

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: SKS MURRAY STREET HOTEL PTY LTD

OTHER PARTIES: CHIEF HEALTH OFFICER (INTERVENER)
COMMISSIONER OF POLICE (INTERVENER)

PREMISES: DOUBLETREE BY HILTON, PERTH NORTHBRIDGE
AMANSARI

PREMISES ADDRESS: 100 JAMES STREET NORTHBRIDGE

APPLICATION ID: A000225113

MATTER: APPLICATION FOR CONDITIONAL GRANT OF A HOTEL
RESTRICTED LICENCE

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 17 JULY 2017

Introduction

- 1 SKS Murray Street Hotel Pty Ltd (the applicant) seeks the conditional grant of a hotel restricted licence for premises to be known as DoubleTree by Hilton, Perth Northbridge Amansari and located at 100 James Street, Northbridge. The application is made pursuant to ss 41 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. There were no objections to the grant of the application, however the Chief Health Officer (CHO) and the Commissioner of Police (Commissioner) lodged notices of intervention.
- 3 As permitted under ss 13 and 16 of the Act, the application will be determined based on the written material lodged by the parties.

A brief overview of the applicant's evidence and submissions

- 4 It was submitted that Hilton is an iconic brand operating more than 4,700 hotels and resorts across 97 countries and the proposed DoubleTree by Hilton in Northbridge will be consistent with the high standard of service, fit out and amenity provided by the Hilton brand worldwide.
- 5 The applicant's proposed premises will include the following features:
 - 205 rooms over 13 levels incorporating 187 hotel rooms, 9 accessible rooms and 8 hotel suites;
 - 24-hour reception with a duty manager;
 - all day dining, bar and lounge area;
 - conference and meeting room facilities;

- internet;
 - luggage storage;
 - laundry service;
 - 24-hour room service;
 - in room mini bars; and
 - valet parking.
- 6 Additionally, two *a la carte* restaurants, operated by separate entities, will provide further food services for patrons within the complex.
- 7 It was submitted that the Perth City Link development will result in significant changes to Northbridge and the Perth CBD, including the areas where shoppers, workers and tourists will resort for both day and night time activities, dining and entertainment. In this regard, the applicant's proposed premises will cater to visitors and tourists, providing dining, bar and accommodation services. It was also submitted that the proposed premises will complement the surrounding cultural precinct, which includes the Perth Cultural Centre, WA State Theatre, the Art Gallery, Perth Arena and other key cultural venues.
- 8 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA provided information on the proposed venue and how it will operate; community consultation; the demographic profile of the locality; and the benefits to the community if the application is granted.
- 9 The applicant also sought an extended trading permit (ETP) under s 60(4)(g) of the Act, to authorise trading until 2 a.m. in the whole of the premises. In this regard, it was submitted that due to the nature of the locality in which the hotel will operate, being a dining, entertainment and leisure destination, most consumers' especially interstate and international visitors would reasonably expect a full-service hotel to operate during these extended hours.

The interventions

Chief Health Officer

- 10 The CHO intervened in the application because of the following concerns:
- the applicant has simultaneously applied for a hotel restricted licence and an ETP to allow trading to 2 a.m. each day;
 - it is understood the premises has yet to commence trade and therefore the venue is not able to demonstrate a trading history. This is of concern given the locality in which the applicant proposes to trade and that late night trading is a high-risk factor for harm;
 - research demonstrates that late night trading can facilitate increased consumption and alcohol-related harm, not only inside a venue, but once patrons leave; and
 - the premises has a large patron capacity in publicly accessible areas (approximately 700 patrons). A large patron capacity poses a greater risk of alcohol-related harm.

- 11 The CHO provided evidence on the existing level of alcohol-related harm in Northbridge and research linking late night trading with increased rates of harm. This evidence indicates that alcohol-related assaults in Northbridge peak between 12 midnight and 2 a.m.; the hours of which are the subject of the ETP application.
- 12 Consequently, it was submitted by the CHO that in order to minimise the potential for harm or ill-health if consideration is given to the grant of the ETP, as a contingency, trading not be permitted past 1 a.m. in the public drinking areas on any day. The CHO also recommended other harm minimisation conditions for the licence.

The Commissioner of Police

- 13 It was submitted by the Commissioner that whilst the primary focus of the venue will be accommodation, there will be general drinking areas for the public which has the potential to increase the existing high rates of alcohol-related harm in locality. In this regard, it was submitted by the Commissioner that:
- there were 567 domestic-related assaults reported within the Perth CBD and Northbridge during the 2014 to 2016 calendar years, of which alcohol was a contributing factor in 251 or 44% of these offences;
 - the rate of alcohol-related domestic assaults for Northbridge, when calculated per one thousand persons were 10.8 times higher than the corresponding Perth sub-district for the 2016 calendar year;
 - the rate of alcohol-related domestic assaults for Northbridge was 16.6 times higher than the metropolitan rate and 9.8 times the State rate;
 - there were 2,902 non-domestic assaults for Northbridge and the Perth CBD during the same period, of which 1,091 or 37% were alcohol-related; and
 - the rate of alcohol-related non-domestic assaults in Northbridge in 2016 was 19.5 times higher than the Perth sub-district, 142 times higher than the metropolitan rate and 110 times higher than the State rate.
- 14 According to the Commissioner, numerous studies show a clear correlation between 'on premise' liquor outlets and incidents of non-domestic assault and anti-social behaviour. The high level of harm throughout the locality is fundamentally attributed to existing licensed premises in the area.
- 15 It was submitted that the existing rates of violence and anti-social behaviour in the area are of significant concern and a considerable drain on police resources and other emergency services.
- 16 Consequently, the Commissioner submitted that if the application is approved, the premises is likely to directly or indirectly influence increase crime and alcohol-related harm in the locality, and therefore, it is appropriate to impose conditions on the licence to minimise the risk of any further alcohol-related harm.
- 17 In respect of the ETP application, the Commissioner provided evidence which shows that the number of calls for police assistance relating to anti-social and violent behaviour in the Northbridge and Perth CBD entertainment precincts escalates considerably during the late

evening and early morning trade toward the end of the week. The Commissioner therefore recommend that if the ETP application is approved, harm minimisation conditions should be imposed on the permit to mitigate the risks associated with late night trading at the venue.

Determination

18 There are two applications before me for determination: an application for a hotel restricted licence and an application for an extended trading permit (ETP) to authorise trading to 2 a.m. each morning. I will deal with the hotel restricted licence application first and then consider the ETP application.

The application for a hotel restricted licence

19 The applicant seeks to establish an up-market accommodation focused hotel in Northbridge. The premises, to operate under the Hilton Hotel banner, will provide 205 accommodation rooms over 13 levels together with ancillary facilities including function rooms and bar areas for the public.

20 An applicant for the grant of a hotel restricted licence must satisfy the licensing authority that the grant of the application is in the public interest: s 38(2). In considering the public interest under s 38, I need to consider both the positive and negative social, economic and health impacts.

21 In determining whether the applicant has discharged its burden under s 38(2), the applicant's evidence and submissions must be considered having regard to the objects of the Act as set out in s 5. The primary objects of the Act are:

- to regulate the sale, supply and consumption of liquor;
- to minimise harm caused to people, or any group of people, due to the use of liquor; and
- to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

22 The secondary objects of the Act are:

- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
- to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

23 The licensing authority has acknowledged in numerous decisions that Northbridge experiences elevated rates of alcohol-related harm. This conclusion is confirmed by the evidence submitted by the interveners in this case. This is a factor which weighs against the granting of the application. However, this is not determinative of the matter. While minimising alcohol-related harm is one of the objects of the Act, another object of the Act is to cater to the requirements of

consumers for liquor and related services with regard to the proper development of the liquor, tourism and hospitality industries in the State.

24 Where conflict arises between the minimisation of harm or ill-health, on the one hand, and the need to achieve one or more of the other objects of the Act, the licensing authority must undertake a weighing and balancing exercise. The decision will depend on the particular circumstances of the case.¹

25 It is worth noting that the primary object in s 5(1)(b) is to 'minimise' harm or ill-health, not to prevent harm or ill-health absolutely. The word 'minimise' is consistent with the need to weigh and balance all relevant considerations.² It is a matter for the licensing authority to decide what weight to give to the competing interest interests and other relevant considerations.³

26 In consideration of the applicant's evidence, I find the following factors weigh in favour of the grant of the application:

- it will introduce a high class, internationally branded hotel to the area;
- it will provide accommodation and related facilities for tourists, thereby adding to the tourist inventory in Northbridge;
- it will provide high quality facilities for on-premises consumption;
- it will provide additional food and dining options for lodgers and visitors to the area;
- it will contribute to the revitalisation of the area and increase day-time trade;
- it will positively contribute to the overall image of the area; and
- it will have a positive economic impact for the area and other businesses.

27 Ultimately, 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.⁴

28 Consequently, when I weigh and balance the positive and negative aspects of the application, and the competing interests in terms of promoting the objects of the Act, I am persuaded that the grant of the application is in the public interest. However, in recognition of the existing high rates of alcohol-related harm in the area, and the potential risks the premises poses, as highlighted by the interveners, it is appropriate that conditions be imposed on the operation of the licence to mitigate those risks.

29 I am therefore satisfied that the applicant has complied with all the statutory requirements and conditions precedent to the application being granted, and a hotel restricted licence is conditionally granted to the applicant subject to the following:

¹ ***Executive Director of Public Health v Lily Creek International Pty Ltd*** [2000] WASCA 258)

² ***Lily Creek*** supra

³ ***Hermal Pty Ltd v Director of Liquor Licensing*** [2001] WASCA 356

⁴ ***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).

- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
- (b) compliance with the Local Government Act 1960, Health Act 1911 and any written law relating to the sewerage and drainage of these premise;
- (c) all work being completed within 12 months in accordance with the plans and specifications dated 25 January 2017;
- (d) 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 at least 21 days prior to applicant wishing to trade under the licence;
- (e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- (f) the applicant seeking confirmation of the grant on or before **5 July 2018** pursuant to s 62(4)(c) of the Act.

30 On confirmation of the conditional grant, the following conditions will be imposed on the licence:

Trading hours

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

Trading conditions

- The licensee is authorised to sell and supply liquor in accordance with the provisions of s 41 of the Act as it relates to a hotel restricted licence.
- Packaged liquor, for consumption off the premise, may only be sold to lodgers.
- Food must be available at all times during trading hours until 30 minutes before the end of trade.
- The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing.
- The maximum number of patrons permitted on the licensed premises will be set following receipt of the public building certificate from the local government authority.
- Seating and associated table arrangements must be available for a minimum of 50% of the maximum permitted number of patrons.
- the licensee shall not promote or sell drinks which offer liquor by virtue of their 'emotive' titles such as, but not limited to, 'laybacks', 'shooters', 'slammers', 'test tubes', and 'blasters'.
- Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available at all times.
- Crowd controllers (licensed under the Securities and Related Activities (Control) Act 1996) are to be employed at a ratio of two crowd controllers for the first 100 patrons, and one

crowd controller for each additional 100 patrons or part thereof, from 8 p.m. (or the time of opening the premises if after 8 p.m.) each Friday and Saturday until 30 minutes after closing.

- Dress standards – Outlaw Motorcycle Gangs

The following dress standard applies during the permitted trading hours:

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:

- (i) Coffin Cheaters;
- (ii) Club Deroes;
- (iii) Gods Garbage;
- (iv) Gypsy Jokers;
- (iv) Outlaws;
- (v) Finks;
- (vi) Rebels;
- (vii) Comancheroes;
- (ix) Hell's Angels;
- (x) Rock Machine; and
- (xi) Mongols.

A notice is to be displayed at all entrance to the licensed areas reflecting this condition.

Entertainment Condition

- (a) A person resorting to, or on the premises, including the licensee or manager, or an employee or agent of the licensee or manager, shall not:
 - (i) be immodestly or indecently dressed on the licensed premises, and/or
 - (ii) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
- (b) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:
 - (i) exhibiting or showing, or causing, suffering or permitting to be exhibited or shown, on the licensed premises any classified "R 18+", "X 18+" or "RC" classified publication, film or computer game or extract therefrom; or

- (ii) causing, suffering or permitting any person employed, engaged or otherwise contracted to undertake any activity or perform any entertainment on the licensed premises to be immodestly or indecently dressed on the licensed premises; or
- (iii) causing, suffering or permitting any person to take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
- (c) In this condition “licensed premises” includes any premises, place or area:
- (i) which is appurtenant to the licensed premises; or
- (ii) in respect of which an extended trading permit granted to the licensee is for the time being in force,

but does not include any part of the premises which is reserved for the private use of the licensee, manager or employees of the licensee and to which the public does not have access.

Compliance with harm minimisation policy

The licensee is to have a 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.

General

- Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.

- 31 The applicant, although agreeing to have crowd controllers at the venue, sought to modify this requirement, however in view of the location of the premises (in an area experiencing elevated rates of alcohol-related harm) and the lack of trading history at the venue, I am of the view that the current condition is appropriate. The applicant is at liberty to apply to vary the condition at a later date.
- 32 Pursuant to s 104 of the Act, the profit sharing arrangement as set out in the application dated 14 October 2016 is approved. The licensee is reminded that the provisions of the Act override any conflicting terms of a Management Agreement and the licensee cannot ‘contract out’ its obligations and responsibilities under the Act. In this regard, the licensee is always responsible for the conduct of the business under the licence and must ensure the business carried on under the licence is personally supervised and managed by a natural person in accordance with s 100.

The application for an extended trading permit

- 33 The applicant seeks an ETP to trade to 2 a.m. Monday to Sunday. Pursuant to s 38(1)(b) and r 9F(b), an applicant for the grant of an ETP under s 60(4)(g) of the Act for a period more than

three weeks must satisfy the licensing authority that the grant of the application is in the public interest.

- 34 Although I have determined that the grant of the hotel restricted licence is in the public interest, it does not automatically follow that the ETP application should be approved. These are separate applications, and each application must be considered on its merits: s 33(2). The onus is upon the applicant to adduce sufficient evidence to discharge its burden under the Act.
- 35 Regrettably, the applicant appears to have approach the two applications as one, and interwoven its submissions and evidence in its PIA. According to the applicant, the ETP is sought to cater to the following consumers:
- international and interstate visitors to our state that have arrived late looking for somewhere other than a nightclub or tavern after 12 midnight;
 - hosts of a function at the hotel able to permit their guests to stay till 2 a.m. in a safe and controlled premise;
 - those who have been to another form of entertainment in the area such as the State Theatre or Perth Arena; and
 - patrons who have dined at the premises and wish to continue their socialising in safe, reputable and well-appointed premises.
- 36 The evidence of the interveners establishes that the locality experiences elevated rates of alcohol-related harm, which increases significantly from 12 midnight to 2 a.m.
- 37 In LC 39/2014, the Liquor Commission stated that whilst not provided for the in the Act or the Director's policies, the granting of an ETP, where there is no trading history for the premises, would generally not be in the public interest.
- 38 The applicant submitted that while the premises are under construction and therefore has no trading history, Hilton Worldwide successfully operate the Parmelia Hilton in the Perth CBD and more than 4,500 reputable and award winning 4 and 5 star hotels globally under a variety of banners. In this regard, however, I note that while the proposed premises will operate under the Hilton Hotel banner through a licensing arrangement, the applicant is not the licensee of the Parmelia Hilton and does not appear, from the evidence submitted, to have any experience in the operation of licensed premises, and in particular licensed premises in a busy entertainment precinct.
- 39 The applicant's evidence is not compelling. The CHO recommended that a cautious approach should be adopted because of the lack of trading history of the venue and the proposed hours are during at-risk times for alcohol-related harm in the locality. Consequently, the CHO recommended that the permit only be approved to 1 a.m.
- 40 In *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384, Heenan J observed that object 5(1)(a) of the Act is to regulate the sale, supply and consumption of liquor and that this statutory policy of regulation is entirely consistent with taking a measured approach to what may be regarded as contributing to the proper development of the liquor industry.
- 41 I also note that the Liquor Commission in LC 28/2015 (National Hotel Fremantle) only approved trading to 1 a.m. because of the high rates of alcohol-related harm being experienced in the

locality. The Commission stated that given the evidence of harm that is currently experienced (in Fremantle) after midnight and during the hours for which the ETP has been sought, there is a strong likelihood that allowing trading beyond 1 a.m. will result in an increase in that harm, which would be detrimental to the liquor, tourism and hospitality industries in the State. The Commission also noted the existence of trading options past 1 a.m. in the locality that can already cater to the requirements of the public.

- 42 Based on the evidence submitted by the interveners, I find that the locality surrounding the proposed premises currently experiences high rates of alcohol-related harm. The proposed premises will be able to cater for approximately 700 people, and notwithstanding the up-market nature of the facility, I am of the view that the grant of the application has the potential to increase the existing rates of alcohol-related harm in the area. Object 5(1)(b) of the Act is to minimise alcohol-related harm in the community. However, the term 'minimise' is consistent with the need to weigh and balance the competing considerations.
- 43 In consideration of the evidence presented, I am satisfied that the grant of the application is in the public interest as required under s 38(2) of the Act, however, in weighing and balancing the competing interests in this case, and taking into consideration the circumstances of the locality; the lack of trading history of the venue; the limited experience of the applicant; and the evidence submitted by the interveners, I am of the view that the ETP should only be granted to 1 a.m. Monday to Saturday. In respect of trading past 12 midnight on Sunday, I note that the permitted trading hours for hotels was only recently extended from 10 p.m. to 12 midnight and the applicant has provided little or no evidence to justify trading past 12 midnight on this day of the week. It should also be noted that under a hotel restricted licence, the licensee is authorised to sell and supply liquor to a lodger at any time, thereby catering to the expectations of interstate and international visitors staying at the hotel.
- 44 In addition to the conditions of the licence, which apply to the permit, the ETP will be subject to the following conditions:
- No trading is permitted on Good Friday, Christmas Day or before noon on ANZAC Day.
 - There is to be no liquor discounting or advertising of cheap liquor during the operation of the permit.
 - The permit relates to the area outlined in yellow on plans dated 25 January 2017.
 - The sale of packaged liquor for consumption off the licensed premises is prohibited during the hours covered by this permit (except to lodgers).
 - Crowd Controllers
 1. Crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed at a ratio of two crowd controllers for the first 100 patrons, and one crowd controller for each additional 100 patrons or part thereof.
 2. These crowd controllers (licensed under the *Securities and Related Activities (Control) Act 1996*), are required to be present to monitor the licensed premises and the behaviour of patrons arriving and departing the premises from 8 p.m. (or the time of opening the premises if after 8 p.m.), until one hour after trading ceases.

3. Where the licensee decides not to exercise the authority to trade under the extended trading permit on any approved day, the licensee is not required to employ crowd controllers in accordance with this condition. However, in such circumstances, the licensee is prohibited from trading under the permit.
 4. The licensee must make a written record of its decision not to trade under the extended trading permit, on any approved day, prior to 8 p.m. and that written record must be available for inspection by an authorised officer.
 - If there is an inconsistency between these conditions and any other condition to which the licence or permit is subject, the condition that is more onerous for the licensee prevails.
 - The permit will remain in force for five years commencing from the date of confirmation of the grant of the hotel restricted licence or until the Director determines otherwise.
- 45 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.
- 46 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