

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

**APPLICATION ID:** A000221414

**APPLICANT:** THIS LITTLE PIGGY FOOD CO. PTY LTD

**PREMISES:** PIGGY FOOD CO

**PREMISES ADDRESS:** 229A QUEEN VICTORIA STREET, NORTH FREMANTLE

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

**DATE OF DETERMINATION:** 06 JUNE 2017

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1. On 5 December 2016, an application was made by This Little Piggy Food Co. Pty Ltd (the Applicant) for the conditional grant of a small bar licence for premises known as *Piggy Food Co* and situated at 229A Queen Victoria Street, North Fremantle.
2. The application was made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (the Act) and was advertised in accordance with instructions issued by the Director of Liquor Licensing (the Director), which resulted in a notice of objection being lodged by Michelle Perche and Helga Kahrger (the Objector), residents of the locality; who were joined as a party to these proceedings.
3. Pursuant to ss 13 and 16 of the Act:
  - (a) a document exchange was initiated between the parties to ensure that each party was given a reasonable opportunity to present its case; and
  - (b) the parties were advised that the application would be determined on the basis of their written submissions.
4. To support its application, the Applicant lodged a Public Interest Assessment (PIA) and other submissions to address the requirements of ss 5 and 38 of the Act, in which it was submitted that Piggy Food Co is currently operating as a BYO restaurant. The Applicant began operating at the premises in November 2015, as outlined in the PIA:

“Piggy Food Co was started in 2014 by Maxwell Kordyl, with assistance from his Californian partner Andrea Young, as a pop-up restaurant featuring a simple, hand made menu inspired by Southern Californian bar food, using locally sourced Western Australian ingredients. The pop-up was met with growing success and support, leading Maxwell to open a permanent venue in its current location in North Fremantle.”

5. The Applicant also submitted that patrons of the restaurant and local residents have expressed significant interest in being able to purchase alcoholic beverages at Piggy Food Co, as well as expressing an interest in the type of alcoholic beverages proposed to be offered at the premises, namely local and international craft beers, wines and spirits.
6. The application was supported by a petition, signed by over 300 persons, with several letters of support also being lodged.
7. The Applicant further submitted that if the application is successful, "the restaurant will continue to operate as is and patrons will be able to visit the venue not only to purchase a meal, but also to enjoy quality, craft beers, wines and spirits."
8. It was further submitted that:
  - (a) food will be provided for sale on the licensed premises during all opening hours, with the business continuing to have a strong emphasis on food options; and
  - (b) the grant of a small bar licence would see a change in the premises' current trading hours, with the premises closing at midnight (except on Sunday nights where trading would cease at 10 p.m.), instead of the current 9.30 p.m. closing time.
9. In terms of impact on the amenity of the locality, the Applicant submitted that:

"The North Fremantle precinct is becoming a transit-oriented development, where most amenities can be found within a walkable neighborhood. Free parking (of over 250 parking spots) is available all throughout the precinct, and there are two public lots within 100m in either direction of the venue. The North Fremantle train station (which is on the Fremantle Line) is 850m from the venue, and there are several bus stops within 50m, as well as newly upgraded footpaths and bike paths. Taxis regularly queue on the main street of Queen Victoria St Friday and Saturday nights."
10. In accordance with the manner of trade outlined in its PIA, the Applicant volunteered several trading conditions, including that:
  - (a) any music played at the premises shall be at a level that permits conversation to occur;
  - (b) the sale and supply of packaged pre-mixed drinks that are ready to drink will not be provided;
  - (c) energy drinks will not be served and drink options, including light and mid-strength alcohol content, as well as a range of non-alcoholic drinks, shall be available for purchase at all times; and
  - (d) unaccompanied juveniles will not be permitted on the premises.

11. The objection proceeded on the ground permitted by s 74 (1)(g)(i) of the Act, that if the application were granted undue offence, annoyance, disturbance or inconvenience to persons who reside in the vicinity would be likely to occur, due to there being insufficient parking available and residents being disturbed and inconvenienced when patrons park in local streets. In this regard, the Objector further submitted that:

“Local residents living near the North Fremantle Town Centre are inconvenience when patron of the local businesses park in our street, particularly on weekend evenings. Our heritage houses do not have driveways or off-street parking. The parking problem is exacerbated by the fact that our residential streets are surrounded by main arterial roads, leading us with few options for parking near our homes.

In addition, when patrons return to their vehicles late at night, local residents are affected by the noise and behaviour. Being a heritage area, our homes’ frontages are very close to the road and pavement, making it very easy to be disturbed by the noise as patrons return to their cars late at night.

This Little Piggy currently operates as a restaurant, four days a week and closes by 9.30pm. It is a family friendly venue, which is welcomed by the local community. If the venue changes to a bar, the opening hours will be extended until midnight seven days a week, which will not be in the public interest of local residents for the reasons outlined above...”

12. In response to the objection, the Applicant submitted that:

- (a) there is sufficient customer parking already in Fremantle, with over 200 spaces; as well as the availability of public transport and bike/walking paths, as shown in the following information sourced from the City of Fremantle:



Below is a table of existing public car parking bays available to the North Fremantle Local Centre which all cliental of all businesses have access to within a trading week.

Public Car parking Bays

Location of car parking	Distance from site	No. car bays
Corner of Tydeman Road and Queen Victoria Street	175m south	30
Queen Victoria Street, South of the Swan Hotel	350m south	50
North Fremantle Bowling Club Car Park / Gordon Dedman Reserve	150m north east	45
North Fremantle Train Station car park	500m north	83
Street parking	Within 100m of site	40
		Total – 248 bays

- (b) the Applicant has been conducting business in the premises for over 16 months, albeit as a busy restaurant;

- (c) the hours the Applicant has previously elected to trade are well under those legally permitted, given that restaurants, licensed or unlicensed, fall outside of operating hour restrictions imposed by the *Retail Trading Hours Act 1987*, as well as any restrictions placed by the Fremantle Council, and are therefore able to operate 24 hours a day, seven days a week, should they so choose, except for Anzac Day;
  - (d) the granting of a small bar licence would therefore place restrictions on the Applicant's operating hours, where none currently exist; and
  - (e) given that the Applicant's business at the premises is already open during the peak hours of entertainment (Fri-Sat, after 6:30pm), it is unlikely that additional trading hours, similar to those of other venues, would cause undue noise or offense, particularly given that the Applicant does not intend to change the "relaxed and casual ambience of our business."
13. The provisions of the Act place an evidentiary onus on both applicants and objectors: an applicant must establish that the grant of the licence is in the public interest and advances the objects of the Act, while the onus of establishing the validity of any objection lies on the objector.
14. Whilst the licensing authority will always carefully consider the genuinely held concerns of residential objectors, in this instance there is no evidence to establish that the noise resulting from the granting of the application would be of such impact on the amenity of the locality, particularly given that the Applicant is already conducting an unlicensed business at the premises, that it would not be in the public interest to grant the application.
15. Section 73(10) of the Act provides that the burden of establishing the validity of any objection lies on the objector and I consider that the objector has failed to establish the validity of its objection.
16. Conversely, I am 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.
17. Accordingly, the licence is conditionally granted, subject to the following conditions:
- (a) a certificate under s 39 of the Act being lodged before the operation of the licence;
  - (b) compliance with the *Local Government Act 1960*, *Health Act 1911* and any written law relating to the sewerage and drainage of these premise;
  - (c) all work being completed within 12 months in accordance with the plans and specifications dated 2 December 2016;

- (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director being notified, in writing, at least 21 days prior to Applicant wishing to trade under the licence;
- (e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- (f) the Applicant seeking confirmation of the grant on or before **5 June 2018**, pursuant to s 62(4)(c) of the Act.

18. The following conditions will be imposed on the issue of the licence:

- (a) Trading hours:
  - (i) The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.
- (b) Trading conditions:
  - (i) The licensee is authorised to sell and supply liquor in accordance with the provisions of s 41 of the Act as it relates to a small bar licence.
  - (ii) During the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises.
  - (iii) The sale of packaged liquor for consumption off the licensed premises is prohibited.
  - (iv) Food must be available during trading hours.
  - (v) Dining facilities are required to be provided on the licensed premises, and tables or fixed structures used as tables, along with appropriate seating, are required to be provided to support the delivery of dining services.
  - (vi) The licensee shall not promote, advertise or employ incentives which encourage the excessive consumption of liquor by virtue of their 'emotive' titles such as (but not exclusive to) 'laybacks', 'shooters', 'slammers', 'test tubes' and 'blasters'.
  - (vii) The licensee is to provide a reasonable range of non-alcoholic and low-alcohol liquor products during all trading hours.
  - (viii) 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.

- (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) The maximum number of persons permitted to be on the licensed premises at any time is 100.
- (c) Entertainment Condition:
  - (xi) 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:
    - (1) be immodestly or indecently dressed on the licensed premises; and/or
    - (2) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
  - (xii) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:
    - (1) exhibiting or showing, or causing, suffering or permitting to be exhibited or shown, on the licensed premises any "R 18+", "X 18+" or "RC" classified film or computer game or "Category 1 – Restricted" or "Category 2 – Restricted" publication, or extract therefrom; or
    - (2) 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
    - (3) 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.
  - (xiii) In this condition "licensed premises" includes any premises, place or area:
    - (1) which is appurtenant to the licensed premises; or
    - (2) 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.
- (d) Compliance with Harm Minimisation Policy:
  - (i) 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.

19. Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
20. The Applicant is hereby reminded that trading under the licence **may not** commence without the prior written approval of the licensing authority.
21. 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.
22. 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