

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**LICENSEE:** AUSTRALIAN LEISURE & HOSPITALITY GROUP PTY LIMITED

**PREMISES:** THE BRASS MONKEY

**PREMISES ADDRESS:** 209 WILLIAM STREET NORTHBRIDGE

**LICENCE NUMBER:** 6020035063

**APPLICATION ID:** A000182662

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

**DATE OF DETERMINATION:** 24 DECEMBER 2015

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### **Introduction**

- 1 This is an application by Australian Leisure & Hospitality Group Pty Limited (the applicant) for the grant of an extended trading permit (ETP), pursuant to s 60(4)(g) of the *Liquor Control Act 1988* (the Act), in respect of premises known as the Brass Monkey and located at 209 William Street, Perth.
- 2 The applicant seeks approval to trade from 12 midnight and 1 a.m. the following morning on Wednesday and Thursday nights and from 12 midnight to 2 a.m. the following morning on Friday and Saturday nights.
- 3 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. The Commissioner of Police (the Commissioner) lodged 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.

### **The applicant's evidence and submissions**

- 5 According to the applicant, this application is to effectively renew an ETP that has been in place since 2010. The existing ETP continues a long history of extended trading at the premises dating back to 1994. It is proposed that the new permit be granted on the same terms and conditions as the existing permit.
- 6 It was submitted that the Brass Monkey is one of Perth's most well known and historical pubs. It is located in Northbridge and provides a "gateway" into the Northbridge Entertainment Precinct. The premises are a popular and well patronised venue that is well managed and has a sound history of compliance with the provisions of the Act. According to the applicant, part of the Brass Monkey's trading success is attributed to its ability to offer extended trading on Wednesday to Saturday nights

under the existing permit. The venue is well patronised on these nights due to the entertainment offered by the venue, which is unique and not available at other venues in Northbridge. It also provides an alternative, relaxed, controlled and safe late night venue to other late night venues in the Precinct.

7 The applicant lodged a Public Interest Assessment (PIA) to support its application. The PIA included:

- a statement of evidence by Michael Cheeseman, Manager of the Brass Monkey;
- a survey of patrons during extended trading periods under the existing ETP;
- a town planning report by MGA Town Planners; and
- results of searches of the licensing authority's and Liquor Commission's records.

8 It was submitted that the applicant is a very experienced operator of licensed premises and extensive and comprehensive harm minimisation management principles and practices are in place to ensure the Brass Monkey is soundly and effectively managed during all trading hours. It has a demonstrated track record of operating the Brass Monkey responsibly during extended trading periods without causing adverse or negative impact to the amenity of the local area.

9 According to the applicant, the licensing authority should consider the following when determining the application:

- the trading history of the applicant in the extended trading hours under the existing ETP;
- the applicant's compliance with the requirements of the Act during extended trading hours under the existing ETP; and
- if the nature or the surrounding environment has changed since the existing ETP was granted.

10 It was further submitted that continuation of the ETP hours under the existing permit is particularly important to the Brass Monkey continuing its newly established reputation of one of Perth's late night entertainment venues. If the application is not granted, this aspect of the tavern's business will be detrimentally affected. The applicant has appropriate and sufficient facilities, management expertise and resources to enable the permit the subject of the application to be operated in a proper manner.

11 In conclusion, it was submitted that:

- the applicant operates the premises in an extremely sound and responsible manner during the extended trading hours (as well as all trading hours);
- the applicant fully complies with its licence conditions and the Act. No infringement notices have been issued by the licensing authority or the Police in relation to the

- applicant's operation of the premises during extended trading periods under the existing ETP;
- there are comprehensive and extensive management policies and procedures in place to ensure the premises are effectively controlled;
  - the applicant effectively monitors the levels of intoxication and patron behaviour and has in place the strategies to deal with any issues if they arise;
  - the premises positively contributes to the minimisation of alcohol-related harm and ill-health issues; and
  - Northbridge is still the State's principal entertainment and hospitality precinct, that has since the existing ETP was granted, experienced an increased residential population. Whilst there are still alcohol-related issues in the area, there has been some improvement in recent years.

### **The Commissioner's evidence and submissions**

- 12 The Commissioner intervened to provide evidence to demonstrate that there is a level of harm, offending and disturbances occurring at the premises during the current ETP hours, and if the application is granted, new conditions should be imposed on the permit, in addition to the existing conditions, to minimise the risks associated with late night trading at the venue.
- 13 In this regard, the Commissioner recommended the following additional conditions:
- the proposed hours of the permit are reduced to 1 a.m. on Friday and Saturday nights;
  - the use of an ID scanner from 8 p.m. on each night that the permit operates;
  - any amplified music played at the venue after 12 midnight must be background in nature so as to allow normal conversation to occur;
  - the licensee engages two dedicated RSA officers from 8 p.m.; and
  - the permit only be granted for a period of three years.
- 14 To support his contentions, the Commissioner provided crime data specifically related to the premises, during the ETP period, from 1 January 2010 to 24 July 2015. An analysis of this data indicates the following;
- 2010 – 7 incidents (2 x assault, 3 x stealing, 1 x disorderly conduct, 1 x possess weapon);
- 2011 – 6 incidents (3 x assault, 2 x stealing, 1 x disorderly/hinder police);
- 2012 – 5 incidents (2 x stealing, 1 x hinder, 1 x damage, 1 x stealing/burglary);

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- 2013 – 9 incidents (2 x assault, 5 x stealing/disorderly, 1 x possess weapon, 1 x sex assault)
- 2014 – 8 incidents (2 x assault, 3 x stealing, 2 x damage/disorderly conduct, 1 x assault occasioning bodily harm); and
- 2015 – 6 incidents (3 x assault, 1 x assault occasioning bodily harm, 1 x stealing, 1 x breach of conditions).
- 15 The Commissioner also submitted that an analysis of the licensee's Liquor Incidents Report for the period 1 January 2015 to 23 July 2015 indicates that a high number of patrons were removed, evicted or asked to leave the premises for behaviours that give rise to them being considered intoxicated or approaching intoxication. Specifically, 309 patrons were removed or asked to leave for 'approaching intoxication', 62 for disorderly conduct, 7 for fighting, 8 for indecent assault, 7 for assault and 23 for other reasons.
- 16 On 29 August 2015, at about 1 a.m., two officers from the Licensing Enforcement Unit of the WA police attended the premises to conduct covert observations. The officers noted particulars of the operation of the premises, patron behaviour and levels of drunkenness. Statements from the officers and CCTV footage were submitted. Upon approaching the entrance to the premises, a crowd controller advised the officers with words to the effect of "you guys are looking pretty straight for 1 a.m., go in and get drunk." Upon entering the premises, the officers observed numerous patrons to be showing signs of drunkenness, including one patron who vomited twice on the floor of the premises. There were no staff members or crowd controllers within sight, with the incident passing unnoticed and the patron remained at the premises. Another female patron exhibited signs of intoxication, appeared to be falling asleep and required assistance from other patrons to remain upright and was awoken several times.
- 17 It was submitted by the Commissioner that the observations of the officers on 29 August 2015 call into question the management of the premises during the trading hours of the ETP. Further, an analysis of police issued Move-On notices for the period 1 January 2015 to 9 September 2015; indicate that 2,092 notices were issued in Northbridge, of which 73 related to the applicant's premises.
- 18 According to the Commissioner, the conduct of the premises during the current ETP hours to date is a relevant consideration to whether the grant of the current application is in the public interest.
- 19 Consequently, it was submitted by the Commissioner that the current trading conditions imposed on the existing ETP are not adequately minimising alcohol-related harm and are not ensuring the premises trades in a manner that minimally impacts on the amenity of the locality.

## Determination

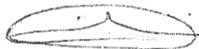
20 The legal principles to be followed when determining an application for extended trading hours, for a period in excess of three weeks, under section 60(4)(g) of the Act, are well established. Briefly, those principles are:

- the applicant must satisfy the licensing authority that the grant of the application is in the public interest (refer section 38(1)(b) and regulation 9F(b)). In this regard, the licensing authority needs to consider both the positive and negative social, economic and health impacts that the grant of the application will have on the community (refer section 19 of the *Interpretation Act 1994* and *Parliamentary Debates, WA Parliament, Vol 409, p 6342*). Consequently, an applicant must adduce sufficient probative evidence to discharge its obligation under section 38(2) of the Act;
- an intervener carries no onus to establish their assertions of fact or opinion (refer *Re Gull Liquor* (1999) 20 SR (WA) 321);
- 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);
- the factual matters which the licensing authority is bound to take into account when determining whether the grant of an application is ‘in the public interest’ are those relevant to the objects of the Act 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; and
- In *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356, when considering the discretion to be exercised by the licensing authority, Templeman J, stated:

*“The only question is whether, having regard to all the circumstances and the legislative intention, an extended trading permit is justified. In answering that question the Director has a wide discretion; it is a matter for him to decide what weight he will give to the competing interests and other relevant considerations.”*

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- 21 The applicant has operated the venue with extended trading hours for over 20 years. The last permit was granted in 2010 for a period of five years and the applicant now seeks a further permit on similar terms and conditions. The Commissioner has intervened for the purpose of having additional conditions imposed on the permit because the current conditions are not adequately minimising the potential for alcohol-related harm to occur.
- 22 The applicant is opposed to any of the conditions proposed by the Commissioner because it is of the belief that the premises are currently well managed during the hours of the permit.
- 23 In my view, the grant of this application would be consistent with object 5(1)(c) of the Act. I arrive at this conclusion based upon the late night trading history of the venue since 1994; the applicant's survey data; and the applicant's evidence on the number of persons using the venue during the permit hours.
- 24 The application must however, also be considered in the context of the harm minimisation object of the Act. In this regard, I am mindful that object 5(1)(b) is directed towards minimising alcohol-related, not the prevention of harm absolutely (refer Ipp J in *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258). The word 'minimise' is consistent with the need to weigh and balance all relevant considerations.
- 25 Notwithstanding, in my view, the Commissioner's evidence does raise concerns about levels of intoxication and patron behaviour.
- 26 In response to the Commissioner's evidence relating to the number of incidents at the premises in the period 2010 to 2015, the applicant submitted that 41 incidents occurred which resulted in only 14 charges. It was submitted that some of the incidents did not relate to the premises or did not involve alcohol and only a small proportion of incidents actually resulted in an offence. Further, the applicant estimates that approximately 62,000 to 72,000 people attend the venue per annum during the ETP hours and the number of offences is quite small compared to the overall number of patrons. I also note that there has been no infringement notices issued or disciplinary action taken against the licensee.
- 27 Whilst the applicant claims that it effectively monitors the levels of intoxication and patron behaviour, in my view, the evidence of the two police officers who attended the premises on 29 August 2015, which I accept, calls into question the effectiveness of the applicant's monitoring procedures.
- 28 Consequently, in weighing and balancing the competing interests in this case, I am satisfied that the grant of the application is in the public interest, however, a condition requiring the licensee to engage two dedicated RSA officers from 8 p.m. on each night that the permit operates is appropriate to help monitor patrons of the venue and levels of intoxication.

- 29 Accordingly, the application is granted and the permit will be subject to the existing conditions together with an additional condition requiring the licensee to engage two additional approved managers, dedicated to RSA activities, on each night that the permit operates. These managers are to be on the premises from 8 p.m. until the close of business and they are to focus on patron behaviour and the responsible service and consumption of alcohol within the venue and they are not to undertake other activities such as serving alcohol behind the bar.
- 30 At this juncture, I do not believe further conditions, as proposed by the Commissioner, are necessary, however the permit will only be granted for a period of three years, which will allow a reasonable period to review and monitor the operation of the venue. The licensee may wish to consider further initiatives to ensure the permit is conducted in a manner consistent with the public interest. The licensee is reminded that the permit may be cancelled if the licensing authority is satisfied that the continuation of the permit is no longer appropriate.
- 31 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.
- 32 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