

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

Applicant: Highmoon Pty Ltd and Yardoo Pty Ltd
(represented by Mr John Prior, instructed by Williams
Ellison Pty Ltd)

Intervener: Executive Director of Public Health
(represented by Ms Lana White of the State Solicitor's
Office)

Objector: Mrs Tindara Tarricone, Licensee of Lake Street Liquor
Supply
(represented by Mr Alec Weston of Lavan Legal)

Commission: Mr Jim Freemantle (Chairperson)
Mr Eddie Watling (Deputy Chairperson)
Ms Helen Cogan

Premises: Northbridge Brewing Company
44 Lake Street, Northbridge

Date of Hearing: 29 July 2010

Date of Determination: 25 August 2010

Matter: Application for the conditional grant of a tavern
licence pursuant to sections 41 and 62 of the *Liquor
Control Act 1988*

Determination: Application is granted

Authorities cited in decision:

Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR 241

Executive Director of Health –v- Lily Creek International Pty Ltd & Ors [2000] WASCA 258

Introduction

- 1 On 23 April 2009 an application was lodged by Highmoon Pty Ltd and Yardoo Pty Ltd (“the applicant”) for the conditional grant of a tavern licence for premises to be known as Northbridge Brewing Company and located at 44 Lake Street, Northbridge.
- 2 The application was advertised to the general public in accordance with instructions issued by the Director of Liquor Licensing. An objection to the application was lodged by Tindara Tarricone (“the objector”), licensee of the Lake Street Liquor Supply, pursuant to section 73(4) of the *Liquor Control Act 1988* (“the Act”) and the Executive Director Public Health lodged a Notice of Intervention pursuant to section 69(8a) of the Act.
- 3 On 9 April 2010 the Director of Liquor Licensing, pursuant to section 24 of the Act, referred the application to the Commission for determination.
- 4 A hearing before the Commission was held on 29 July 2010.

Submissions on behalf of the applicant in support of its application for a tavern licence

- 5 According to the applicant’s Public Interest Assessment (PIA), it seeks a tavern licence for a multi-faceted facility which will include a micro brewery, café, restaurant and a function room catering for up to 70 people. The proposed premises will be set over three levels and will be adjacent to the Northbridge Piazza.
- 6 It is proposed that the premises will trade seven days a week, providing breakfast, lunch and dinner to the residents of, and visitors to, Northbridge and provide a dedicated function venue for the business community. The design of the premises will be visually attractive and provide a dynamic “interactive streetscape”, with the brewing equipment on display to passersby on Lake Street and an alfresco area fronting the Piazza.
- 7 The applicant, whose directors have extensive experience in the hospitality industry, will invest approximately \$3.5m to provide a unique venue in Northbridge, which has been recognised as a significant entertainment, hospitality and tourism area in Perth. It is anticipated that the proposed premises will attract a more sophisticated patron to the area thereby having a positive impact on the drinking culture of the locality. The venue will be promoted as an “experience” rather than a place to drink.
- 8 The applicant addressed the matters set out in section 38(4) of the Act in its PIA and provided information on the locality, demographics of the locality, existing licensed premises and services in the area, local government consultation, history of the site and motivation for the application. In this regard, the applicant was chosen by the City of Perth to re-develop the site following an extensive tender process with a key outcome being the activation of the Piazza, with a diversity of services and entertainment,

particularly at times that could attract a range of patrons that currently do not make Northbridge a social option.

9 Specifically, it was submitted that the grant of the licence would have minimal impact on existing levels of harm in the locality because:

- the design of the premises and the environment established will mitigate against any harm;
- food will be available from when the premises are open until late;
- the design of the venue and the proposed operating style would mitigate against any adverse noise impact on the amenity of the area;
- the proposed premises will attract a more sophisticated patron to the area which will decrease anti-social behaviour;
- an acoustic report has been prepared and the recommended noise control measures to be adopted comply with the *Environmental Protection (noise) Regulations 1997*;
- the applicant has developed a House Management Policy and Code of Conduct and a Harm Minimisation Plan; and
- of the carefully considered architectural design of the premises with limited upright drinking areas, more quality furniture permanently in place and quieter areas.

10 It was also submitted that the proposed premises will have a positive effect on the behaviour of the public in Northbridge as the development of the Northbridge Piazza is an integrated urban renewal initiative and the proposed premises will activate the area and encourage persons to socialise within the proposed facility as well as in the public space and the development of the site will provide an impetus towards revitalisation of Northbridge.

11 In consideration of the evidence, it was submitted that the grant of the application was in the public interest because:

- the application has the support of the City of Perth;
- there are no other venues in Northbridge of the kind proposed;
- there is public support for the application as evidenced by the witness petitions and witness petition summary, online survey and public interest witness questionnaires;
- Tourism WA supports the proposal;
- the Perth City Council is keen to see a diversity of venues in Northbridge;

- the premises will facilitate tourism as micro breweries have become synonymous with tourism;
- the premises and the proposed manner of trade is in accordance with the City of Perth's plans for the development of Northbridge;
- there will be a positive economic impact on Northbridge and the Western Australian economy due to the construction of the venue which will see employment and the resulting multiplier effect and the on-going employment of approximately 36 people at the venue;
- it will provide greater focus on social and cultural aspects rather than drinking;
- emphasis of development of the Piazza and interaction between the premises and the Piazza will ensure street activation;
- it will facilitate tourism, improve the profile of the precinct, promote street activations and increase perceptions of security; and
- the controlling personnel of the applicant companies are very experienced in the hospitality industry in Western Australia and in particular the Northbridge locality.

Submissions on behalf of the objector

- 12 In the Notice of Objection lodged by Mrs Tarricone to the grant of the application, it was stated that she does not object to the sale of liquor for consumption on the premises, however she does object to the sale of packaged liquor as this will affect her business. Mrs Tarricone states that her premises, Lake Street Liquor Supply, is situated close to the proposed tavern and she already provides an extensive range of beer, wines and spirits for local residents, business people and visitors to the area.
- 13 In later submissions, prepared on behalf of Mrs Tarricone by Lavan Legal, it was submitted that if the application was granted, the Commission should impose a condition prohibiting the sale of packaged liquor because of the proximity of the proposed premises to the Northbridge Piazza and it is not in the public interest for persons to be able to purchase packaged liquor in Northbridge from venues which are close to public spaces.
- 14 It was also submitted that it is in the public interest for the Commission to prohibit the sale of packaged liquor at the premises because this is consistent with the applicant's representations about its proposed manner of operation.

Submissions on behalf of the Executive Director Public Health (EDPH)

- 15 The purpose of the intervention from the EDPH was to recommend that the application be refused because of the high risk aspects associated with the application, including:

- high outlet density of licensed premises in the locality of the proposed venue;
 - high levels of violence and alcohol-related problems in the vicinity of the proposed premises, particularly during late night trading times;
 - the association between late night trading, high outlet density of licensed premises and increased rates of alcohol-related harm;
 - existing levels of drink-driving in Northbridge; and
 - limited late night public transport options available at the proposed closing time of the premises.
- 16 The EDPH acknowledges that Northbridge is one of the Perth metropolitan area's major entertainment precincts with 82 licensed outlets clustered within a small area. The 82 premises comprise a variety of taverns, nightclubs, restaurants, special facilities, liquor stores and small bars.
- 17 In the 12 months ending March 2009, there were 3,727 alcohol-related incidents recorded in Northbridge, of which 89% occurred between 8.00pm Friday and 8.00am Sunday. It was submitted that Northbridge is a location which has an ongoing history of alcohol-related problems which has received substantial media attention; consequently, the applicant has not established that harm will not occur, nor that existing levels of harm will not be exacerbated by the granting of the application.
- 18 The EDPH provided data to highlight the existing problems in the locality including:
- the concentration of assaults occurring along Lake Street and the intersection with James Street in the immediate vicinity of the proposed licensed premises;
 - in the 12 months previous to March 2009 in Northbridge there were 1,022 selected offences (assault, sexual assault, threatening behaviour and robbery) against the person and 1,377 disorderly conduct offences;
 - during the period 2005 to 2009 in Northbridge, there was a 71% increase in the number of reported selected offences against the person. Additionally, in 2005 there were 321 assaults recorded as being alcohol-involved; however in 2008 this figure increased to 411. This data is consistent with the study by Briscoe and Donnelly (2001) which demonstrates a link between late night trading and violence.
 - Emergency department data which shows a link between late night trading, peak trading days (Friday, Saturday and early Sunday morning) and presentations to the Emergency Departments of Royal Perth Hospital and Sir Charles Gardiner Hospital;
 - assault presentations to Royal Perth Hospital Emergency Department;
 - drink-driving charges for the suburb of Northbridge;

- lack of late night public transport options; and
- research which suggests a positive correlation between outlet density and increases in alcohol-related harm and anti-social behaviour.

19 It was submitted that a matter also for consideration in the determination of the application is the possible increase in the risk of harm from people who are refused service or requested to leave the venue or simply the increase in the number of people consuming liquor in Northbridge and then leaving the venue to mix amongst others on the streets who have been consuming alcohol.

20 The EDPH was of the view that the grant of the application for a tavern licence has the real potential to contribute to levels of alcohol-related harm or ill-health. Whilst acknowledging that harm or ill-health due to the use of liquor is not the only consideration when assessing the public interest, it is a “powerful public interest consideration” and appropriate weight needs to be given to this issue, particularly in light of the observations of Ipp J in *Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WASCA*.

Responsive submissions on behalf of the applicant

21 In response to the matters raised by the EDPH, it was submitted that some of the harm data is out of date. For example, recent police data indicates that for the 12 month period ending 27 June 2010, there has been a 22.3% decline in total offences in Northbridge; with non-domestic assaults down 9.6%, threatening behaviour down 18.9%, robbery down 27.7% and burglary and motor vehicle theft each down by over 50%. Consequently, in recent times, there has been a significant decline in the extent of harm in the locality. Furthermore, a report commissioned by the applicant and prepared by Ms Roberta Ryan, a Director of Urbis, raises questions in respect of the reporting and recording of crimes by the WA Police and the gaps in the presentation of health data regarding increased presentations to the Emergency department at Royal Perth Hospital.

22 Some of the data presented in the intervention by the EDPH relates to the application for an extended trading permit, however the extended trading permit application had not been referred to the Commission for determination with the tavern application.

23 It should be noted that while there was an initial intervention from the Commissioner of Police, this was subsequently withdrawn.

24 It was also submitted that each application must be considered on its merits and in this context, none of the material relied upon by the EDPH in his intervention analyses in any detail the nature of the applicant’s proposed licensed premises, its proposed facilities, the management proposed and the proposed method of trade and how this may differ from existing licensed premises in Northbridge. Nor has the EDPH given consideration to any conditions which could be imposed on the tavern licence sought by the applicant

which may circumvent or reduce his perception of the potential for alcohol-related harm to occur.

- 25 Mr Michael Keiller, from Yardoo Pty Ltd, presented at the hearing an overview of the proposed development using architectural drawings and responded to questions from the Commission.
- 26 It was contended that the proposed development would produce an operation similar to the successful Little Creatures Brewery in Fremantle and the grant of the application would be consistent with recent determinations by the Commission in the cases of Equanimity Investments Pty Ltd (Empyrean Function Centre), Fremantle Beverages Pty Ltd (Impact Bar) and O'Hanlons (WA) Pty Ltd (the William Street Bird).
- 27 According to the applicant, any perceived negative impact that the grant of the application may have must be weighed and balanced against all the potential benefits.
- 28 In response to the objection by the licensee of the Lake Street Liquor Supply, the applicant stated that it would agree to a condition being imposed on the tavern licence prohibiting the sale of packaged liquor, because this would be consistent with its proposed style of operation anyway.

Determination

- 29 Pursuant to section 38(2) of the Act, an applicant for the grant of a tavern licence must satisfy the licensing authority that granting the application is in the public interest.
- 30 Whilst section 38(4) of the Act is directed to the potential negative impact of an application, these are not the only matters for consideration. In considering the public interest under section 38, the licensing authority needs to consider both the positive and negative social, economic and health impacts that the grant of an application will have on a community (refer *Second Reading Speech, Parliamentary Debates, WA Parliament, vol 409, p 6342*).
- 31 Furthermore, pursuant to section 33(1), the licensing authority has an absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest; the discretion being confined only by the scope and purpose of the Act (refer *Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR 241*).
- 32 When considering the public interest, the licensing authority is also bound by the objects of the Act as set out in section 5. In respect of this application, the objects set out in sections 5(1)(b) and (c) and 5(2)(a) are particularly relevant.
- 33 Where there is conflict between the various objects of the Act, the licensing authority needs to weigh and balance those competing interests (refer *Executive Director of Health –v- Lily Creek International Pty Ltd & Ors [2000] WASCA 258*).

- 34 In respect of the objection by Mrs Tindara Tarricone, licensee of the Lake Street Liquor Supply, the Commission is of the view that this objection is motivated by an attempt to limit or restrict competition. This is evident from the Notice of Objection lodged by Mrs Tarricone where she states that the sale of packaged liquor from the proposed tavern will impact upon her business. This is not a valid ground of objection under section 74 of the Act and whilst later submissions on behalf of the objector sought to suggest that it would be in the public interest to impose a restrictive condition on the licence if the application was approved, the motivation for the objection is clear and the Commission therefore finds that the objector has failed to discharge its onus under section 73(10) of the Act.
- 35 The EDPH intervention raised issues relating to both the grant of the tavern licence and the grant of an extended trading permit. The Commission has given weight only to those submissions relevant to the application for the tavern licence because the application for the extended trading permit was not referred to the Commission for determination.
- 36 Although the applicant has disputed some of the data presented by the EDPH and provided evidence that crime and anti-social behaviour in the area may have decreased in the past 12 months, it is nonetheless still significantly high. The Commission has previously acknowledged in its decisions that Northbridge experiences high levels of alcohol-related harm. This is clearly enunciated in Fremantle Beverages Pty Ltd trading as the Impact Bar (LC 15/2010) at paragraphs 54 and 55 where it was stated –

“54 One final comment. Northbridge is Perth’s premier entertainment precinct, attracting large numbers of people from throughout the metropolitan area and tourists each day and more significantly, at night on weekends. There is a high density of licensed premises, catering for a variety of consumer demands, in a relatively small locality, which, when mixed with a large influx of patrons late at night leads to the inevitable increase in anti-social behaviour and alcohol-related problems. Arguably, Northbridge is no different to entertainment precincts in other capital cities in Australia and elsewhere in other developed countries. This is not to excuse or downplay the extent of alcohol-related harm that occurs in Northbridge, but to put it in some context.

55 Consequently, whilst the evidence indicates that alcohol is a major contributing factor to much of the harm data, there is nonetheless a range of complex social dynamics which interplay to create the problems in Northbridge. There is no simple solution to these problems and all agencies must work collaboratively to solve them. However, the Commission must balance the existing alcohol-related harm against providing for the demand by consumers for liquor and related services in this entertainment precinct.”

37 In considering the evidence submitted by the applicant, the Commission accepts that the proposed development:

- is unique to Northbridge;
- has a strong emphasis on food with minimal standing areas for drinking;
- forms part of an integrated urban renewal initiative for the area;
- will contribute to the revitalisation of the local area and increase day-time trade;
- will improve the aesthetic appearance of the site and the overall image of the area;
- will have a positive economic impact for the area and other businesses; and
- will provide an activation of the Northbridge Piazza.

38 The Commission also gives weight to the strong support from the City of Perth for the development of the site and the applicant's proposal, which according to the Lord Mayor was selected for its design synergy with the City's community building on the Piazza and its influence on increasing day-time activity in the area. The Lord Mayor believes that the applicant's proposal will also be an addition to the tourist inventory of Northbridge and broaden the public appeal of the area. Some weight should also be given to the fact that the Commissioner of Police did not proceed with his intervention to the application (a Notice of Intervention was submitted but subsequently withdrawn). Section 69(6)(c)(ii) provides that the Commissioner of Police may intervene in proceedings before the licensing authority and introduce evidence or make representations that if a particular application were granted, public disorder or disturbance would be likely to result. However, as pointed out by Ms White in the hearing before the Commission, because the Commissioner of Police did not intervene does not lead to the conclusion that he actually supports the application.

39 The Commission finds, based on the evidence submitted, that the applicant has discharged its onus under section 38(2) of the Act and the grant of the licence is consistent with objects 5(1)(c) and 5(2)(a) of the Act.

40 As indicated at paragraph 33 above, where there is a conflict between the objects of the Act, it is necessary for the Commission to weigh and balance those competing interests. Northbridge already experiences high levels of alcohol-related harm; however the applicant's proposal is unique to Northbridge, may attract a new clientele to the locality and will contribute to the revitalisation of the local area. There is a strong emphasis on food, with reduced vertical drinking areas.

41 In weighing and balancing these competing interests, the Commission is of the view that the overall positive aspects of the applicant's proposal, as presented to the Commission, outweigh the potential negative impact that the grant of the application may have on

existing levels of harm in the area. However the Commission acknowledges the risks associated with the operation of a large, new licensed outlet of this nature in a sensitive area and consequently conditions should be imposed on the grant of the licence to mitigate against these risks and ensure that the premises operates in the manner submitted by this applicant or by any other licensee in the future, should the licence be transferred.

42 The Commission is therefore satisfied that the applicant has complied with all necessary statutory criteria, requirements and conditions precedent to the application being granted and accordingly a tavern licence is conditionally granted to Highmoon Pty Ltd and Yardoo Pty Ltd for premises to be known as Northbridge Brewing Company and located at 44 Lake Street, Northbridge.

43 The tavern licence will be subject to the following conditions when it commences trading:

- I. The sale of packaged liquor for consumption off the premises is prohibited.
- II. The premises must be furnished with tables and chairs consistent with the plans submitted in support of the application dated 24 August 2009.
- III. The premises must be open for breakfast (Monday to Saturday), lunch and dinner (Monday to Sunday).
- IV. The kitchen is to be functioning and food available at all times that the premises are open for trade.
- V. The maximum number of patrons permitted on the premises at any one time is:

• Ground floor	271
• Middle floor	167
• Sky Deck	71
- VI. A range of light and mid strength liquor products must be available for purchase during all trading hours.
- VII. The licensee is not permitted to promote or sell drinks which offer liquor by virtue of their 'emotive' titles such as "laybacks", "shooters", "slammers", "test tubes", "blasters" or "Jager bombs" and no liquor is to be mixed with energy drinks.

(for the purposes of this condition "energy drinks" has the same meaning as "formulated caffeinated beverage" within the *Australian New Zealand Food Standards Code* with a composition of 145mg/l of caffeine or greater).
- VIII. The licensee must maintain and operate the micro brewery.

- IX. The licensee is prohibited from establishing any doorway or thoroughfare between the premises and the adjoining licensed premises (Mustang Bar).
 - X. Only low level background music can be played in the "Sky Deck" area.
 - XI. The licensee is to operate a video surveillance system (CCTV) in accordance with the policy of the Director of Liquor Licensing.
- 44 The conditional grant of the licence is also subject to the standard conditions imposed by the Director of Liquor Licensing and trading may not commence until those conditions have been satisfied.
- 45 Notwithstanding that crime and anti-social behaviour may be on the decline in Northbridge, particularly over the last 12 months, the Commission remains satisfied, based on the evidence submitted, that the locality of Northbridge continues to experience high levels of alcohol-related harm. Consequently, the Commission will maintain a cautious and considered approach to the granting of applications in the area.



JIM FREEMANTLE
CHAIRPERSON