicious, healthy and fresh food, with the option of liquor beverages to be consumed on the premises, which is an object of the Act.

The tapas style dinner menu includes various sliders, baguettes and bagels, in addition to breads, dips, olives and cheeses and various sweet selections. The liquor selections will feature predominantly Australian beers and ciders, a selection of local Western Australian, Australian and overseas wines as well as a small selection of seasonal cocktails to complement the food.”

8. The Applicant’s PIA also contained submissions in relation to those matters prescribed in s 38(4) of the Act.

9. In order to demonstrate that the grant of the small bar licence will cater for the requirements of consumers for liquor and related services in the locality, the Applicant lodged:

(a) a petition bearing 123 signatures supporting the grant of the licence as being in the public’s interest; and

(b) 65 completed surveys supporting the concept of the premises.

Submissions of the Commissioner

10. The notice of intervention by the Commissioner made representations that the grant of the application, without the imposition of appropriate trading conditions, might lead to the premises having a negative impact on the community and therefore recommended the imposition of a number of conditions to assist in the amelioration of such negative impact.

Further submissions

11. The Applicant lodged further submissions on 19 January 2015 in which it stated that it was agreeable to significant trading conditions being imposed on the licence, if the application is granted, “as such conditions form part of its harm minimisation strategies”. This statement referred to the significant number of conditions the Applicant volunteered within their PIA, as well as two additional conditions requested by the Commissioner.

12. The Applicant's further submissions also sought to clarify its position regarding the overall trading hours of the business, which are wider than the hours sought for approval as permitted hours for the sale and supply of liquor.

Determination

13. An applicant for the grant or removal of a small bar licence must, pursuant to s 38(2) of the Act, satisfy the licensing authority that granting the application is in the public interest. The Act as a whole, establishes a regime for the control and regulation of the sale, supply and consumption of liquor. The Act does not proceed on the basis that there is a presumption in favour of a grant of a licence, rather the reverse, that an applicant must demonstrate that it is in the public interest that the application should succeed (refer *Woolworths Ltd -v- Director of Liquor Licensing* [2012] WASC 384).
14. 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).
15. In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:

"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."
16. Also, advancing the objects of the Act as set out in s 5 is relevant to the public interest considerations (refer *Palace Securities supra*). The primary objects of the Act are:
 - (a) to regulate the sale, supply and consumption of liquor;
 - (b) to minimize harm caused to people, or any group of people, due to the use of liquor; and
 - (c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
17. In addition to the objective support from the public for the grant of the licence, which includes both survey results and letters of support, I have also noted the following positive aspects of the proposal:
 - (a) the small number of patrons permitted at any one time (i.e. no more than 50 patrons at any given time); and
 - (b) the provision of food on the premises.

18. In my view, the grant of the application will promote one of the primary objects of the Act, namely object 5(1)(c), which relates to catering to the requirements of consumers for liquor and related services. Furthermore, the evidence also suggests that object 5(2)(a) is also relevant, which relates to facilitating the use and development of licensed facilities reflecting the diversity of consumers in the State.
19. After reviewing the evidence of the parties in relation to this matter, I consider that the Police do not oppose the grant of the licence *per se*, but rather seek the imposition of conditions on the grant of the licence. In this regard, I also note the Applicant has volunteered trading conditions and is agreeable to restricted trading hours.
20. Therefore, after weighing and balancing the evidence, it is my view that the grant of a small bar licence will cater for the requirements of consumers and provide a service that is consistent with consumer requirements.
21. In forming this view, I have particularly noted that the premises will offer a casual environment focussed on fresh, modern and healthy foods, including the serving of a variety of breakfast, lunch and tapas style meals, snacks and shared foods, which the Applicant intends to complement with the provision of wine, beer and spirits, although not until after 12 noon.
22. A report from an Inspector of Licensed Premises established that due to the number of toilet facilities present on the premises, the maximum number patrons who can be present of the licensed premises at any one time is not more than 50. This recommendation was included on the Schedule of Requirements forwarded to the Applicant on 19 November 2014 and I note that the Applicant has not raised issue with that recommendation.
23. I am therefore satisfied that the applicant has complied with all the necessary statutory criteria, requirements and conditions precedent to the application being granted and that the grant of the application is in the public interest. Accordingly the application is granted with effect from 9 March 2015, subject to the following conditions:

(a) Trading Hours:

- (i) The following trading hours are prescribed as permitted hours for the purposes of s 98 of the Act:

- (1) on Sunday to Wednesday:

- (a) from 12 noon to 10 p.m.;
- (b) on New Year's Eve (where it falls on a Sunday to Wednesday), from 10 p.m. to 12 midnight;
- (c) on New Year's Day, from immediately after 12 midnight on the previous day to up to 2 a.m.; and

- (2) on Thursday to Saturday:

- (a) from 12 noon to 12 midnight;
 - (b) on New Year's Day (where it falls on a Thursday, Friday or Saturday), from immediately after 12 midnight on the previous day to up to 2 a.m.; and
 - (c) Good Friday or Christmas Day, from 12 noon until 10 p.m., but only for liquor sold ancillary to the provision of a meal by the licensee (see the definition of "meal" in s 3 of the Act); and
- (3) on ANZAC Day:
 - (a) from 12 noon until 12 midnight on a Thursday, Friday or Saturday; and
 - (b) from 12 noon until 10 p.m. on any other day,
- (b) Trading Conditions:
 - (i) The Applicant is permitted to sell and supply liquor in accordance with the provisions of s 41 of the Act as it relates to small bar licences.
 - (ii) The sale of packaged liquor for consumption off the licensed premises is prohibited.
 - (iii) The maximum number of patrons permitted to be on the licensed premises at any one time is 50.
 - (iv) Food must be available during trading hours.
 - (v) Low strength and mid-strength beer, plus non-alcoholic drinks must be available at all times that business is conducted under the licence.
 - (vi) The licensee is prohibited from offering shots, laybacks, jelly shots, test tubes and any other shooter style drinks or otherwise offering the sale and supply of liquor in such a way that would encourage the rapid consumption of liquor.
 - (vii) The sale of liquor in jugs is prohibited.
 - (viii) No liquor is to be be sold and supplied mixed with energy drinks;
 - (ix) Any music played at the premises must be background in nature only, and at a level sufficient to allow normal conversation to occur.
 - (x) Management reserves the right to refuse admission or service to any person or persons failing to comply with the premises' dress requirements, including the wearing of jackets or any other clothing or accessory, or any visible body markings bearing patches or insignia of any Outlaw Motor Cycle Gang.

- (xi) A Closed Circuit Television (“CCTV”) surveillance system is required to be in place and operational at all times, covering the internal access/egress of each entrance and exit to the premises.
- (xii) The CCTV system must allow for clear identification of patrons.
- (xiii) The CCTV system is required to comply with the Director’s Police relating to *Safety and Security at Licensed Premises*.
- (xiv) Images recorded via the CCTV system must be retained for 28 days and must be made available for viewing and/or exporting and removal by the Police or other persons authorised by the Director.

24. Entertainment Condition:

- (a) 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:
 - (i) be immodestly or indecently dressed on the licensed premises, and/or
 - (ii) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
- (b) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:
 - (i) 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 there from;
 - (ii) 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
 - (iii) 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.
- (c) In this condition “licensed premises” includes any premises, place or area:-
 - (i) which is appurtenant to the licensed premises, or
 - (ii) 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.

25. Compliance with Harm Minimisation Policy:

- (a) 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.

General

26. Pursuant to s 127(2) of the Act the prescribed licence fee is payable prior to the grant of the licence. I am satisfied that the licence fee has been paid.
27. The licensed premises are defined as the area outlined in red on the plans attached and dated 5 December 2014. A copy of that plan is to be retained on the premises and produced to any authorised officer on request.
28. The premises' name *Hylin* is approved and may not be altered without prior approval of the Director of Liquor Licensing.
29. Pursuant to s 116(4) of the Act the applicant must ensure a copy of the licence is displayed in a readily legible condition and in a conspicuous position in the licensed premises.
30. Additionally, the Applicant must ensure that the signage required under ss 116(5) of the Act is displayed on the licensed premises within 14 days of the date of this decision.
31. 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.
32. This matter has been determined by me under delegation pursuant to s 15 of the Act.

Brett Snell
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

9 March 2015