DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: THE SENTINEL BAR & GRILL PTY LTD

PREMISES: THE SENTINEL BAR & GRILL

PREMISES ADDRESS: TENANCY D, GROUND FLOOR, 111 ST GEORGE'S TERRACE, PERTH

LICENCE NO: 13635

NATURE OF MATTER: CONDITIONAL GRANT OF A TAVERN LICENCE

This is an application by The Sentinel Bar & Grill Pty Ltd ("the applicant") for the conditional grant of a tavern licence for premises to be known as The Sentinel Bar & Grill and situated at Tenancy D, Ground Floor, 111 St George's Terrace, PERTH. The application is made pursuant to Sections 41 and 62 of the Liquor Control Act 1988 ("the Act").

Pursuant to section 67 of the Act, the application was required to be advertised on the site of the premises between 6 September 2010 and 3 October 2010; by way of a notice published in The West Australian newspaper; by way of a Notice to Residents and Businesses distributed within the locality; and by a General Notice distributed to educational, health care and local and regional government institutions, as well as community and church groups situated within the locality.

Notices of Intervention were lodged by the Executive Director Public Health ("EDPH") and the Commissioner of Police ("Commissioner").

The interventions were served on the applicant and all parties were provided an opportunity to lodge further response submissions.

Pursuant to sections 13 and 16 of the Act, the application will be determined on the written submissions of the applicant.

DOCUMENTS CONSIDERED

The documents to which regard will be given in making a determination are as follows:

1. Notice of Application lodged 17 August 2010;
2. Public Interest Assessment ("PIA") submissions and supporting documentation lodged 17 August 2010;
4. Section 40 Certificate of Local Planning dated 19 August 2010 and the City of Perth Approval to Commence Development document dated 19 August 2010;
5. Schedule of Requirements dated 14 September 2010;
6. Notice of Intervention from the Commissioner;
7. Notice of Intervention from the EDPH;
8. Response Submissions from the applicant lodged 18 October 2010;
9. Correspondence from Sergeant P Gilmour confirming that no further submissions are to be made by the WA Police;
10. Closing submissions from the EDPH lodged 25 October 2010; and

LEGISLATIVE FRAMEWORK

The objects of the Act are set out in section 5. The primary objects are:

a) to regulate the sale, supply and consumption of liquor;
b) to minimise harm or ill-health 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.

Section 33 of the Act provides;

Subject to this Act, the licensing authority has an absolute discretion to grant or refuse an application under this Act on any ground, or for any reason, that the licensing authority considers in the public interest.

(2) An application —
a) may be refused, even if the applicant meets all the requirements of this Act;
b) or
c) may be granted, even if a valid ground of objection is made out,
d) but is required to be dealt with on its merits, after such inquiry as the licensing authority thinks fit.

Applicants must satisfy the licensing authority that the granting of an application is in the public interest. In this regard, section 38(4) of the Act provides:

Without limiting subsection (2), the matters the licensing authority may have regard to in determining whether granting an application is in the public interest include —
a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and

b) the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and

c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and

d) any other prescribed matter.

The reference to “public interest” indicates that both sections 5 and 38 of the Act are relevant when making a decision.

**APPLICANT’S CASE**

The applicant lodged comprehensive PIA submissions as its evidence in relation to section 38(2) and (4) matters. Those submissions provided data on the socio-economic demographics of the locality; tourism information; social health indicators; existing crime statistics; information on the amenity of the area; and information relating to the positive benefits of the application. The application was supported by proposed menus and wine lists; 36 Public Interest Witness Questionnaires; and correspondence from the Rt Hon Lord Mayor for Perth, Lisa Scaffidi.

In summary of that PIA documentation, the applicant states:

1. The proposed premises are located on St Georges Terrace in the heart of the CBD and is surrounded by 5 star hotels, financial businesses, national and multinational professional offices, boutique cafes and restaurants, and retail spaces.

2. Positioning itself in this precinct, it is proposed that The Sentinel will be of a superior standard in terms of both premises design and layout, and in its product offering. The applicant proposes to trade six days a week, providing breakfast, lunch and dinner to residents, visitors and workers in the Perth CBD. The applicant may later open on Sundays. Evidence of the high end product that the applicant will have available, was provided by way of The Sentinel menu and wine list.

3. It is proposed that The Sentinel will provide a “mix of traditional French bistro cooking and modern American grill house flavours...”. The venue will include a “…striking bar that overlooks the Terrace and dining areas with a look and feel that reflect a world culture of wines and smart drink service.”
4. The theme of the premises is high quality and is inspired by “...traditional bar restaurants found in New York, London or Paris.” The interior will be characterised by natural timbers, travertine stone and black leather seating. Three dining rooms will be available; including an outside dining area. Each of the dining spaces will provide for different dining experiences. That is; there will be a casual front room, a dining room providing a more intimate ambience with leather banquettes, and an alfresco dining space with views into the kitchen. The centrepiece connecting all three spaces will be the bar and wine library.

5. For lunch and evening meals, tables will be dressed in linen and crystal glassware. Meals will be served all day until closing.

6. The venue will also cater for corporate functions.

7. Entertainment will be by way of background music, and on rare occasions, a live jazz trio.

8. Although a tavern licence is sought, The Sentinel will not provide a packaged liquor facility or product offering. Nor does the applicant have any current plans for extended trading hours.

9. The city of Perth is experiencing substantial growth in terms of both inner-city residential development and business/retail development. It has a working population of approximately 109,693 people and a residential population of over 16,000. The City of Perth anticipates the residential population to grow to more than 24,000 by 2020. According to the City of Perth, there has been a consistent 10% growth each year since 2007/08 in the CBD and that trend is expected to continue.

10. Information from the City of Perth indicates, that of the city workers, the vast majority are employed in administrative and professional occupations. The residential population is characterised as “empty nesters”, young professionals, and singles, 83% of whom live in units or apartments. It is submitted that this group are affluent and well educated.

11. To address potential concerns about outlet density, the applicant undertook an analysis of similar licence types to that sought and comparing the population (residential and working) against the existing licensed premises, the applicant argues that there is a ratio of 1 of this type of licensed premises for every 2,353 people.

12. The applicant also undertook an analysis of existing services in the CBD which provide bar/restaurant style facilities. The applicant submits that of the various existing premises in the area, there are only six venues that can be said to provide this type of operation. However, the applicant submits that none of these venues deliver the unique high end product offering being proposed by it. That is:
   a. Full class 1 kitchen
   b. Full sit-down meals
   c. Fine dining
   d. ‘top shelf’ comprehensive beverage list
   e. Comprehensive wine selection
   f. ‘Celebrity chefs’, Sommeliers
   g. Separate bar from dining area
   h. Rare and unique products on menu and beverage listing
i. Private dining rooms
j. Corporate services
k. A wine library

13. The applicant compared The Sentinel proposal against its current premises, Bar One, to further demonstrate how the product will be different. It is submitted that “Bar One is a place that...has stayed focused on ...providing great coffee, food, beverage and service...”. It is “...modeled on an Italian Canteen...” theme, whereas The Sentinel “...will establish itself around a savvy yet casual ‘New York Style’ grill and bar restaurant.”

14. The applicant submits that the proposed tavern is the kind of place that is missing in Perth and that it will bring a quality, “true” bar / restaurant facility to the Perth CBD which is currently lacking.

15. The location of the venue is an area where it will have a low impact, primarily due to its emphasis on food, low key background music and extensive acoustic panelling which has been incorporated into the premises design. Further, there are no nearby residential homes/apartments.

16. The applicant is an experienced licensee, having operated a number of high profile venues in Western Australia for over 20 years. The principle of the applicant company, Stephen Scaffidi, is not only a trained chef but has managed licensed premises throughout Western Australia and in the Eastern States.

NOTICE OF INTERVENTION – COMMISSIONER OF POLICE

On 12 October 2010, the Commissioner lodged a Notice of Intervention for the purpose of introducing evidence and making representations that if the application was granted harm or ill-health may be caused to people or any group of people due to the use of liquor, and therefore contrary to the public interest.

The key points of the intervention are:

1. Police are concerned that there is already a high level of alcohol-related harm occurring in the metropolitan area.
2. “[i]t is not difficult to conceive of circumstances in which licensed premises, no matter how conducted, will negatively impact on the amenity of the area...”.
3. The Commissioner submits that by their nature, licensed premises inherently give rise to anti-social behaviour and that no degree of management can effectively control this behaviour after a patron has left the venue.
4. The Commissioner submits that even if the proposed licensee complied with the Act and ceased to serve patrons and removed them from the premises, the patrons would then end up on the street along with patrons from other premises resulting in alcohol affected patrons impacting upon the amenity of the area.
5. Information from intelligence holdings shows that between 1 July 2010 and 30 September 2010, Police had to attend numerous incidents in the CBD area.

6. It is submitted that the locality of the proposed premises is already susceptible to alcohol related harm and another premises will further increase this existing problem.

If the application is granted, the Commissioner submits that conditions need to be imposed, consistent with the applicant’s PIA, so as to minimize the potential harms.

NOTICE OF INTERVENTION – EDPH

On 13 October 2010, the EDPH lodged an intervention for the purpose of making representations that:

1. The granting of the application would increase the outlet density of licensed premises in the suburb of Perth, which already has a high outlet density;
2. There are high levels of alcohol-related harm occurring in the suburb of Perth;
3. The existing high level of alcohol-related harm is consistent with research which shows outlet density of licensed premises is associated with levels of alcohol-related harm;
4. Research shows taverns are high-risk for harm when compared with other licence types; and
5. If the licence is granted conditions on the licence would be an important harm minimisation approach.

The key points for the EDPH are that:

1. WA Police data shows there are existing levels of harm occurring in the locality and that these are relevant to the consideration of public interest.
2. Between May 2009 and May 2010, there were a total of 829 assaults reported for the suburb of Perth; and 608 disorderly conduct incidents of which 69.9% were recorded as alcohol-related.
3. Increasing the outlet density of higher risk licence types increases the likelihood of further harm occurring.
4. There are 169 licensed premises in the suburb of Perth which provide range of food and beverage facilities. Using the applicant’s population estimates, the actual ratio of licensed premises per person is more likely to be 1:808 people.
5. The applicant’s comparison of population statistics is misleading and Perth has a greater outlet density per person than presented by the applicant.
6. Outlet density in Perth has increased over the years, as have the levels of harm. There is a significant body of evidence demonstrating the positive relationship between levels of per capita alcohol consumption and the frequency and range of social and health problems.

The EDPH submits that if granted, the imposition of conditions on the licence may support the provision of liquor at the proposed premises to be lower risk of harm.
RESPONSIVE SUBMISSIONS – APPLICANT

On 18 October 2010, the applicant responded to the interventions noting:

1. The applicant accepts most of the proposed trading conditions suggested by the Commissioner and the EDPH. These conditions are in the main consistent with the applicant’s commitments in its PIA.
2. The proposed conditions relating to maximum accommodation numbers and seating requirements need minor modification consistent with the proposed manner of trade.
3. Neither intervention demonstrated how the research and evidence relates to the applicant’s proposed premises.

RESPONSIVE SUBMISSIONS – EDPH

The EDPH maintains the submissions made in the original intervention and noted that the premises will be a higher risk venue unless conditions are imposed. The EDPH reiterated his concerns around the potential for harm and made comment on the proposed modification of the conditions.

DETERMINATION

Pursuant to section 38(2) of the Act, the applicant must satisfy the licensing authority that the grant of the application is in the public interest. Sub-section (4) sets out the matters the licensing authority may have regard to in determining whether the granting of the application is in the public interest.

In addition to the requirements of section 38, the licensing authority must also determine whether to grant the application is in the public interest under section 33(1) of the Act.

In considering the public interest and the evidence submitted by the parties to this proceedings, and having regard to the objects of the Act, the responsibility of the licensing authority in discharging its functions is to consider the application in the context of the objects of the Act.

As part of its package of documents, the applicant submitted information relating to the population of Perth CBD both in terms of the working population and the resident population; as well as the number of visitors and visitor nights in Perth. The applicant also provided 36 Public Interest Witness Questionnaires as objective evidence that its services would cater for the requirements of consumers. These questionnaires provide a representative sample of consumers in the CBD and their requirements for liquor at the proposed premises.
In my opinion, the intervention by the EDPH and the Commissioner of Police establishes that if the application for the tavern licence is granted, harm or ill-health might be caused to people or any group of people due to the use of liquor, where harm due to the use of liquor extends to harm caused to other than the consumer.

As a consequence of the matters raised in the interventions and the submissions of the applicant, conflict arises between two of the primary objects of the Act; that is, those set out in section 5(1)(b) and 5(1)(c). The determination of this application therefore requires a weighing and balancing of the possibility of harm if the application is granted, against object (c) of section 5(1) of the Act.

Ultimately, the determination of this application turns on the quality and level of evidence submitted by the applicant to discharge its obligations under the Act.

When considering the Act's harm minimisation object, the Supreme Court stated in *Executive Director Public Health v Lily Creek International & Ors (2000) WASCA 258* (paragraph 29) that:

> “The potential of harm or ill-health to people, irrespective of whether the harm or ill health is proved on a balance of probabilities, would be a powerful public interest consideration. This section is therefore consistent with the view that the mere possibility of harm or ill-health would always be a relevant matter for the Licensing Authority when discharging its functions.”

The Supreme Court also stated at paragraph 29 that:

> “…the public interest considerations that underlie s5(1)(b) indicate that the potential of harm or ill-health is to be taken into account irrespective of whether the prospect of harm or ill-health is a possibility or a probability.”

In Decision No. A191578 in relation to the Eastern Hotel Midland, the licensing authority found that, on the balance of probabilities, “…hotels and taverns can be classified as “at risk venues” in terms of the possibility of causing harm or ill-health to people or any group of people due to the use of liquor…”.

In this context, this is an application for a new “at risk venue”. However, when considering the public interest and the risk of alcohol-related harm, it is important to also consider the nature of the proposed premises; its location; the trading hours; and the management proposed in relation to, amongst other things:
• the responsible service and promotion of liquor;
• emphasis on meals and other services;
• target patronage;
• the standard of the proposed premises;
• noise management and the entertainment to be provided; and
• experience and reputation of the applicant.

The submissions of the EDPH and the Commissioner demonstrate that there is, on the balance of probabilities, harm occurring in the Perth CBD area, which includes the area identified by the applicant as the relevant locality. While I acknowledge that some of the evidence of the EDPH and the Commissioner relates to the harm occurring during late night trading, it nonetheless presents a snapshot of the current levels of harm in the CBD area. I also note the arguments and concerns around outlet density. In this regard, it is important to note that the growth in licensed premises in the suburb of Perth (which covers the whole of the City of Perth) has generally been observed in the licence classifications considered lower risk, for example: restaurants, special facility – transport, sporting clubs and reception centres.

Notwithstanding that finding, I also accept the applicant’s submissions that its proposed premises may cater for the requirements of consumers with regard to the proper development of the industry. Where such conflicts in findings occur, the comments of Ipp J in Executive Director Public Health v Lily Creek International & Ors (2000) WASCA 258 page 8 paragraph 19, provides guidance:

“There will be occasions when section 5(2) objects can only be achieved by the grant of licences for the sale and supply of liquor in circumstances under which such grants may tend to cause harm or ill-health to people. Section 5 makes it plain that the Licensing Authority is required to bear section 5(2) objects in mind as well as the primary objects when fulfilling its functions. This indicates that the Licensing Authority must undertake a weighing and balancing exercise when conflict between objects arises”.

This application is, in my opinion, just such a case. While harm or ill-health may be caused to people if the application was granted, I accept the applicant’s submissions that the proposed premises may provide a unique, sophisticated and high end product that is somewhat lacking in the CBD at present; that it will be developed/constructed to a high standard; and that it will feature modern and upmarket facilities. I also note the applicant’s commitment to emphasising and promoting a full meal service as opposed to a standard
vertical drinking / bar atmosphere. Therefore, provided the applicant brings its vision to fruition, I am satisfied that the impact on the amenity of the locality may be a positive one.

However, in the context of the possibility of increased harms, and in order to ensure that the premises remains a low risk venue and maintains the standards as set out in the applicant’s own PIA supporting the grant of the licence, I intend to condition the licence consistent with the management practices identified by the applicant in its PIA.

Accordingly, this application is conditionally granted subject to the following:-

1. a Certificate under section 39 of the Act being lodged before the operation of the licence;

2. compliance with the Local Government Act 1960, Health Act 1911 and any written law relating to the sewerage and drainage of these premises;

3. all work being completed within twelve (12) months by 10 November 2011 in accordance with plans and specifications 17 August 2010;

4. the recommendations of the Inspector of Licensed Premises on the schedule of requirements being satisfactorily completed and the Director of Liquor Licensing being notified in writing on completion of that work within 21 days before the day the licensee wishes to commence trading under the licence;

5. a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and

6. the applicant seeking confirmation of the grant on or before pursuant to section 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 in accordance with section 98 of the Act will be as follows:-

- Monday to Saturday – 6 am to 12 midnight;
- Sunday – 10 am to 10 pm;
- New Years Eve (where it falls on a Sunday) – 10 pm to 12 midnight;
- New Years Day – up to 2 am from immediately after 12 midnight on New Year’s Eve;
- Good Friday or Christmas Day – 12 noon to 10 pm, where the liquor is sold ancillary to a meal supplied by the licensee; and
• Anzac Day – from 12 noon until 12 midnight.

**TRADING CONDITIONS**

The licensee will be permitted to sell and supply liquor in accordance with the provisions of section 41 of the Act as it relates to tavern licences and is subject to the following additional conditions:

1. The sale and supply of packaged liquor for consumption off the licensed premises is prohibited.
2. Meals must be available at the licensed premises at all times up until the last hour of trade.
3. The maximum patron accommodation numbers permitted on the licensed premises at any one time is 175.
4. The licensee is not permitted to promote or sell drinks which offer liquor by virtue of emotive titles such as “laybacks”, “shooters”, “slammers”, “test tubes”, “blasters”, or “bombs” and spirits are not to be sold or supplied in non-standard measures (that is, no more than 30ml of spirits is permitted in any vessel).
5. No liquor is to be supplied with energy drinks. (For the purposes of this condition energy drinks has the same meaning as formulated caffeinated beverage within Australia New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater).
6. The areas identified on the approved plans as ‘Dining’, must be set up for dining with tables or fixed structures used as dining tables, along with appropriate seating, at all times the premises is open for trade.
7. Any live entertainment or music provided on the licensed premises is to be background in nature only, sufficient to enable normal conversation to occur.

**ENTERTAINMENT CONDITION**

1. The licensee or manager, or an employee or agent of the licensee or manager, shall not:-

   (a) be immodestly or indecently dressed on the licensed premises;
   (b) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner;
   (c) exhibit or show, or cause, suffer or permit to be exhibited or shown, on the licensed premises any classified "R" moving picture or extract therefrom;
   (d) cause, suffer or permit 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
   (e) cause, suffer or permit any person to take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
2. In this condition, "licensed premises" includes any premises, place or area:-

(a) which is appurtenant to the licensed premises; or
(b) 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. Additionally, the licensee shall ensure that the premises’ House Management Policy and Code of Conduct are displayed in a prominent position on the licensed premises.

**REGISTERS**

The licensee must maintain on the licensed premises the following registers:

a) a register of prescribed incidents that take place at the licensed premises (section 116A of the Act and regulation 18EB refer); and
b) a register that records training compliance for all staff (section 103A of the Act and regulation 14AG refer).

These registers must be maintained in a form approved by the Director of Liquor Licensing. The licensee, or an employee or agent of the licensee of the business conducted under the licence shall, at the request of an authorized officer, produce the registers for inspection by that authorized officer.

**In addition to the specified trading conditions of the licence, the licensee is also reminded of the following obligations under the Act:-**

**Supervision & Management – Approved Manager**

In accordance with section 100(2) of the Act a natural person approved as a licensee or manager must be on the licensed premises at times when business is being conducted at the premises. In this regard please note that more than one person may be approved as manager to ensure that the licensee can comply with this requirements taking into consideration the trading hours of the licensee.
Mandatory Training - Responsible Service of Alcohol
Within four (4) weeks of commencing employment at the licensed premises the licensee is required to have any person who will be engaged in the sale, supply and service of liquor on the licensed premises, and all senior staff, successfully complete a course of training in the responsible service of alcohol.

Free Drinking Water
Pursuant to section 115A of the Act, at all times that liquor is sold and supplied for consumption on the licensed premises, the licensee shall make available to patrons, potable drinking water free of charge. As a minimum, this condition is to be met by way of water dispensers located at or near all bar service areas. The water must be refreshed regularly, with clean glasses or disposable cups being available for use.

LICENCE FEES
Pursuant to section 127(2) of the Act, the prescribed licence fee of $500 will be payable prior to the operation of the licence.

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

This matter has been determined by me under delegation pursuant to section 15 of the Act.

Janine Belling
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

1 November 2010