DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: SHIRE OF UPPER GASCOYNE
PREMISES: THE JUNCTION PUB AND TOURIST PARK
PREMISES ADDRESS: LOT 4 VIVEASH WAY, GASCOYNE JUNCTION
APPLICATION NO: 14690
NATURE OF MATTER: CONDITIONAL GRANT OF A TAVERN LICENCE

Introduction

1. On 13 February 2013 an application was made by the Shire of Upper Gascoyne ("the applicant") for the conditional grant of a tavern licence for premises to be known as The Junction Pub and Tourist Park and situated at Lot 4 Vivieash Way, Gascoyne Junction ("the premises"). The application is made pursuant to sections 41 and 62 of the Liquor Control Act 1988 ("the Act"). Pursuant to the provisions of section 17(1)(b) of the Act, the applicant is represented by Mr Ernest Samec, of Samec Legal.

2. The application was advertised for public comment between the dates of 17 May 2013 and 13 June 2013, in accordance with instructions issued by the Director of Liquor Licensing and no objections were lodged. However, on 24 June 2013, the Commissioner of Police exercised his rights under section 69(6) of the Act and was joined as a party to these proceedings.

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

Submissions

Submissions of the applicant

4. To support its application and discharge its onus under section 38(2) of the Act, the applicant prepared a Public Interest Assessment ("PIA"), which explains that the proposed premises will be the only licensed premises within the Shire of Upper Gascoyne, which covers an area of some 46,602 sq km.

5. The applicant submits that the proposed tavern is currently being constructed in a new building as part of an integrated tourism precinct in the town centre and will comprise a total licensed area of 318 sq m, consisting of:

1 Any reference in this determination to the submissions of "the applicant" is also a reference to the submissions of its representative.
(a) an integrated bar and dining area of 120 sq m;
(b) an undercover and garden area of 155 sq m to be included within the licensed area; and
(c) public conveniences.

6. The applicant also submits that the tavern building has been designed with four metre wide verandahs, a steeply pitched traditional metal roof and with over the counter packaged liquor sales in mind. It is further proposed that the premises’ kitchen will be shared with an adjoining, but separate, roadhouse.

7. By way of background, in relation to Gascoyne Junction and the proposal to establish a new tavern, the applicant submits that Gascoyne Junction is located approximately 180 kms east of Carnarvon, with a population of about 25 persons for the town, although based on the 2011 ABS census, the total Shire population is about 250 persons. In this regard:

The population of the Shire is distributed between the town of Gascoyne Junction, the Woodgamia Community, the Burringurrah Community and those persons who live on pastoral stations.

The population of the Shire of Upper Gascoyne is estimated to be distributed as follows:
- Gascoyne Junction Township: 10%;
- Woodgamia Community: 5%;
- Burringurrah Community: 58%; and
- Pastoral Stations: 27%.

8. According to the applicant, the proposed tavern will replace the former Junction Hotel, which was destroyed in the floods of December 2010, leaving the town of Gascoyne Junction without much needed social and retail facilities and having a major impact on residents and tourists visiting the region, particularly visitors to Mt Augustus.

9. As such, the applicant submits that the purpose of the tavern is to provide a social hub for the families who live in the Shire and who wish to enjoy meals in a relaxed bar and dining atmosphere.

10. In relation to the management of the proposed tavern, the applicant submits that:

The Shire plans to appoint an experienced Manager to manage the Gascoyne Junction Tavern with experience in the liquor industry. It is likely that initially the Manager will be employed directly by the Shire with the Manager responsible for the day to day supervision of support staff. The Shire will also employ permanent and casual staff, the numbers of which will vary according to demand.

The Shire will retain ownership of Lot 4 being the land upon which the Tavern and Roadhouse building is constructed. The Shire will be responsible for repairs and maintenance. The Shire considers that it will take some time to build up the business of the Gascoyne Junction Tavern and Tourism Precinct.

Alternatively the Shire is considering leasing the operation of the Tavern Premises, roadhouse and camping facilities to one experienced operator.
11. The PIA also addresses those matters prescribed in section 38(4) of the Act. In this regard, the applicant's PIA explains that Viveash Way has been designed as Gascoyne Junction's new main street and will form the new town centre, thereby having a positive impact on the amenity of the locality.

12. In its consideration of the potential harm or ill-health that might be caused to people, or any group of people, due to the use of liquor, the applicant acknowledges that Aboriginal people and communities are considered possible 'at risk' groups under the Drug and Alcohol Interagency Framework for Western Australia 2011-2015 and provided the following information about both the Woodgamia Community and Burringurrah Community:

   - The Woodgamia community is the closest community being situated approximately 1.5 km from the location of the tavern premises within 3km of the radius.
   - The Burringurrah community is located about a 3.5 hour drive north east of Gascoyne Junction within the extent of the Mt Augustus National Park. Most of the drive from Gascoyne Junction to the Burringurrah community is by unsealed road.

13. In relation to shopping trips by the identified communities, the applicant submits that:

   - Based on the 2011 census and the Shire's estimate, the population of the Woodgamia community may have a population of approximately 10 to 15 persons.
   - There is no shop, bank, medical centre, pharmacy, dentist, bank, ATM machine, or licensed outlet in Gascoyne Junction. As a result all persons who live in the town including the members of the Woodgamia community must drive 2 hours one way to Carnarvon for their regular shopping, medical, pharmaceutical, banking and other needs including alcohol.
   - This 4 hour 2 way regular drive between the town and Carnarvon and access to alcohol during shopping trips would continue even if the new Tavern was not being constructed.
   - The Burringurrah Community is located within the boundaries of the Mt Augustus National Park, a considerable distance of 267 km or 332 km north east of Gascoyne Junction. The Burringurrah community is also located about 280 km north west of Meekatharra. In broad terms, the Burringurrah Community is located approximately mid way between Gascoyne Junction and Meekatharra.
   - The Burringurrah Community has a shop, medical facility and a multi function police station. In comparison Gascoyne Junction has no shop and no medical facility. Members of the Burringurrah Community may not have the same need to drive to Carnarvon for shopping and services as do persons living in Gascoyne Junction.
   - Alternatively members of the Burringurrah Community have the choice of driving about 280 km to Meekatharra to purchase packaged alcohol when road conditions allow.

14. The applicant further submits that the sealed road from Gascoyne Junction stops after 12 kms to the east and the road thereafter is unsealed to Burringurrah and is sometimes not accessible when the Community is flooded in.
15. The applicant presents the fact that the Junction Hotel operated for 99 years without evidence of significant harm, together with the perceived low likelihood of harm from the proposed Tavern in Gascoyne Junction to the Burringurrah Community, as mitigating the risks associated with the sale and supply of liquor to that community.

16. In relation to possible offence, annoyance, disturbance or inconvenience posed by the grant of the licence, the applicant submits that:

The issue of crowds or crowd control will not arise from the Tavern Premises. The relatively small total of 318 sq m of the Tavern incorporating a dining area set up with tables and chairs is not sufficient to generate a crowd.

The Premises will not have live bands or live popular music or even recorded music. Some recorded music may be heard from the restaurant but no more.

The lack of such popular music is not attractive to younger persons who tend to be attracted towards loud amplified music as a crowd attractor.

The small 318 sq m capacity of the proposed Tavern including the verandah and garden area will not cause issues concerning crowds or antisocial behaviour.

17. In conclusion, the applicant further submits that:

The purpose of the Tavern application is to bring back to life the social hub of the town that existed during the 99 year history of the former Junction Hotel but in a modern environment on high ground above the floodway. Since the destructive floods of December 2010 the town and indeed the Shire has had no licensed facility.

...Furthermore, it does not necessarily mean that no licence should be granted if some harm or ill health may be caused by the grant of the licence. See Executive Director of Health v Lilley Creek International Pty Ltd & Ors (2150) WACA 258.

Submissions of the Commissioner of Police

18. The intervention of the Commissioner of Police makes representations about whether or not the applicant has met the public interest test, the presence of ‘at risk’ groups and existing alcohol related harm in the locality.

19. After making observations about whether or not the applicant has discharged its onus under section 38(2) of the Act, the Commissioner of Police makes representation, via a report prepared by Acting Sergeant Akker from the Mid-West Gascoyne Alcohol and Drug Co-Ordination Unit, on how both the Woodgamia and the Burringurrah Communities should be considered as ‘at risk’ groups for the purposes of the application.

20. In relation to the Burringurrah Community, it is submitted that “…the proposed premises will be patronised by members of that community…” and in response to the applicant’s submission that the distance and unsealed roads would deter members of the Burringurrah Community from patronising the proposed premises, the intervener submits that “…the statement is not validated by any supporting facts.” It is further submitted that “…the town of Carnarvon has shopping facilities and places of convenience, in contrast to Meekatharra which has only available limited facilities.”
As such, the Commissioner of Police submits that residents from the Shire of Upper Gascoyne frequent Carnarvon due to the availability of greater services.

21. Following discussions with the Officer in Charge of the Multi Functional Police Facility (“MFPF”) in Burringurrah, the intervener also submits that “…members of the Burringurrah Community have a greater propensity to travel to Carnarvon, as opposed to Meekatharra.” The Officer in Charge of the MFPF also expressed concern that community members may frequent the proposed venue to make their large quantity sales and that community members of Gascoyne Junction also have a propensity to drink alcohol in large volumes.

22. The Commissioner of Police also notes that the Shire Census provided in the applicant’s PIA identifies that the Indigenous population makes up 56% of the residents of the Shire of Upper Gascoyne and submits that licensed premises in areas with such a large percentage of ‘at risk’ residents raises concerns about potential harm and ill-health.

23. In this regard, qualitative information was also provided by the intervener regarding:

(a) incidents of domestic violence attended by police from the MFPF in Burringurrah, where children are present and alcohol is a contributing factor, which can require intervention by the Department of Child Protection; and

(b) that the Department of Child Protection is present within the community as a response to the Gordon Inquiry\(^2\), which identified that abuse was widespread in Indigenous communities.

24. The intervention also references other reports, such as the *Report of Reducing Harm Alcohol, Tobacco and Obesity in Indigenous Communities, Key Approaches and Actions*, which was tabled for the National Preventative Task Force in March 2009 and *Restrictions on the Sale and Supply of Alcohol; Evidence and Outcomes*, tabled by the National Drug Research Institute of Curtin University in 2007, to establish the benefits to Indigenous communities from liquor licensing restrictions that reduce the supply of alcohol.

25. Further, submissions are made on the extent of existing alcohol related harm within the locality, with the Commissioner of Police including incidents occurring within the Burringurrup Community in these submissions.

26. In conclusion, the intervener submits that:

The applicant provides [sic] primary purpose of the proposed premises is to serve drinks and meals to local residents and tourist [sic] in a comfortable environment set up with a bar and tables and chairs for dining.

\(^2\) The Gordon Inquiry was prompted by the coronial inquest into the death of a 15 year old Aboriginal girl at the Swan Valley Nyoongar Community in 1999.
Police submit that the PIA does not expand on intention [sic] to service takeaway alcohol sales.

Having regard to the identified risks associated with alcohol consumption within the communities of ‘at risk’ people, Western Australia Police respectfully request seek [sic] to make recommendations in line with an existing s.64 of the Act restriction which encompasses the Shires of Meekatharra, Cue, Mount Magnet, Sandstone and Yalgoo.

Document exchange

27. In accordance with the procedure laid down in section 16 of the Act, a document exchange process was initiated on 12 August 2013 between the parties in order to ensure that each party was given a reasonable opportunity to present its case and to inspect (and make submissions in respect of) all relevant documents.

28. As such, each of the parties were invited to lodge further submissions and/or evidence in order to support their application or intervention, as the case may be.

29. I also took the opportunity, in accordance with the provisions of section 16(1)(b)(i) of the Act, to obtain information from the applicant on a number of questions arising from my analysis of both its PIA and the notice of intervention.

30. On 26 August 2013, further submissions were made by the applicant, which were accompanied by statements from Mr Ross Collins, the Shire President; Mr Peter Windie, the spokesperson for the Woodgamia Community; Ms Elizabeth Cox, the Shire’s Environmental Health Officer; Mr Rodney Ding, Traffic Engineer; and Mr Ernest Samec, Lawyer. Appended to the submissions was an extract of a Sydney Morning Herald article, published on 31 October 2007, regarding the closure of police stations and a document entitled Stage 2 Business Case for Town Revitalisation Project.

31. In these submissions, the applicant also addresses my questions relating to:

(a) the proposal to share the kitchen between the proposed tavern and roadhouse, by confirming that the kitchen is to be included as part of the defined licensed premises and all the buildings on Lot 4 of Deposited Plan 71572 (i.e. the Tavern, Roadhouse with Shop and Caravan Park) are designed to operate as one tourist precinct, with one tenant appointed to manage all of the buildings on Lot 4 as a single business; and

(b) the apparent focus of the PIA on on-premises consumption of liquor and why a tavern licence is being sought in preference to a tavern restricted licence or a small bar licence, with the applicant advising that a tavern licence is sought because the applicant considers that the sale of packaged liquor over the counter is in the public interest, as it will mitigate the existing risks of unnecessarily long car journeys to Carnarvon to purchase packaged liquor.
32. In relation to possible risks associated with potential harm or ill-health to people, or any group of people, due to the use of liquor, the applicant submits that, given the breakdown of the population of the Shire of Upper Gascoyne:

There “...are strong indicators of social stability and security in the locality for both indigenous and non indigenous people which points to a low risk for the at risk groups.

...The actual location of the Tavern and the design of its immediate surroundings in the new tourist precinct will improve surveillance and mitigate harm to indigenous people as indicated below.

The Shire considers that members of the Burringurra Community who live almost 300 km from the town are too far in the east to be affected by the proposed Tavern at Gascoyne Junction. Nevertheless the Shire supports the need to minimise harm and has included input from the Burringurra spokesperson.

33. Therefore, to address potential harm or ill-health associated with the grant of the licence to residents of the Woodgamia and Burringurrah communities, the applicant submits that the “...Shire as the representative of the Local Government of the community and Landlord of the Tavern supports harm minimisation...” and will insert a number conditions in the Lease to further minimise risks of alcohol related harm or ill-health.

34. The applicant further submits that people, including indigenous people who arrive at the tavern, will enter a safe and well lit tourist precinct, which will be a secure environment without areas for loitering, drinking or anti social behaviour, which will also mitigate any potential harms. Similarly, the applicant further submits that the Shire’s lease of the Tavern, Roadhouse and Caravan Park will be to one entity, will allow for greater surveillance and control by Management.

35. The provision of meals for patrons is also considered by the applicant to be very important for all patrons, which is why it designed the tavern to share a modern kitchen to improve viability and meal preparation so that all patrons, including indigenous people, will be attracted to the affordable meals in the tavern, thereby further mitigating harms.

36. The applicant also submits that the size of the premises, which is too small to accommodate live bands, means that the tavern will not act as a crowd attractor, which further mitigates against antisocial behaviour, excessive drinking and harm.

37. In response to the Notice of Intervention, the applicant submits that:

There is little logic in the Police intervention where it claims without justification that alcohol sales at the new Tavern in Gascoyne Junction will lead to alcohol related incidents at Burrengurra a drive of almost 300 km to the east over unsealed and seasonally flooded roads.
38. In relation to the police incidents cited in the intervention, the applicant submits that:

If there are issues at Burrungurrah, the new MFPF Police Station located at Burrungurrah is best placed to deal with them. It is not surprising that the Police came from Meekatharra to Burrungurrah because Burrungurrah is under the influence of Meekatharra where there is a large town with several supermarkets and Pubs. The Junction Hotel has been closed since late 2010 and was not responsible for supplying liquor to members of the Burrungurrah community during the Police incident. The Shire’s proposed Tavern in Gascoyne Junction is too small and too distant over difficult unsealed roads to cause people from Burrungurrah to drive to it for alcohol. Burrungurrah is under the influence of Meekatharra and that is where the alcohol was most likely purchased.

Furthermore, there is a licensed facility at the Mt Augustus which is an active Tavern...

The short driving distance between Burrungurrah and the Mt Augustus Tavern licence is a much easier proposition than a longer drive from Burrungurrah to Meekatharra for packaged alcohol.

39. The applicant also submits that any consideration of crime statistics must also consider that in 2007 the Police closed the Police Station in Gascoyne Junction due to the low rate of incidents in the preceding three and a half years.

40. In relation to the conditions proposed in the intervention by the Commissioner of Police, the applicant submits a number of alternative conditions in its submissions of 26 August 2013.

41. In response to my concerns regarding potential harms, particularly in relation to the decision of the Supreme Court in *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* (2000) WACA 258, the applicant submits that “…the facts and circumstances of Lily Creek are significantly dissimilar to the proposed Tavern…”

42. The applicant then proceeds to contrast both applications in terms of location of the premises (or not) on a major highway; population and outlet density; the difference in establishing a drive through bottle shop verses the concept of over the counter packaged liquor sales; and the difference between the “...major reserve and gathering place for Aboriginal people...” in the Lily Creek matter and the “…7 household community at Woodgamina...” where the “…relatively small town of Gascoyne Junction provides a safe pedestrian and traffic environment for indigenous and non indigenous persons.”

43. In the intervener’s closing submissions, lodged on 2 September 2013, the Commissioner notes that the intervention was prepared by Acting Sergeant Akker of the Mid West-Gascoyne Liquor Enforcement Unit and submits that the applicant’s Chief Executive Officer, Mr Sellenger:

...was engaged during the application process by Acting Senior Sergeant Russ, the Officer in Charge of the Burrungurrah Multi Functional Police Facility, where concerns as to the sale of packaged liquor were discussed. Despite the concerns raised by Acting Senior Sergeant Russ, police submit Mr Sellenger refused any real
compromise or acknowledgment of harm, which will likely come from packaged liquor being introduced into the community.

Mr Sellenger continues, in his response, to state there has only been a small amount of graffiti and no broken windows or the awareness of any break-ins. Police submit that this is a simplistic assessment of crime and the applicant fails to recognise the extensive harms which occurs from the use and abuse of alcohol.

Police note in the Shire of Upper Gascoyne Minutes of Ordinary Council Meeting of 14 December 2012, published by the applicant. The following excerpt which was taken from the report entitled “Report of the Chief Executive Officer for the month of December 2012” and the paragraph titled Police Presence in Gascoyne Junction.

“The Burringurrah police have spent approximately a week in the past few months in Gascoyne Junction. This resulted in several arrests and the recovery of several stolen vehicles as well as the prevention of a further vehicle theft (owned by the shire). This increased Police presence in town is appreciated by most residents of the town” (page 60).

44. The intervener further submits that the applicant has been dismissive of and failed to appreciate the broader issues in the community, which were reported on by the State’s inquiry into child abuse. It is further submitted that some of the alternative conditions proposed by the applicant, such as the suggested limit on purchases “per person per transaction” are easily exploited and not viewed as “...a genuine attempt to address the issues of harm minimisation.” In this regard, the Intervener submits that if the applicant had been genuine in their efforts to alleviate such concerns, “...they would reconsider the need to sell packaged liquor, or endorse workable, realistic conditions.”

Determination

45. As this is an application for the grant of a tavern licence pursuant to section 41 of the Act, the applicant must satisfy the licensing authority, pursuant to section 38(2), that the granting of the application is in the public interest.

46. In determining whether the grant of an application is “in the public interest” I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (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).

47. In McKinnon v Secretary, Department of Treasury [2005] FCAFC 142 Tamberlin J said 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.”
48. Section 38(2) is clear in its imposition of an affirmative or positive obligation on an applicant to demonstrate to the licensing authority that granting of the application is in the public interest. In this regard, it is insufficient to demonstrate that the grant of the application is not contrary to the public interest. As such, the level and degree of evidence to be submitted by an applicant will vary depending upon the facts and circumstances of each case. In this regard, the Courts have found that applicants must appreciate that applications under the Act cannot proceed on the basis of any legal or factual presumption in favour of approval or on the expectation that the commercial interests of an applicant will necessarily coincide with the public interest.

49. Without confining the scope or meaning of the public interest in section 38(2), section 38(4) prescribes a number of factors that might be considered in determining whether or not the grant of an application is in the public interest.

50. In this regard, advancing the objects of the Act, as set out in section 5, is also a relevant public interest consideration. The primary objects of the Act, as set out in section 5(1), are to regulate the sale, supply and consumption of liquor (paragraph (a)); to minimise harm or ill-health to people, or any group of people, due to the use of liquor (paragraph (b)); and to cater for the requirements of consumers for liquor and related services, with regard to the proper development of, relevantly, the liquor industry in the State (paragraph (c)).

51. The power of the licensing authority to grant licences and other applications under the Act is found in section 33 of the Act, which provides absolute authority to grant or refuse an application on any ground or for any reason considered to be in the public interest, provided that applications are dealt with on their own merits.

52. Submissions have been lodged by each of the parties to these proceedings in order to advance their respective positions.

53. In relation to the representations made in the notice of intervention, it should be noted that as an intervener, the Commissioner of Police carries no burden of proof (see Greaves J, Re Gull Liquor (1999) 20 SR (WA) 321), but rather provides comment in order to assist the licensing authority in making an informed decision.

54. In its PIA the applicant concluded that the grant of the licence would not have an adverse impact on the social health of persons who may live in at risk groups in the locality. However, after making this statement, it then proceeded to refer to the decision in Executive Director of Health -v- Lily Creek International Pty Ltd & Ors [2000] WASCA 258 and the observations of Ipp J that the mere fact that section 5(1)(b) is a primary object does not necessarily mean that where harm or ill-health may be caused to people by the grant of a licence, no licence should be granted.

55. In my view, the difference in the evidence of the applicant and the intervener centres on the issue of whether members of the Burringurrah Community travel through the locality and should therefore have been included in the applicant’s assessment of
the probable harm or ill-health that might be caused to people, or any group of people, due to the use of liquor.

56. In this regard, the applicant submits that the “...Shire’s proposed Tavern in Gascoyne Junction is too small and distant over difficult unsealed roads to cause people from Burrungurra to drive to it for alcohol.”

57. Conversely, the Commissioner of Police submits that the proposed premises will be patronised by members of the Burrungurra Community, given that members of that community are known to travel to Carnarvon (which is located further away from the Burrungurra Community than Gascoyne Junction) in preference to Meekatharra, due to Carnarvon having a greater range of shopping facilities and places of convenience. The Commissioner of Police formed this view after consultations with Senior Sergeant Laura Russ, Officer in Charge of the MFPF in Burringurrah, who has developed an intimate knowledge of the behavioural patterns of members of that community.

58. In my view, despite some discrepancies in its submissions, the evidence of the applicant clearly acknowledges that there are groups at risk of harm or ill health due to the use of liquor, if not in the town of Gascoyne Junction itself, then in the greater Shire of Upper Gascoyne, most specifically the members of the Woodgamia Community and Burringurrah Community.

59. The Public Interest Assessment policy of the Director of Liquor Licensing provides guidance for applicants when addressing harm or ill-health caused due to the use of liquor, recommending that applicants need to consider whether there any ‘at risk’ groups or sub-communities within the locality, travelling through the locality or resorting to the locality (my emphasis), as well as the strategies to be implemented by the licensee to minimise probable harm or ill health.

60. In this regard, I have noted the applicant’s evidence:

(a) in the form of the letter of support from Mr Peter Windie, spokesperson for the Woodgamia Community, in which Mr Windie explains that members of the Woodgamia Community “…voted that one person from our community could only buy one carton of beer per person at a time;”

(b) that in “…broad terms, the Burringurrah Community is located approximately mid way between Gascoyne Junction and Meekatharra...;”

(c) that perhaps members of the Burringurrah Community purchase liquor from the Mount Augustus Tavern, which is “…the source of packaged alcohol and alcohol related events at Burringurrah...;” and

(d) which shows that majority of the population of the Shire of Upper Gascoyne (i.e. 58%) and that Shire’s biggest sub-community is the Burringurrah Community.
61. In consideration of the applicant’s assertions regarding probable sources for the purchase of alcohol by members of the Burringurrah Community, it is worth noting that the relevant licences in Meekatharra, as well as the tavern licence issued in respect of the Mt Augustus Tourist Park, are conditioned with restrictive trading conditions for the sale of packaged liquor.

62. It is also significant to note that the primary object in section 5(1)(b) is to “minimise” harm or ill-health and not to prevent harm or ill-health absolutely. The word “minimise” is consistent with the need to weigh and balance all relevant considerations (see Executive Director of Health -v- Lily Creek International Pty Ltd & Ors).

63. In my view, there is a very real possibility of harm or ill-health presented by granting a tavern licence, without appropriate conditions to mitigate potential harm in the Shire of Upper Gascoyne arising from the sale of packaged liquor in Gascoyne Junction, particularly:
   
   (a) as the location of the Woodgamia Community is in such close proximity to the proposed licensed premises;
   
   (b) given the intervener's submissions regarding the findings of the Gordon Inquiry, which established that high levels of harm are experienced in Aboriginal Communities, including the Burringurrah Community; and
   
   (c) given the applicant’s submissions that the Burringurrah Community is located approximately midway between Meekatharra and Gascoyne Junction, when the nature of the restrictions on the sale of packaged liquor in Meekatharra (and Mt Augustus) are taken into consideration.

64. However, notwithstanding the very real possibility of harm, I do not consider it appropriate in this instance, to refuse the grant of the licence, given that one of the primary objects of the Act is concerned with catering for the requirements of consumers for liquor and relates services. In this regard, the evidence before me establishes that there is a significant public interest in the residents of the Shire of Upper Gascoyne having access to both a social hub in the town site and a venue that can sell packaged liquor, which is located closer to their homes than Carnarvon.

65. In my view, the grant of the application will promote one of the primary objects of the Act, object 5(1)(c), which relates to catering for the requirements of consumers for liquor and related services, as well as secondary object 5(2)(a) relating to facilitating the use and development of licensed facilities reflecting the diversity of consumers in the State. In weighing and balancing these objects with object 5(1)(b), the harm minimisation aspect of the Act (in accordance with the principles set out in Executive Director of Health -v- Lily Creek International Pty Ltd & Ors, the perceived social benefits to the community need to be weighed carefully against the potential for harm.
66. As noted by Ipp J (refer Executive Director of Health -v- Lily Creek International Pty Ltd & Ors), section 33 of the Act confers upon the licensing authority an absolute discretion to grant or refuse an application on any ground that it considers in the public interest. The potential of harm or ill-health to people, irrespective of whether the harm or ill-health is proved on a balance of probabilities, is a powerful public interest consideration. The 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.

67. Accordingly, it is my view, after weighing and balancing the competing evidence of the parties, that the premises will provide a social hub for the families who live in the Shire and wish to enjoy meals in a relaxed bar and dining atmosphere, as well as accessing over the counter packaged liquor facilities; and that this is an instance which favours the granting of a licence with stringent conditions imposed, similar to those proposed by the applicant as part of the document exchange process, except more closely aligned with the restrictions already imposed by the licensing authority in Meekatharra.

68. However, during the determination of this application, much of the evidence demonstrated that the applicant intended to transfer the licence to a third party operator. In this respect, the applicant’s website further indicated that a request for tender had been prepared and already awarded. As this approach would have been contrary to the provisions of section 68(2a) of the Act, which provides that an application for the grant of a licence may only be made by, or on behalf of, the person or persons wishing to carry on business under the licence after it is granted, I sought further submissions from the applicant on 2 September 2013, drawing its attention to the relevant provisions.

69. On 17 September 2013, the applicant lodged its submissions and advised that:

(a) it recognised the tender process was invalid because it failed to comply with the public tender requirements of the relevant law and therefore the tender was rescinded on 10 September 2013; and

(b) as a result, the Shire does not have a contract, lease or licence with any other party to carry on business in its place and therefore remains compliant with the provisions of section 68(2a).

70. Whilst I accept the applicant’s submissions in respect of this matter, I am also of the view that non compliance with section 68(2a) would have been the determinant to not grant the current application. Therefore, in accordance with the applicant’s evidence in respect of this matter, I am of the view that a condition should be imposed on the licence to ensure that the applicant will conduct business under the licence, for a period of at least twelve months.
71. Therefore, after considering the evidence in this matter, I am satisfied that the applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted. I am also satisfied that, subject to the imposition of a number of conditions outlined below, the grant of the application is in the public interest.

Conditional grant

72. Pursuant to sections 41, 98, 62 and 64 of the Act, a tavern licence is conditionally granted to the Shire of Upper Gascoyne (hereafter referred to as “the licensee”), subject to the following conditions:

(a) all work being completed within 12 months in accordance with plans and specifications dated 18 April 2013;

(b) the recommendations of the Inspector of Licensed Premises on the schedule of requirements dated 30 May 2013 being satisfactorily completed and the Director of Liquor Licensing being notified in writing on completion of that work, at least 21 days prior to the day the licensee wishes to commence trading under the licence;

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

(d) the applicant seeking confirmation of the grant on or before 28 October 2014 pursuant to section 62(4)(c) of the Act.

Confirmation

73. On confirmation of the conditional grant, the following conditions will be imposed on the issue of the tavern licence, pursuant to the provisions of sections 41, 64 and 98 of the Act:

(a) Trading hours

The permitted trading hours in accordance with section 98 of the Act will be as follows:

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

(b) Trading conditions

The applicant is permitted to sell and supply liquor in accordance with the provisions of section 41 of the Act as it relates to tavern licences, subject to:

(1) Conditions relating to the sale of liquor for consumption on the licensed premises:
(i) The focus of the business must always remain on the provision of a social hub for the families who live in the Shire of Upper Gascoyne and who wish to enjoy meals in a relaxed bar and dining atmosphere.

(ii) Seating in the form of restaurant style dining tables and chairs must be provided at all times.

(iii) The kitchen must be kept open and food must be available while the Tavern is trading.

(iv) All entertainment at the premises is restricted to low level background music only, sufficient to allow normal conversation to occur.

(v) Any entertainment is to be in keeping with the theme of the venue as outlined in the PIA. Therefore, the licensee is prohibited from setting up pool or billiards tables and from staging live rock bands (or other crowd attractors) at the premises.

(vi) The sale of 750 ml beer glass bottles (i.e. “King Browns”) is prohibited.

(vii) Low alcohol liquor and non-alcoholic drinks must be available at all times the premises is open to the public.

(viii) ‘Shots’, ‘lay-backs’, ‘test tubes’ and any other shooter style drinks are prohibited.

(ix) Jugs of liquor are prohibited, except where plastic jugs are used.

(x) No promotions, advertising or incentives which encourage cheap or discounted liquor or which encourage excessive consumption shall be employed by the licensee.

(2) Conditions relating to the sale of packaged liquor:

(i) The sale of packaged liquor being restricted to between the hours of 11 a.m. and 10 p.m. Monday to Sunday.

(ii) The sale of packaged beer is restricted to the equivalent of carton of full strength beer (i.e. more than 3.5% ethanol by volume) per customer per day.

(iii) The sale of spirits is limited to one 700 ml bottle per transaction per day.

(iv) The sale of cask wines is limited to two litres per person per transaction per day.

(v) Per person per day limits do not apply to a person who is a station owner or pastoralist, provided that the licensee maintains on the licensed premises, a register of purchases, which, must be made available for inspection at the request of an authorised officer and contains the following information: (a) the station owner’s or pastoralist’s name; (b) address; and (c) the address to which the liquor is being delivered or taken.

(c) Cultural awareness

(1) The licensee and any approved manager must have accredited training in cultural awareness to ensure skilled communication with and understanding of indigenous people.

(2) An approved manager must schedule and regular meetings, at least once a month, and invite spokespersons for the Woodgamia Community and the community spokesperson for Burrungurra.
(d) Entertainment Condition

(1) 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 –

(a) be immodestly or indecently dressed on the licensed premises, and/or

(a) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.

(2) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from -

(b) 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 publication, film or computer game or extract therefrom;

(c) 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

(d) 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.

(3) 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.

(e) 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.

(f) Shire of Upper Gascoyne to Conduct Business Under the Licence

The Shire of Upper Gascoyne must conduct business under the licence for at least twelve months from the date of this decision. Furthermore, prior to the transfer of the licence, the Director of Liquor Licensing may review the effectiveness of the restrictive conditions of this licence in reducing alcohol related harm in the Shire of Upper Gascoyne.

General

74. The licensee is advised of the provisions of section 64 of the Act, which allows for the Director of Liquor Licensing to impose conditions on licences restricting the sale and supply of liquor, where it is in the public interest to do so. A condition may include a limitation, prohibition or an authorisation on any licence or permit and can relate to any aspect of business carried out under the licence, or any activity that takes place at the licensed premises and may include a review of the effectiveness of the restrictive
conditions already imposed on the licence in reducing alcohol related harm and in minimizing the harms that may be caused as a consequence of the activities of the licensed premises. However, there is nothing to prevent the licensee from voluntarily adopting restrictive strategies to also mitigate any harm or ill-health issues that arise once business commences under the licence.

75. Pursuant to section 127(2) of the Act, a prescribed licence fee will be payable prior to the operation of the licence.

76. The licensee is reminded that trading under the licence may not commence without the prior written approval of this authority.

77. Parties to this matter dissatisfied with the outcome may seek a review of the Decision under section 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.

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

Brett Snell
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

28 October 2013