

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICATION ID: A000210054

LICENSEE: BAAC PTY LTD

PREMISES: ALOFT HOTEL

PREMISES ADDRESS: 25 ROWE AVENUE, RIVERVALE

LICENCE NUMBER: 601208972216

NATURE OF APPLICATION: GRANT OF AN EXTENDED TRADING PERMIT (ONGOING HOURS)

DATE OF DETERMINATION: 29 MAY 2017

1. On 23 December 2016, an application was made by BAAC Pty Ltd (the Applicant) for the grant of an extended trading permit, for ongoing extended hours (i.e. for a period exceeding three weeks), in respect of premises known as *Aloft Hotel* and situated at 27 Rowe Avenue, Rivervale.
2. The application was made pursuant to s 60(4)(g) of the *Liquor Control Act 1988* (the Act) and sought approval to trade on Monday to Saturday nights, from midnight to 1 a.m. the following morning.
3. Following the advertising of the application, which was carried out in accordance with instructions issued by the Director of Liquor Licensing (the Director), a notice of intervention was lodged by the Chief Health Officer (CHO), pursuant to the provisions of s 69 of the Act.
4. Therefore, pursuant to ss 13 and 16 of the Act, the application will be determined on the written submissions of the parties.
5. To support its application, the Applicant lodged a Public Interest Assessment (PIA) and other submissions to address the requirements of ss 5 and 38 of the Act. In this regard, it was submitted that key features of the premises include:
 - (a) 224 guest rooms;
 - (b) the W XYZ Bar and Lounge;
 - (c) the Re:fuel café and a restaurant with seating for up to 391 patrons;
 - (d) various multi-function areas; and
 - (e) a rooftop ballroom and bar.
6. Accordingly, the Applicant proposes that it would be in the public interest to allow the premises to trade until 1 a.m., to accommodate international guests and corporate travellers, as well as local residents.

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7. The Applicant further submitted that a 1 a.m. closing time is also necessary for:
 - (a) the many weddings and other receptions that are likely to take place at the venue in the rooftop ballroom and bar area; and
 - (b) communal meetings for residents of the surrounding apartment buildings.
8. The Applicant also submitted that:

“Obtaining an extended trading permit authorising trading until 1 a.m. the following day forms part of the strategy to ensure that the Aloft Hotel provides a convenient service and a welcome meeting place for the surrounding neighbourhood. With so many apartment complexes within walking distance of the Aloft Hotel it is only natural that some of those residents would welcome the opportunity to stay later than normal.

... the apartment complexes will appeal to young professionals for a variety of reasons, including proximity to the City, the stadium and the Swan River. These same young professionals are also likely to utilise the Aloft bar facilities later into the night...”
9. To support these contentions, the Applicant referred to its consumer survey, to show that 93% of the 69 persons surveyed were supportive of trade at the premises until 1 a.m. on Monday through to Saturday nights. Additionally, a letter from Tanja Pisaric, who lives near the premises, also confirmed that “As a local resident, I believe the addition of Aloft will provide an attractive meeting place for the Rivervale community...”
10. Accordingly, the Applicant submitted that the results of the consumer survey and letters of support provide clear, objective and reliable evidence that there is a consumer requirement for the additional hours being proposed by the Applicant.
11. The following trading conditions were proposed by the Applicant for the extended hours sought in the application:
 - (a) food shall be made available at the premises at all times when open to the general public;
 - (b) 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’;
 - (c) drink options that contain light and mid-strength alcohol content as well as a range of non-alcohol drinks shall be available for purchase at all times;
 - (d) a CCTV video surveillance system that records continuous images throughout the premises including all entrance and exit points to the premises shall be installed; and
 - (e) happy hours would not be conducted.
12. The intervention by the CHO sought to make representations regarding the potential for this application to cause harm or ill-health to people, or any group of people, due to the use of liquor, and the minimisation of that harm.

13. In this regard, the CHO submitted that:
- (a) extended trading is linked to increased consumption and harm, such as an increased risk of drink driving and related harm; and
 - (b) there are several high-risk features of the premises, such as large numbers of patrons, which makes it more difficult for staff to effectively monitor the consumption of alcohol by patrons to prevent risk factors for harm such as drunkenness; and that large numbers of people increases the chances of accidental contact between patrons, with alcohol impairing their ability to respond appropriately.
14. While I am aware that alcohol can cause harm and ill-health, in considering the primary object of the Act expressed in s 5(1)(b), I am required to consider each application in accordance with the test outlined by Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing*¹, being to:
- (a) make findings that specifically identify the existing level of harm and ill-health in the relevant area, due to the use of liquor;
 - (b) make findings about the likely degree of harm to result from the grant of the application;
 - (c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
 - (d) weigh the likely degree of harm, so assessed, together with any other relevant factors to determine whether the Applicant has satisfied the authority that it was in the public interest to grant the application.
15. Therefore, on the information before me, I consider that:
- (a) the existing levels of harm and ill-health in the locality are no higher than other areas in Western Australia;
 - (b) there is nothing to suggest that the granting of the licence will result in an increase in harm and ill-health, given the nature of its operation as a 4.5-star hotel and the fact that it is an accommodation hotel, which suggests that there will be controls in place relating to the care and well-being of guests staying at the hotel; and
 - (c) there is nothing to suggest that there will be an increase in harm and ill-health in the locality to such a degree that would be considered unacceptable.
16. Therefore, having regard to the totality of the evidence, I am satisfied that the grant of the application is in the public interest. Accordingly, pursuant to s 60(4)(g) of the Act an extended trading permit is granted authorising the sale and supply of liquor for consumption on the premises only on Monday to Saturday nights, from midnight to 1 a.m. the following morning.

¹ [2015] WASC 208.

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17. The permit is subject to the following conditions:
- (a) The sale of packaged liquor for consumption off the licensed premises is prohibited during the hours covered by this permit.
 - (b) The area to which the permit relates is the whole of the licensed area.
 - (c) There is to be no liquor discounting or advertising of cheap liquor during the operation of the extended trading permit.
 - (d) 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'.
 - (e) Drink options that contain light and mid-strength alcohol content as well as a range of non-alcohol drinks shall be available for purchase at all times.
 - (f) Food shall be made available at the premises at all times.
 - (g) A CCTV video surveillance system that records continuous images throughout the premises including all entrance and exit points to the premises shall be installed. The system must comply with the minimum requirements identified and be maintained in accordance with the Director's *Safety and Security at Licensed Premises* policy.
 - (h) 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.
 - (i) The permit will remain in force for five years, commencing 29 May 2017 and expiring 28 May 2022.
 - (j) In accordance with s 60(8a) of the Act, the licensing authority may cancel an extended trading permit at any time if satisfied that the permit is no longer appropriate.
18. The licensee is also 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.
19. 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.
20. This matter has been determined by me under delegation pursuant to s 15 of the Act.


Brett Snell
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING