

DECISION OF DIRECTOR OF LIQUOR LICENSING

LICENSEE: ASH PROMOTIONS PTY LTD
PREMISES: AN SIBIN PUB
PREMISES ADDRESS: 147 JAMES STREET, NORTHBRIDGE
LICENCE NUMBER: 6020026526
DATE OF DETERMINATION: 09 DECEMBER 2015

- 1 Ash Promotions Pty Ltd is the licensee of An Sibin Pub, situated at 147 James Street, Northbridge.
- 2 On 29 October 2015, the Commissioner of Police (the Commissioner) lodged a complaint, under s 95 of the *Liquor Control Act 1988* (the Act), with the Liquor Commission, for disciplinary action against the licensee. A copy of that complaint was provided to the Director of Liquor Licensing (the Director).
- 3 Section 95(6) of the Act provides that where a complaint for disciplinary action has been lodged, and the Director is satisfied that the safety, health and welfare of the public so requires, conditions may be imposed on the licence pending determination of the complaint. In broad terms, the basis of the complaint is that the premises have not been properly managed in accordance with the Act and the licence has not been exercised in the public interest.
- 4 Consequently, I wrote the licensee advising that I was considering imposing the following conditions on the licence:
 - 1) The licensee is prohibited from selling and supplying liquor for consumption on the premises:-
 - in any non standard measure;
 - presented in such a way that would encourage the rapid consumption of liquor (for example, but not limited to, unadulterated spirits or liqueur in a shot glass); or
 - by virtue of their 'emotive' titles such as, but not limited to, 'laybacks', 'shooters', 'slammers', 'test tubes', and 'blasters'.
 - 2) Crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed at a ratio of three (3) crowd controllers for the first 100 patrons (general public) and one crowd controller for each additional 100 patrons or part thereof, from 5 p.m. until 30 minutes after trading ceases.
 - 3) A video surveillance system must be in place and operational and must comply with the minimum requirements identified in the "Safety and Security at Licensed

Premises” Policy or with requirements otherwise approved by this authority. In accordance with the Policy, it is expected that this system will provide and record continuous images of the entrances to the premises, bars and entertainment/dance areas, from 5 p.m. (or the time of opening the premises if after 5 p.m.), until 1 hour after trading ceases and be able to identify individuals, showing times and dates; and

Images recorded via the video surveillance system must be retained for 28 days, and must be made available for viewing or removal by the Police or other persons authorised by the Director.

- 4) From 6 p.m. until closing on each Friday, Saturday and Sunday two approved managers are to be present on the licensed premises; with one manager to specially focus on patron behaviour and the responsible service of alcohol and this manager is not to undertake other activities such as serving alcohol behind the bar.
- 5) No liquor sold for consumption on the premises shall be supplied in a container greater than 375ml.
- 6) Each director of the licensee company is to complete a refresher training course, within 28 days, in –
 - Responsible Service of Alcohol (SITHFAB201); and
 - Course in Management of Licensed Premises 52735WA (MLPLCA401A, MLPLCA402A and MLPLCA403A).
- 5 In response, the licensee indicated that it does not oppose conditions 1, 3 and 6 being imposed on the licence, however it contends that the remaining conditions should either not be imposed, or should at least be modified.
- 6 It was submitted by the licensee that the power that may be exercised under s 95(6) is limited to the making of an interim order which will only have effect until such time as the Liquor Commission has made a determination in relation to the ultimate complaint. It was further submitted that when regard is had to the scheme of the Act, the imposition of a condition must not be an arbitrary decision, but, rather, must be causally linked, upon a consideration of the evidence before the licensing authority, to the harm or mischief sought to be prevented.
- 7 In this regard, the licensee undertook a detailed analysis of the evidence relied upon by the Commissioner in the complaint before the Liquor Commissioner. The licensee disputes some of that evidence and as a consequence, also disputes some of the conclusions that the Commissioner draws from that evidence.
- 8 In respect of proposed condition 2, the licensee submitted that the venue is small; catering to only 125 patrons and the requirement to provide security seven days a

week will have a significant financial burden. It was submitted the majority of the incidents relied upon by the Commissioner in his complaint occurred on a Friday, Saturday or Sunday night and a review of the incident reports as they pertain to Monday to Thursday do not reveal that the safety, health or welfare of the public are being threatened by the operation of the venue. Consequently, the licensee proposed that security only be required on Friday, Saturday and Sunday nights from 8 p.m. at a ratio of 2 for the first 100 patrons with an additional crowd controller being engaged from 9 p.m. on those nights.

- 9 In consideration of the licensee's submission, I am prepared to vary the proposed condition so that security is only mandatory on Friday, Saturday and Sunday nights, however in my view, crowd controllers should be engaged from 5 p.m., not 8 p.m. as proposed by the licensee. Further, mindful of the size of the venue and the financial impost on the licensee, but taking into consideration the reported incidents at the venue, security will be employed at a ratio of two crowd controllers for the first 50 patrons and one crowd controller for each additional 50 patrons or part thereof. Overall, if the premises are at capacity, this will result in one additional crowd controller above the existing requirement, but will ensure sufficient crowd controllers are present at the venue to monitor patron behaviour.
- 10 In respect of condition 4, the licensee is not opposed to the condition *per se*, but seeks to have the additional approved manager, whose focus is to monitor the responsible service and consumption of liquor, commence duties from 9 p.m. It was submitted that the Commissioner was not seeking the imposition of such a condition in his submissions to the Liquor Commission and the Commission has never imposed a more restrictive condition than what the Commissioner has sought in his complaint. However, I note from the Commissioner's complaint that one of the remedies he seeks is to have an additional approved manager engaged at the venue. Consequently, in consideration of all of the circumstances, I am of the view that condition 4, as proposed, is appropriate.
- 11 In respect of condition 5, the licensee submitted that it has recently upgraded the kitchen facilities at the venue and a full meal service is now provided. The imposition of a 375ml restriction would prevent the sales of bottled wine to persons to have with their meal and it would prevent sale of Guinness in pints, which is common practice for an Irish pub. I am prepared to accept the licensee's submissions, particularly on the basis that with an additional approved manager at the venue, focussed on the responsible service and consumption of liquor, better monitoring of consumption patterns will be achieved. Therefore condition 5 will not be imposed.
- 12 Whilst I acknowledge that the licensee disputes the evidence relied upon by the Commissioner, and this evidence will be tested at the substantive hearing of the complaint before the Liquor Commission, I am nonetheless satisfied that the evidence submitted by the Commissioner establishes that the management practices at this venue are not of a required standard and there are unacceptable levels of patron

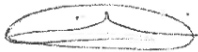
intoxication. I am satisfied that the evidence, when considered as a whole, establishes that in order to minimise the risk to the safety, health and welfare of the public it is appropriate to impose the conditions, as outlined above, on a temporary basis pending a decision by the Liquor Commission. I am also satisfied that the proposed conditions are targeted at addressing some of the identified problems at the venue.

- 13 In addition to the imposition of the above conditions, I indicated to the licensee that I was considering cancelling the existing extended trading permit, which authorises trading on Friday and Saturday nights from 12 midnight to 2 a.m. the following morning. This permit was due to expire in May 2015; however it was extended until 19 February 2016 pending the determining of an application for grant of a new permit, to replace the expiring permit.
- 14 It was submitted by the licensee that an extended trading permit should only be cancelled if it is in the public interest to do so. It was further submitted that the specific incidents relied upon by the Commissioner and the various incident reports, provide limited evidence of undue harm or ill-health being experienced by persons attracted to the premises. According to the licensee, the evidence of harm or ill-health must be weighed against the requirement of consumers to socialise later at the venue. In this regard, the licensee submitted 109 consumer requirement surveys and 32 letters from patrons of the venue.
- 15 In LC 23/2022 (Commissioner of Police v Circuit Nightclub Pty Ltd), the Liquor Commission stated that:

“One of the primary objects of the Act is to minimize harm or ill-health caused to people, or any group of people, due to the use of liquor. To support and reinforce this primary object, the Act has been progressively amended over the years to include provisions for mandatory training in responsible service practices; the introduction of a public interest test; the ability of the licensing authority to impose conditions on licences to minimize alcohol related harm and ensure public order and safety; and ensure the proper supervision and management of licensed premises to name just a few. Through the regulation of the liquor industry, the Act clearly correlates the sale and consumption of alcohol in our community with the public interest and the protection of the community and therefore places obligations and responsibilities on persons who are entrusted with the privilege to operate and manage licensed premises.”
- 16 I am satisfied that, on the balance of probabilities, the evidence establishes both before and during the hours of the permit, there are problems with the management of the venue resulting in patron intoxication. An extended trading permit is a privilege, not a right. It is incumbent on a licensee to ensure that its premises are well managed and that liquor is only served and consumed in a responsible manner. The health and safety of patrons, whether at the venue or after they have left the venue, should not be put at risk by poor management practices. The police have engaged with the licensee

on a number of occasions to improve the management of the venue, without the desired results.

- 17 The licensee took over this venue in December 2014 and by its own admission it has limited experience in the industry. This inexperience in managing licensed premises, particularly premises in a busy entertainment precinct, may also be a contributing factor to the problems being experienced at the venue. Nonetheless, in consideration of all the information before me, I am of the view that the harm minimisation object of the Act should take precedence over any other competing object.
- 18 Consequently, I find that the continuation of the extended trading permit is no longer appropriate or in the public interest and therefore, pursuant to s 60(8a) of the Act, extended trading permit No. 0200605515 is cancelled with effect from 8 December 2015. The application for a new extended trading permit will be considered in due course, on its merits.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING