

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

**APPLICANT:** NORFOLK HOBBS PTY LTD

**PREMISES:** THE HARBOUR TERRACE BAR & GRILL

**PREMISES ADDRESS:** SHOP 202, FIRST FLOOR, SKYCORP BUILDING,  
HILLARYS BOAT HARBOUR SOUTHSIDE DRIVE  
HILLARYS

**APPLICATION ID:** A000200442

**NATURE OF APPLICATION:** APPLICATION FOR CONDITIONAL GRANT OF A  
TAVERN RESTRICTED LICENCE

**DATE OF DETERMINATION:** 20 October 2016

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### **Introduction**

1. On 13 April 2016, an application was lodged by Norfolk Hobbs Pty Ltd ("the applicant") for the conditional grant of a tavern restricted licence in respect of premises to be situated at Shop 202, First Floor, Skycorp Building, Hillarys Boat Harbour, Southside Drive, Hillarys and to be known as The Harbour Terrace Bar & Grill.
2. The application is made pursuant to ss 41, 62 and 68 of the *Liquor Control Act 1988* ("the Act").
3. Pursuant to s 67 of the Act, the application was required to be advertised by way of a notice in *The West Australian* newspaper; by way of a notice on the site of the premises for a period of 28 days commencing on 23 May 2016; by way of a notice to residents and businesses located within a 200 metre radius of the premises; and a general notice to educational, health care and local and regional government institutions, as well as community and church groups, within the locality.
4. No objections were lodged. However, pursuant to s 69 of the Act, the Commissioner of Police ("the Commissioner") lodged a notice of intervention.
5. By letter dated 9 September 2016, each party to proceedings was afforded the opportunity to lodge closing submissions to be taken into consideration in the determination of the application.
6. Pursuant to ss 13 and 16 of the Act, the application will be determined on the papers. The submissions and the evidence of the parties to these proceedings are briefly summarised below.

### **Submissions of the applicant**

7. The applicant is currently the holder of special facility licence No 63100045807 issued in respect of the proposed premises and known as The Harbour Terrace.

8. Under its special facility “Amusement venue” licence, the applicant is authorised to sell and supply liquor for consumption on the licensed premises to patrons. The primary purpose of the venue being the playing of snooker, pool, bowling, electronic games or similar amusements.
9. It was submitted that the application for the conditional grant of a tavern restricted licence, for the proposed premises, was commenced because the existing licence does not suit the original concept for the venue (namely the applicant’s intended manner of trade); and that an application to add, vary or cancel a condition of the licence cannot be granted, by the licensing authority, in view of the provisions of the Act as they apply to special facility licences.
10. In respect of the application for a tavern restricted licence, the applicant’s objectives were stated as:
  - to provide quality meals in a contemporary modern facility;
  - to provide great value seafood and quality meat meals inspired by international flavours and experiences;
  - to provide food and beverages in an inviting and friendly environment; and
  - to provide a drink and sport viewing facilities in a causal bar environment with easy access from the Quay.
11. According to the applicant Hillarys Boat Harbour, since opening in 1988, has been one of Perth’s Premier Recreational Destination—offering a wide range of unique experiences appealing to WA residents and overseas visitors.
12. In support of the application, the applicant lodged a Public Interest Assessment (PIA) which included its intended manner of trade, which will be in the same manner as its other related venues (Oceanic Bar & Grill & Coventry Seafood Bar & Grill); a description of the facilities; and addressed the matters contained in s 38(4) of the Act. The PIA was supported by:
  - approvals from the local authority;
  - consumer surveys; and
  - other material.
13. In order to mitigate any negative impacts the grant of the licence may have in the locality the applicant submitted undertakings; its house management strategies; and highlighted the venues security systems.

#### **Submissions of the Commissioner**

14. The Commissioner intervened in the application on the basis that if the application was granted public disorder or disturbance would be likely to result and any other matter relevant to the public interest.
15. The particulars raised in support of the Commissioner’s intervention were stated as follows:

- Applicant's consumer surveys and questionnaires;
  - Existing outlet density;
  - Existing alcohol related harm in the locality; and
  - Harm Minimisation.
16. The Commissioner's intervention included an analysis of the applicant's PIA and evidence; and makes representations regarding existing outlet density in the locality; the locality and demographics; security – crowd controllers; dress standards; closed circuit television ("CCTV"); provision of food; seating; entertainment; and dress standards.
17. The Commissioner submitted that while he does not oppose the approval of the application, the intervention is lodged in order to recommend trading conditions that will assist to minimise the consequential harms and anti-social behaviours attributed to the premises and to ensure the manner in which the applicant proposes to trade is adhered to, should the application be granted.
18. The Commissioner submitted that he has extensive knowledge regarding the contemporary issues relating to the locality, these include domestic/non-domestic assault, disturbance and public disorder issues. In this regard, the Commissioner provided data regarding existing alcohol related harm and offences in the locality.
19. In conclusion, the Commissioner submitted that if the application is granted, conditions should be imposed on the licence to minimise the potential risks associated with the conduct of the business under the licence; and proposed specific trading conditions for consideration.

### **Determination**

20. The applicant seeks the grant of a tavern restricted licence in respect of premises which are currently approved as licensed premises and trading under a special facility "Amusement venue" licence.
21. The applicant in accordance with its special facility licence is permitted to trade as follows:
- Monday to Thursday    12 midday to 12 midnight;  
Friday to Saturday       12 midday to 1 a.m. the following day; and  
Sunday                    12 midday to 12 midnight.  
No trading is permitted on Christmas Day, Good Friday or before noon on Anzac Day.
22. The special facility licence, subject to specific trading conditions, authorises the applicant, as licensee, to sell and supply liquor to persons for consumption on the licensed premises. The primary purpose of the premises being the playing of snooker, pool, bowling, electronic games or similar amusements.
23. The applicant in its application submitted the reasons for seeking a tavern restricted licence for the premises, namely that it proposes to vary the manner that the business is being conducted on the licensed premises, that is, being an "Amusement" focused

venue to a venue that operates in a manner similar to its other premises by providing food and other related services to meet the requirements of consumers.

24. In accordance with s 38 of the Act, the onus is on the applicant to satisfy the licensing authority that the grant of the application is in the public interest. In this regard, the licensing authority, however constituted, makes its determination on the balance of probabilities.
25. In considering the public interest, the licensing authority needs to consider both the positive and negative social, economic and health impacts, and exercise a discretionary value judgement as to whether the application should be granted (refer section 19 of the *Interpretation Act 1994* and *Parliamentary Debates, WA Parliament*, Vol 409, page 6342; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241).
26. In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:

*The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.*

*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.*

27. In determining whether an application should be granted “in the public interest” consideration must be given to the objects of the Act as specified in s 5 of the Act.
28. The primary objects of the Act are:
  - to regulate the sale, supply and consumption of liquor;
  - to minimise harm caused to people, or any group of people, due to the use of liquor; and
  - 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.

29. The secondary objects of the Act are:
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
  - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
  - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
30. The licensing authority may also take into consideration the matters set out in s 38(4) of the Act.
31. Pursuant to s 33 of the Act, the licensing authority has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest, but must deal with an application on its own merits within the scope of the Act (refer *Woolworths Ltd v Director of liquor Licensing* [2012] WASC; *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).
32. The Commissioner, while not opposing the grant of the application, submitted that the application, if granted, public disorder or disturbance would be likely to result. In this regard, the Commissioner as an intervener to the application carries no burden of proof (per Greaves J. *Gull Petroleum (WA) Pty Ltd* (1998) LLC No. 13/98).
33. The Commissioner also submitted that if the application is granted, conditions should be imposed and suggested possible trading conditions, for consideration, which will assist to minimise the impact the grant of the licence would have on the amenity of the area; and to reflect the nature of the business the applicant proposes to conduct under the tavern restricted licence.
34. In considering this application, I acknowledge the number of licensed premises situated in the locality, in particular the premises and the different types of licences situated within Hillarys Boat Harbour; and the potential for public disorder or disturbance to occur if those licensed premises are not managed in a manner consistent with the requirements of the Act and the Director's policies.
35. I also note the applicant's submissions regarding the requirements of the Act which do not allow the licensing authority to vary or grant a special facility licence if the granting of a licence of another class would achieve the same purpose. In this case, the applicant seeks a tavern restricted licence to be able to sell and supply liquor to persons for consumption on the licensed premises without the need for the venue to be set up and primarily trade as, an "Amusement" venue.
36. In this regard the applicant submitted that the change in use of the type of business conducted on the licensed premises will have a positive impact on the locality and will assist to minimise any alcohol related harm in the locality.

37. On the basis of the information presented, and taking into consideration that Hillarys Boat Harbour is recognised as a tourist destination, I am satisfied that the applicant has discharged its onus under s 38(2) of the Act; and the grant of the application would be in keeping with the object contained in s 5(1)(c) of the Act.
38. Therefore I am prepared to exercise my discretion under s 33 of the Act and grant the application.
39. However taking into consideration the location of the proposed premises and the Commissioner's representations; conditions should be imposed which reflect the applicant's intended manner of trade, and to minimise any adverse impact the change in licence type may have on the locality.
40. Also, I am of the view that the plans lodged with the application do not accurately describe the uses of all rooms as required by regulation 11 of the *Liquor Control Regulations 1989* ("the regulations") for the purposes of the applicant's intended manner of trade under the licence. Therefore, factual plans showing the uses of each room will be required to be lodged prior to the confirmation of the conditional grant of the licence which, reflect the change in use of the premises from an "Amusement" venue to premises trading under a tavern restricted licence. In this regard, the description such as "Existing Pool Hall", in my opinion, does not accurately describe the use of room for the type of business to be conducted under the tavern restricted licence unless the applicant intends to retain all of the pool tables and amusement games as shown on the plans lodged which were drawn in respect of the premises when it was proposed that the premises trade as "Pool + Arcade Hall".
41. In respect of possible trading conditions, I acknowledge the submissions of the applicant regarding the imposition of the specific trading conditions concerning security and music to be provided at the proposed premises.
42. In regards to trading conditions, the Act already imposes specific responsibilities and obligations on licensees; and licensees and managers must ensure that the business conducted under a liquor licence complies with the requirements of the Act; any specific trading conditions of the licence; and the Director's policies.
43. Therefore in considering the conditions to be imposed, I am of the view that conditions should be imposed to reflect the tenor of the applicant's intended manner of trade and to minimise harm or ill-health caused to people due to the use of alcohol. In this regard, while I acknowledge the applicant's submissions regarding "Security Personnel", I consider that it is appropriate, on this occasion, to depart from the Director's standard requirement to require such security personnel, to be required, whenever "live entertainment" is being conducted on the licensed premises from at least 8 p.m.

44. Accordingly as I am prepared to exercise my discretion under s 33 of the Act; and the applicant has complied with all necessary statutory criteria requirements and conditions precedent to the application being granted, the application for a tavern restricted licence is conditionally granted subject to the following conditions:

#### CONDITIONAL GRANT

- (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 premises;
- (c) all work being completed within 12 months in accordance with the plans and specifications dated 13 April 2016; In this regard, floor plans in accordance with regulation 11 of the regulations must be lodged prior to the confirmation of the grant of this licence.
- (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements dated 16 June 2016 being satisfactorily completed and the Director of Liquor Licensing 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;
- (f) the applicant seeking confirmation of the grant on or before **19 October 2017** pursuant to s 62(4)(c) of the Act;

#### **WHEN THE LICENCE COMMENCES OPERATION IT WILL BE SUBJECT TO THE FOLLOWING CONDITIONS:-**

##### **TRADING HOURS**

The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.

##### **TRADING CONDITIONS**

1. 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 tavern restricted licence.
2. The sale of packaged liquor for consumption off the licensed premises is prohibited.
3. The number of persons that may be accommodated on the licensed premises, at any one time, must not exceed 292 or such lesser number of persons as specified in the premises "Maximum Accommodation Certificate" as assessed by the local authority.

4. The licensed premises must be set up with tables or fixed structures used as tables and chairs to accommodate no less than 200 persons, except when there is a pre-booked function, at which the seating arrangements may be re-arranged to accommodate the particular requirements of the function.
5. During trading times, meals must be available at traditional meal times being, breakfast between 7 a.m. and 9 a.m.; lunch between 12 noon and 2 p.m.; and dinner between 6 p.m. and 9 p.m. except during a prearranged private function or special event.
6. Food must be available during trading hours to at least 1 hour prior to closing.
7. Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available at all times.
8. The licensee shall not promote drinks which offer liquor by virtue of their 'emotive' titles such as, but not limited to 'laybacks', 'shooters', 'test tubes', 'shots'; 'jelly shots', 'blasters', or 'bombs'.
9. 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.
10. Noise emanating from the licensed premises must not exceed that permitted under the *Environmental Protection (Noise) Regulations 1997*.
11. Any pre-recorded music played on the licensed premises is restricted to be background in nature and played at a level that permits normal conversation to occur.
12. Whenever live entertainment is being conducted on the licensed premises, crowd controllers licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed at a ratio of two (2) crowd controllers for the first 100 patrons, and one (1) crowd controller for each additional 100 patrons or part thereof.

These crowd controllers (licensed under the *Securities and Related Activities (Control) Act 1996*, are required to be present to monitor the licensed premises and the behaviour of patrons arriving and departing the premises, from 8 p.m. until thirty (30) minutes after trading ceases.

13. A closed circuit television video ("CCTV") surveillance system, able to identify individuals and showing times and dates must be in place and operational. The CCTV system must comply with the requirements as identified in the Director's Policy 'Security at Licensed Premises'. It is expected that the system will provide and record continuous images of the entrances and exits to the premises during the normal trading hours and until one (1) hour after trading ceases. Images recorded via the CCTV system must be retained for, at least, twenty eight (28)

days (or such other period as the Director of Liquor Licensing specifies) and must be made available for viewing or removal by the Police or other persons authorised by the Director.

14. Entry to the licensed premises is prohibited to any person wearing a jacket or any other clothing bearing patches or insignia including accoutrements, jewellery, visible tattoos, branding or any other item that indicates membership or association with any Outlaw Motorcycle Gang, including but not limited to the Coffin Cheaters; Club Deroes; God's Garbage; Gypsy Jokers; Outlaws; Finks; Rebels; Comancheroes; Hell's Angels; Rock Machine; Mongols; Lone Wolf; and Bandidos. (A notice is to be displayed at all entrances to the licensed premises reflecting this condition.)

#### **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 film or computer game or "Category 1 – Restricted" or "Category 2 – Restricted" publication, or extract therefrom; or
- (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.

**COMPLIANCE WITH HARM MINIMISATION POLICY**

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.

**LICENCE FEES**

Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the issue of the licence.

**TRADING NAME**

Pursuant to s 116(3) of the Act, the premises' name *The Harbour Terrace Bar & Grill* is approved. The licensee, on confirmation of this conditional grant, shall not subsequently conduct business at the licensed premises under any other name, without the prior approval of the Director of Liquor Licensing.

45. The special facility licence No 6310045807 is cancelled contemporaneously with the conditional grant of this tavern restricted licence.
46. 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.
47. This matter has been determined by me under delegation pursuant to s 15 of the Act.

**TRADING MAY NOT COMMENCE UNDER THIS LICENCE  
WITHOUT THE PRIOR WRITTEN APPROVAL OF THIS OFFICE.**



Eric Romato

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING