

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

**APPLICANT:** TRADEBOSS PTY LTD

**PREMISES:** PARADISE KARAOKE RESTAURANT

**PREMISES ADDRESS:** 108-110 FRANCIS STREET, NORTHBRIDGE

**APPLICATION ID:** A000057295

**NATURE OF APPLICATION:** **APPLICATION FOR GRANT OF A SPECIAL FACILITY LICENCE**

**DATE OF DETERMINATION:** 23 JULY 2015

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### **Introduction**

1. This is an application by Tradeboss Pty Ltd (“the Applicant”) for the grant of a special facility licence, for the prescribed purpose of an amusement venue, for premises to be known as *Paradise Karaoke Restaurant* and situated at 108-110 Francis Street, Northbridge. Pursuant to the provisions of section 17(1)(d) of the Act, Hospitality Total Services (Aus) Pty Ltd has been approved to represent the applicant in this matter<sup>1</sup>.
2. The application is made pursuant to s 46 of the *Liquor Control Act 1988* (“the Act”) and r 9A(18) of the *Liquor Control Regulations 1989* (“the regulations”) and was advertised in accordance with instructions issued by the Director of Liquor Licensing (“the Director”). While there were no objections to the application, a notice of intervention was lodged by the Commissioner of Police (“the Commissioner”), pursuant to the provisions of s 69(3) of the Act.
3. 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**

4. The Applicant submitted that the grant of a special facility licence will provide its patrons with the option of purchasing food, non-alcoholic drinks and alcoholic beverages, in a safe and comfortable environment, while participating in or viewing karaoke performances.
5. The Applicant further submitted that the venue’s primary purpose is to provide a high quality and well controlled facility, with a variety of different sized rooms for the provision of karaoke services.

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<sup>1</sup> Any reference in this determination to the submissions of “the Applicant” is also a reference to the submissions of its representative.

6. To support its application, the Applicant lodged a Public Interest Assessment (“PIA”) and other submissions, in which it proposed that the grant of the licence would enable *Paradise Karaoke Restaurant* to provide an alternative for people who want to enjoy alcohol in conjunction with karaoke-related activity, without the requirement to go to a hotel or tavern.
7. The Applicant relevantly noted that the proposed premises is located in the Northbridge/Perth CBD dining and entertainment precinct and submitted that that as at 30 June 2013 the population of the City of Perth was 20, 285, which by 2036 is forecast to rise to 25,318 and submitted that the grant of the licence will enable it to provide an additional amenity for the increasing number of local residents and tourists to the locality.
8. Therefore to help establish that the grant of the application will cater to the requirements of consumers in the locality for liquor and related services, the Applicant submitted the results of a ten question Consumer Questionnaire of 86 people, which it claimed demonstrated “overwhelming support for the application.”
9. The Applicant’s PIA also briefly considered those matters prescribed in s 38(4) of the Act. In relation to potential harm or ill-health; while it was clearly acknowledged that crime rates for the locality are generally higher than those for the rest of the State, it was also submitted that this probably stems from the fact that the locality is the State’s largest and most frequented dining and entertainment precinct.
10. In relation to alcohol-related hospital admissions, the Applicant submitted the following table, which was sourced from *Alcohol-related hospitalisations and deaths in Western Australia, Regional Profile: North Metro, Drug and Alcohol Office Surveillance Report November 2011*:<sup>2</sup>

<b>Alcohol-related hospitalisations, Perth (C) – Inner &amp; Perth (C) - Remainder, 2005-2009</b>									
The rates of alcohol-related hospitalisations in Perth (Inner & Remainder) for the period from 2005-2009 were significantly lower for males and females (0.60 times for all persons) compared to the corresponding State rates.									
The age-specific rates of alcohol-related hospitalisations were significantly higher amongst males (7.9 per 1,000 person years) than females (4.0 per 1,000 person years).									
For the period from 2005-2009, Perth (Inner & Remainder) residents were hospitalised a total of 469 times for conditions related to alcohol. They consumed 3,166 beddays (45 per 1,000 persons) at an approximate cost of \$2,724,108.83 (\$38.98 per capita).									
<b>Table 26. Alcohol-related hospitalisations, Perth (C) Inner &amp; Perth (C) Remainder, 2005-2009</b>									
Gender	N	SRR (State=1)	95% CI for SRR	ASR	95% CI for ASR	Beddays	Beddays/ 1,000	Cost (\$)	Cost (\$ per capita
Males	350	0.65*	0.58-0.72	7.9	7.0-8.8	2,438	62	2,096,576.91	52.92
Females	119	0.45*	0.38-0.54	4.0	3.2-4.7	728	24	627,531.93	20.73
Total	469	0.60*	0.55-0.66	6.3	5.7-6.9	3,166	45	2,724,108.83	38.98
<small>Note: SRR=Standardised Rate Ratio; CI=Confidence Interval; * denotes significantly lower than rate in the corresponding State population; ASR=Age Standardised Rate; ASRs are standardised with the Australian 2001 persons per year and expressed per 1,000 person years; number of 'persons' may exceed the sum of males and females due to the inclusion of those with an unknown gender; data geocoded to the SLA of residence has been used rather than postcode of residence; costs are based on ARDRG National Public costweights as published by Commonwealth Dept Health and Ageing.</small>									

<sup>2</sup> Although the reference in the Applicant’s PIA erroneously referred to the profile for the Goldfields region.

11. The Applicant submitted that the hospital data does not indicate the source of the alcohol and whether or not it was consumed in licensed premises or a private residence and concluded that its proposed manner of trade would not unduly contribute to alcohol related hospitalisations.
12. In this regard, the Applicant also indicated that a strict “No BYO” policy will be implemented should the licence be granted, therefore providing for full control over all liquor consumed on the premises and that Asian fusion style food will be available for purchase at the premises, until 30 minutes prior to closing.
13. The Applicant also submitted that due to the nature of the premises, which is comprised of 11 different rooms:
  - (a) all noise from the karaoke activities should be contained within the individual rooms and not cause disturbance to the surrounding locality;
  - (b) CCTV coverage will include the 11 private karaoke suites and provide constant monitoring of the premises and patrons; and
  - (c) that RSA trained staff will routinely monitor those consuming alcoholic beverages in the licensed area.
14. The Applicant also submitted correspondence from the City of Perth regarding the premises’ approval as a Public Building, which stipulates that while each karaoke room has a maximum accommodation number, the overall number of persons in the venue must not exceed 200 persons at any one time. The numbers of persons in individual karaoke rooms can vary from a minimum of 25 persons in Room 9, to a maximum of 49 persons in Room 6.
15. The trading hours proposed in the application are:
  - (a) Monday to Thursday, from 11 a.m. to 11 p.m.;
  - (b) Friday and Saturday, from 11 a.m. to 12 midnight; and
  - (c) Sundays, from 10 a.m. to 10 p.m.
16. A number of other trading conditions were also volunteered by the Applicant as part of its strategy to minimise alcohol-related harm or ill-health, including drink standards, the enforcement of dress standards and the operation and maintenance of a CCTV system that is compliant with the Director’s *Safety and Security at Licensed Premises* policy.
17. In conclusion, the Applicant submitted that the grant of the licence would be in the public interest, given its commitment to operating a safe, well managed licensed premises, with a Harm Minimisation Plan in place and a quality fit out of the venue.

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**Representations of the Commissioner**

18. The Commissioner made representations and submissions that the grant of the application would result in public harm and/or disturbance, if conditions are not imposed on the licence; and on other matters relevant to the public interest.
19. In this regard, the Commissioner submitted that on Friday and Saturday nights the locality suffers from elevated levels of harm and high instances of disturbance and disorder, which is caused by a very high outlet density and results in a elevated numbers of people resorting to the locality in order to socialise in licensed premises and enjoy other entertainment facilities.
20. The Commissioner also submitted that in a sensitive locality such as Northbridge:
  - (a) while the premises may be considered as “low risk” when compared to a nightclub or tavern, there is still the potential for harm to arise as a result of consumption of liquor at the premises; and
  - (b) while potential harm caused by the premises may not be directly attributed to the premises and may potentially be experienced elsewhere (either inside or outside the locality), the Applicant nonetheless has a responsibility to ensure that any harm or disturbance caused by the premises is minimised.
21. Therefore, the Commissioner submitted that restrictive conditions should be imposed on the licence in order to:
  - (a) ensure that the Applicant maintains the manner of trade outlined in its PIA and does “not trade in a broad open manner of trade akin to other classes of licence”;
  - (b) minimise harm; and
  - (c) mitigate the potential for disturbance or public disorder caused by the proposed premises,

**Determination**

22. By way of submissions dated 6 March 2015, the Applicant requested that the Director’s usual document exchange process (refer s 16(11)) be waived on the basis that it generally accepted the conditions recommended by the Commissioner.
23. Through its PIA and other submissions, the Applicant has sought to advance the proposition that it is in the public interest for it to sell and supply liquor to persons attending *Paradise Karaoke Restaurant* for the purposes of participating in or viewing karaoke performances. In this regard, the Applicant submits that the grant of a licence will promote the objects of the Act by facilitating the diversity of consumer demand and by promoting responsible service of alcohol.

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24. The representations of the Commissioner are primarily concerned with the possibility of anti-social behaviour or public disorder arising from the grant of the licence, particularly in the context of Northbridge being a sensitive locality that suffers from elevated levels of harm, disturbance and disorder; as a result of high outlet density and the high numbers of people resorting to the locality.
25. To address these perceived risks, the Commissioner recommended a number of restrictive trading conditions be imposed on the licence, which as I have already noted, the Applicant generally accepts.
26. Section 46 of the Act provides that the licensing authority shall not grant a special facility licence:
- (a) except for a prescribed purpose (see s 46(1)); and
  - (b) if granting or varying a licence of another class, or imposing, varying or cancelling a condition on a licence of another class ... would achieve the purposes for which the special facility licence is sought (see s 46(2)).
27. In this regard, r 9A(18) of the regulations prescribes that a special facility licence may be granted for the purpose of allowing the sale of liquor at an amusement venue to persons in the venue. Furthermore, r (19)(b) also provides that the term “amusement venue” includes a premises with the primary purpose of allowing persons to participate in or view karaoke.
28. The Applicant seeks the grant of a special facility licence and submits that no liquor licence type will enable it to meet the requirements of patrons who are seeking entertainment in the form of karaoke performances.
29. After considering the applicant’s submissions, I am satisfied that no other licence category could achieve the purposes for which the special facility licence is sought and that the Applicant has also demonstrated that the proposed business to be conducted under the licence meets the purposes for which a special facility licence may be granted, particularly as an “amusement venue”, consistent with the purposes prescribed in r 9A(19)(b) to participate in or view karaoke.
30. However, in addition to demonstrating compliance with s 46 of the Act, the Applicant must also satisfy the licensing authority that granting the application is in the public interest, pursuant to s 38(2) of the Act.
31. In this regard, the Act as a whole establishes a regime for the control and regulation of the sale, supply and consumption of liquor and applications do not proceed on the basis that there is any presumption in favour of the grant of a licence, but rather the reverse: that an applicant must demonstrate that it is in the public interest that the application should succeed.<sup>3</sup>

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<sup>3</sup> See *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384

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32. In determining whether the grant of an application is “in the public interest” (refer s 38(4)), I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act.<sup>4</sup>
33. Furthermore, the licensing authority should consider both the positive and negative social, economic and health impacts that the grant of the application will have on the community. In this regard, advancing the objects of the Act as set out in s 5 is a mandatory public interest consideration.<sup>5</sup>
34. Although the procedures of the licensing authority are less formal than before a court (refer section 16) and the rules of evidence do not apply (refer section 17(7)), decisions of the licensing authority must be based on the evidence placed before it, which needs to be relevant, reliable and logically probative to assist the licensing authority to assess the probability of the existence of the facts asserted in each case.
35. In relation to the facts asserted in this application, I am of the view that the Applicant’s evidence contains numerous assertions and opinions that lack sufficient probative evidence. For example, the Applicant merely states that:
- (a) its proposed manner of trade would not unduly contribute to alcohol related hospitalisations, without providing any corroborating evidence; and
  - (b) its patrons need an alternative to attending a hotel or tavern, once again without presenting any corroborating evidence.
36. I must consider the application in terms of the objects of the Act. One of the primary objects of the Act is to cater to the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, tourism industry and hospitality industries in the State. In this context, the Applicant submitted that its Consumer Questionnaire establishes “overwhelming support for the application.” However, I have some difficulty with this assertion due to its questionable evidentiary value.<sup>6</sup> In my view, the Consumer Questionnaire merely establishes that:
- (a) 65 of the respondents (or 75.58%) currently attend other karaoke venues in Perth or surrounding areas;
  - (b) 39 respondents (or 45.35%) were satisfied with the level of amenity offered by existing licensed karaoke venues within Perth and surrounding areas, with an additional 27 respondents (or 31.4%) being “uncertain”; and

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<sup>4</sup> 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.

<sup>5</sup> Refer *Palace Securities* supra.

<sup>6</sup> *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227.

- (c) while 40 respondents (or 67.80%) indicated a desire to attend a venue with premium karaoke facilities and 69 respondents (or 86.25%) indicated that *Paradise Karaoke Restaurant* would satisfy their requirements for a licensed karaoke venue if the licence was granted, only 17 respondents (23.61%) actually indicated they would go to *Paradise Karaoke Restaurant* if the licence was granted, which in my view, is somewhat antithetical to the Applicant's claim of "overwhelming support for the application."
37. In my view, when considered in the context of s 5(1)(c), the consumer evidence falls well short of establishing that the grant of the application will cater to the requirements of consumers, particularly given that the majority of respondents have indicated that they are currently satisfied with the level of amenity offered by existing licensed karaoke venues within Perth and surrounding areas. Furthermore, it appears to me that the representative consumer evidence lodged by the Applicant actually establishes that only a minority of consumers would actually patronise *Paradise Karaoke Restaurant* if the application was successful. Accordingly, I give little weight to the Applicant's consumer evidence.
38. As an aside, I have also questioned whether a sample of 86 persons is sufficiently representative of the number of persons who live in and resort to the locality<sup>7</sup>, although nothing in this determination has turned on this matter.
39. In my view there are no notorious facts in this application which assist the Applicant's assertion that the grant of the application is in the public interest. It is accepted that Northbridge is Perth's premier entertainment precinct, which has a high density and variety of licensed premises that attract large numbers of people to the locality. However, Northbridge is also recognised as experiencing elevated levels of alcohol-related harm as a consequence of its popularity.
40. Furthermore, I do not consider that the licensing authority can presume any evidence or draw any conclusions from the notorious facts in these proceedings to assist in overcoming the Applicant's evidentiary shortfall. In fact, I consider that the only notorious facts relate to the locality being subject to high levels of alcohol-related harm<sup>8 9</sup> and that there is a public interest in the use and development of licensed facilities to reflect the diversity of consumer requirements (see s 5(2)(a)).
41. As such, I am concerned with the health data provided by the Applicant, which is sourced from *Alcohol-related hospitalisations and deaths in Western Australia, Regional Profile: North Metro, Drug and Alcohol Office Surveillance Report November 2011*. While I have noted that the data highlights that the rates of alcohol-related harm

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<sup>7</sup> Particularly given that the Applicant has freely acknowledged that the population of the City of Perth was 20,285 as at 30 June 2015

<sup>8</sup> see *Woolworths Ltd v Director of Liquor Licensing*, supra.

<sup>9</sup> The Applicant's submissions appear oblivious to the fact that the Director has previously imposed conditions on licences in Northbridge and the inner city because of concerns about the level of harm caused by the excessive consumption of liquor.

in Perth (Inner and Remainder) for the period from 2005 – 2009 were significantly lower for males and females (0.60 times for all persons) compared to the corresponding State rate, I have also noted that Perth residents were hospitalised a total of 469 times for conditions relating to alcohol and consumed 3,166 beddays (45 per 1,000 persons) at an approximate cost to the community of \$2,724,108.08 (or \$36.88 per capita). In this regard, I have particularly noted that the Applicant did not:

- (a) provide any cogent explanation as to how these statistics apply to the particular circumstances of this application;
- (b) explain whether the Health data relates purely to residents of Perth or also includes visitors to the locality; and
- (c) controvert the Commissioner's representations that on Friday and Saturday nights the locality suffers from elevated levels of harm and high instances of disturbance and disorder.

42. Furthermore, while I have noted the Applicant's proposed harm minimisation strategies, I consider that the premises' Management Plan appears to be very general in nature and fails to relate to the specific circumstances of this particular application. For instance, there is no reference in the Applicant's Management Plan to:

- (a) the distinctive set up of the premises' with 11 private suites;
- (b) any potential compliance challenges associated with the:
  - (i) sale and supply of liquor in private suites; and
  - (ii) consumption of liquor therein, behind closed doors<sup>10</sup> (apart from references that the private suites would be subject to CCTV coverage and that RSA staff would routinely monitor those consuming liquor in the licensed area); and
- (c) strategies that are to be employed by the Applicant in managing up to 200 patrons at any one time.

43. In fact, the Management Plan is so generic that it cites compliance with the prescribed trading in accordance with s 98D of the Act, which deals with the permitted trading hours of a liquor store.

44. As it currently stands, the Applicant's evidence is unclear about how RSA trained staff would routinely monitor patrons consuming liquor in the licensed area (i.e. in the break out area and 11 private suites) in person or via the CCTV; or whether the CCTV will be constantly monitored via a live feed or only accessed on demand. Furthermore, while

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<sup>10</sup> In this regard, the plans lodged by the Applicant shows that each private karaoke suite has a door, which in the absence of any proof to the contrary, I have assumed will be closed while patrons are present in them to view and participate in karaoke.

the Applicant notes in its PIA that an approved manager will be on-site at all times that the premises is trading, it does not explain whether there will be dedicated RSA trained staff for each private suite or how staff will be able to effectively supervise the consumption of liquor behind the closed doors of the karaoke suites.

45. Accordingly, it is my view that a licensed karaoke facility in Northbridge that can hold up to 200 persons in a number of private suites and seeks to trade over an expansive period of hours, does not present as a small or low risk proposition. Therefore, when considered in the context of s 5(1)(b) of the Act, I do not consider that the Applicant's evidence is sufficient to satisfy me that the grant of the Application will contribute to the minimisation of alcohol-related harm or ill-health in the locality. As such, I can give little weight to the Applicant's evidence relating to the minimisation of alcohol-related harm or ill-health.
46. The Applicant's evidence also fails to satisfy me that the grant of this application is in the public interest when all the facts and circumstances of the case are considered, bearing in mind that the onus is upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest. This burden of persuasion must be satisfied by evidence adduced in each particular case (refer *Woolworths Limited v Director of Liquor Licensing* [2012] WASC 384).
47. In summary, I consider that the evidence establishes that:
  - (a) there are existing karaoke venues in, or within close proximity to the locality, which already reflect the diversity of consumer requirements;
  - (b) the majority of consumers who took part in the Applicant's Consumer Questionnaire indicated that they were satisfied with the level of amenity offered by those existing venues;
  - (c) the Applicant is not proposing to offer anything that is new or different from that which is already offered by existing venues;
  - (d) the size of its premises and configuration into private karaoke suites presents potential harms that are not referenced in its Harm Minimisation documents; and
  - (e) Northbridge already suffers from elevated levels of alcohol-related harm and ill-health.
48. Accordingly I consider that the grant of an additional karaoke licence (that proposes to offer a similar manner of trade as existing premises, and thus meet the same consumer requirements) in the locality can only offer a limited public benefit and that the overall benefits to the general community would to be very marginal.

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49. Furthermore, the provisions of ss 5 and 38 of the Act make it clear that the mere fact that some consumers may desire a particular liquor service does not, in itself, lead to the grant of a licence merely to give effect to that desire.
50. Moreover, the private interests of an applicant do not necessarily equate with what is in the public interest. In this regard, the Liquor Commission observed in LC 44/2012:
- “Licences should not be granted simply because an applicant ‘has a good idea’ or would like to establish a business involving the sale and supply of liquor. The private interests of an applicant should not be confused with the public interest. Such an approach would not be consistent with the Act or the objects of the Act (refer s 5 which includes minimizing alcohol-related harm and having regard to the proper development of the liquor industry).”
51. In circumstances such as these, where an Applicant's assertions and opinions are not substantiated by relevant, probative and sufficient evidence, I consider that the Applicant has failed to discharge its onus of proof. Therefore, the application by Tradeboss Pty Ltd for the grant of a special facility licence is refused.
52. 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.
53. 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