

DECISION OF DIRECTOR OF LIQUOR LICENSING

LICENSEE: WESTERN PLAZA HOTEL CORPORATION PTY LTD

PREMISES: WENTWORTH PLAZA HOTEL

PREMISES ADDRESS: 300 MURRAY ST PERTH WA 6000

LICENCE NUMBER: 6010002519

APPLICATION ID: A000065049

NATURE OF APPLICATION: APPLICATION FOR GRANT OF AN EXTENDED TRADING PERMIT – ONGOING HOURS

DATE OF DETERMINATION: 8 April 2015

Introduction

- 1 On 5 August 2014 an application was lodged by Western Plaza Hotel Corporation Pty Ltd (the applicant) for the grant of an extended trading permit - ongoing hours (ETP or permit), pursuant to s 60(4)(g) of the *Liquor Control Act 1988* (the Act) in respect of premises situated at 300 Murray Street, Perth and known as the Wentworth Plaza Hotel.
- 2 The applicant seeks a continuation of its current permit which allows extended trading on Friday and Saturday nights from 12 midnight to 2 a.m. the following morning.
- 3 The application was advertised in accordance with instructions issued by the Director of Liquor Licensing and while there were no objections lodged, the Commissioner of Police (the Commissioner) submitted a Notice of Intervention, pursuant to s 69 of the Act.
- 4 Pursuant to s 13 and s 16 of the Act the application will be determined on the papers. The evidence and submissions of the parties are briefly summarised as follows.

Submissions on behalf of the applicant

- 5 The applicant seeks a renewal of its ETP (under the same terms and conditions that currently apply) to allow the venue to trade on Friday and Saturday nights from 12 midnight to 2 a.m. the following morning in the area of the premises known as the Bohème Bar and Restaurant.
- 6 The applicant submits the ETP is required to allow the venue to continue to provide late night services to its patrons who wish to socialise in a sophisticated venue and enjoy a late night supper, drink and/or dance.

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- 7 The venue's services have been designed to cater to those patrons who wish to socialise centrally in the CBD in an upmarket venue that provides a variety of services for both daytime trade and those patrons who wish to enjoy late night services in the evenings on weekends, but do not wish to socialise in a nightclub environment.
- 8 Should the application be granted, the applicant does not expect its existing clientele to change during the ETP hours. Patrons currently include:
- hotel guests and visitors to the premises and site;
 - residents of the CBD;
 - affluent professional office workers and corporate clients from within the site and surrounding area in the CBD;
 - tourists visiting the CBD;
 - employees of the retail premises and other hospitality venues situated at the site and located within the CBD; and
 - shoppers visiting the various retail outlets within the site and in the CBD, who wish to stay in the CBD to socialise in the evenings.
- 9 According to the applicant, since trading under its current permit it has not been:
- prosecuted for any breach of the Act or for breaching the terms and conditions of the liquor licence or permit;
 - the subject of disciplinary proceedings under section 95 of the Act;
 - the subject to a section 64 inquiry; or
 - received any complaints from residents, businesses or the City of Perth with respect to the operation of the permit.
- 10 In support of its application, numerous Consumer Requirements Surveys were submitted in which respondents completed a short questionnaire showing support for the venue's current trading hours.
- 11 The applicant concludes it is in the public interest for the application to be granted because:
- it will not result in harm or ill health due to the consumption of liquor;
 - there will be no adverse impact upon the amenity of the area by the granting of the application but will instead assist in the further improvement of the amenity of the CBD and will be in line with the vision and objectives of the relevant planning authorities; and
 - it will not result in any anti-social behaviour, noise or disturbance through the operation of the venue.

Submissions on behalf of the Commissioner of Police

- 12 The Commissioner intervened for the purpose of making representations on the grounds that if the application is granted and conditions not imposed on the permit public disorder or disturbance would be likely to result.

- 13 To support his representations, the Commissioner made the following submissions:
- in line with other licensed premises trading in the latter hours of the evening in the locality, Police seek to enhance the applicant's licence to trade with the addition of several minor harm minimisation strategies during the hours of trade to ensure the standard of the management at the venue is maintained and patron safety is increased;
 - Perth and Northbridge experiences a high number of alcohol related violence and disturbance incidents, resulting in the imposition of s 64 conditions on late night trading venues. Police submit it is in the public interest to maintain these conditions in line with the Director's decision for late night venues in the locality with the addition of several minor conditions;
 - with respect to the existing alcohol related harm and offences occurring in the locality, between September 2013 to August 2014, there were:
 - 2944 relevant criminal offences for Perth, of which 456 were alcohol related;
 - 1441 relevant criminal offences for Northbridge, of which 395 were alcohol related;
 - 5877 relevant police attendances for Perth;
 - 1660 relevant police attendances for Northbridge; and
 - an analysis of data for the Perth and Northbridge areas indicates that alcohol related assaults are elevated and will only increase with time and continued late night trading.
- 14 The Commissioner, whilst acknowledging the evidence submitted does appear to support the renewal of the ETP, is of the view that during the ETP hours alcohol harm occurring in the vicinity of the venue is elevated and therefore stringent harm minimisation conditions are required to be imposed on the permit to alleviate these issues.

Applicant's responsive submissions

- 15 It was submitted by the applicant that some of the conditions proposed by the Commissioner are more restrictive and onerous than those imposed upon other licensed premises in the locality. However, the applicant does agree to some of the additional conditions proposed by the Commissioner, but not all.

Determination

- 16 Pursuant to s 38(1)(b) and r 9F(b), an applicant for the grant of an extended trading permit under s 60(4)(g) of the Act for a period in excess of three weeks must satisfy the licensing authority that the grant of the application is in the public interest.

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- 17 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).
- 18 The scope and purpose of the Act can be ascertained from its objects as set out in s 5. The three primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;
 - to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- 19 In respect of this application, the applicant is seeking a continuation of its current permit to trade on Friday and Saturday nights from 12 midnight to 2 a.m. the following morning. The applicant submits the ETP is required in order to allow the venue to continue to provide late night services to its patrons who wish to socialise in a sophisticated venue and enjoy a late night supper, drink and/or dance.
- 20 During the operation of its current permit, the applicant has not been prosecuted for any breach of the Act or received any complaints from residents, businesses or the City of Perth.
- 21 Having considered the evidence lodged in support of the application and the history of extended hours trading at the venue, I am satisfied the grant of the application would be consistent with primary object 5(1)(c) of the Act (catering for the requirements of consumers). However, the evidence of the Commissioner establishes that the locality in which the premises is to be located does experience some existing level of alcohol-related harm. Minimising harm, due to the use of liquor, is also one of the primary objects of the Act.
- 22 Where there is a conflict in promoting the objects of the Act, I need to weigh and balance those competing interests ((refer *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258) and decide upon the degree of importance to be attributed to each of the relevant factors, as proven by the evidence in each case. It is also important to note the observation of Ipp J in *Lily Creek* where he stated that the harm minimisation object under the Act is not about preventing harm absolutely. Nonetheless, the potential for harm is a powerful public interest consideration. Consequently, I need to consider whether the harm or ill-health which may result from the grant of the application is so serious that the application should be refused, or stringent conditions imposed on the permit.

- 23 The area of the premises known as Bohème Bar and Restaurant has been trading under a permit for over two years. Late night trading at the premises is popular with hotel guests, residents and tourists visiting the CBD and does not appear to have negatively impacted on the surrounding locality. Therefore, in weighing and balancing the competing interests in this case, I am satisfied the applicant has discharged its onus under s 38(2) of the Act. The current permit was granted for a period of two years in order to assess the impact of the additional hours at the premises. Given that there appears to be no negative impact as a result of the extended hours, a further ETP is granted to the applicant, for a period of five (5) years.
- 24 Although the Commissioner seeks the imposition of a number of additional conditions on the permit, in the absence of any pertinent evidence, I am of the view the current conditions are adequate. Notwithstanding, the applicant has indicated it is agreeable to some further conditions to help minimise any potential risks associated with late night trading at the venue, namely:
- low strength alcoholic products and non alcoholic drinks must be made available at all times; and
 - the sale of liquor in jugs is prohibited.
- 25 The applicant was also amenable to a condition relating to dress standards being imposed on the permit, although the applicant submitted wording which is different to that contained in the policy of the Director of Liquor Licensing on "Dress Standards". I believe the wording contained in the Director's policy is preferable:
- Jackets or any other clothing or accessory, or any clearly visible body marking, bearing patches or insignia of any Outlaw Motor Cycle Gangs not limited to, but including, the following listed Outlaw Motor Cycle Gangs, are not permitted to be worn or to be visible on the licensed premises:
 - Coffin Cheaters;
 - Club Deroes;
 - Gods Garbage;
 - Gypsy Jokers;
 - Outlaws;
 - Finks;
 - Rebels;
 - Comancheroes;
 - Hell's Angels;
 - Rock Machine;

- Mongols;
- Lone Wolf; and
- Bandidoes.

26 Therefore, in addition to the existing conditions of the permit, the three conditions above will also be imposed.

27 The licensee is reminded that the permit can be modified or withdrawn at short notice if it is found that the licence is being operated in a manner contrary to the public interest.

28 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.

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



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING