

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Mustang Bar Pty Ltd
(represented by Mr John Prior, instructed by Ms Alyce Cassetta of Ryan & Durey Solicitors)
- Respondent:** Director of Liquor Licensing
(represented by Mr John Carroll of State Solicitor's Office)
- Commission:** Mr Seamus Rafferty (Chairperson)
Mr Eddie Watling (Deputy Chairperson)
Mr Michael Egan (Member)
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988* for a review of the decision of the delegate of the Director of Liquor Licensing regarding an application to vary trading hours on New Year's Eve 2017.
- Premises:** Mustang Bar, 46 Lake Street, Northbridge
- Date of Hearing:** 18 December 2017
- Date of Determination:** 18 December 2017
- Determination** The Commission varies the decision of the Delegate of the Director of Liquor Licensing at first instance pursuant to section 25(4)(a) of the Act by allowing the variation of the operating times on New Year's Eve 2017 to between 6.00am on Sunday, 31 December 2017 and then continuing until 3.00am on the next day, that being Monday, 1 January 2018.
- The remaining conditions set out in the letter of the Delegate dated 13 December 2017 remain as outlined.

Background

1. On 22 September 2017, Mustang Bar Pty Ltd (“the applicant”) lodged an application to vary the conditions of its special facility licence relating to the trading hours on New Year’s Eve. The existing special facility licence which was granted on 16 June 2017 allows the applicant to trade during the following hours:
 - a) Monday to Thursday: between 6.00am and 1.00am the following morning;
 - b) Friday to Saturday: between 6.00am to 3.00am the following morning; and
 - c) Sunday: between 6.00am and midnight.
2. Given that New Year’s Eve falls on a Sunday this year, the applicant required a variation of its existing licence to trade beyond midnight.
3. In a letter dated 13 December 2017, the Delegate of the Director of Liquor Licensing granted the application to vary the licence, but the closing time allowed was 2.00am as opposed to 3.00am as requested. The Delegate expressed his reasoning as follows:

‘I have considered the submissions of the licensee and I am prepared to extend the trading hours on New Year’s Eve from immediately after 12 midnight until 2.00am. The reason for my decision is that the trading hours specified for a hotel licence under section 98 of the Liquor Control Act 1988 (“the Act”) acknowledges that New Year’s Eve should be treated differently and extends those hours from immediately after 12 midnight until 2.00am. Whilst I acknowledge that the Mustang Bar is licensed under a special facility licence, an extension of hours from immediately after 12 midnight until 2.00am is consistent with other premises that trade in a manner similar to that of the Mustang Bar.’

4. By way of an application dated 14 December 2017, the applicant seeks a review of the decision of the Delegate of the Director of Liquor Licensing pursuant to section 25 of the *Liquor Control Act 1988* (“the Act”).
5. A hearing pursuant to section 25 of the Act is a hearing *de novo*, meaning that it is not an appeal hearing and there is no requirement on an applicant to establish error in the decision making process at first instance. However, the Commission may only consider evidence that was before the Delegate at first instance.

Statutory Considerations

6. Section 98C of the Act states that, *‘the permitted hours under a special facility licence are as specified in the particular licence.’* This contrasts with other classes of licence which allow the following trading hours for New Year’s Eve, namely:
 - a) on a Sunday that is New Year’s Eve — from 8 p.m. to midnight and then continuing to 5.00am on the next day for a Nightclub Licence pursuant to section 98A(1)(d) of the Act;
 - b) on New Year’s Day — from immediately after 12 midnight on New Year’s Eve to 2.00am pursuant to section 98(1)(d) of the Act.

Summary of Evidence

7. The evidence before the Commission is outlined in a letter dated 19 September 2017, signed by Mr Michael Keiller who is a Director of Mustang Bar Pty Ltd. It is submitted that the licensed premises provides a location for patrons to attend after hotels have closed, who do not want to attend nightclubs. That distinction is best reflected by the fact that the licensed premises operates under a Special Facility licence as opposed to a hotel licence.
8. Thirteen reasons are advanced at the conclusion of the letter as to why it is in the public interest to grant the variation allowing a closing time of 3.00am. For the purposes of these reasons, it is unnecessary to outline that summary, however the letter is attached to these reasons for decision.

Determination

9. The applicant operates in a large entertainment precinct which is made up of hotels, restaurants and night clubs. The Commission takes notice that it is a location that attracts large numbers of people celebrating the beginning of the New Year each year.
10. The Commission is satisfied that the variation of the applicant's licence to allow trading until 3.00am on the next day after New Year's Eve is in the public interest and consistent with the primary and secondary objects of the Act. There is nothing to suggest that the granting of the variation would cause harm and ill-health over and above the levels that are already experienced in Northbridge. It should also be noted that the closing time is the same closing time for the premises as it currently operates on Friday's and Saturday's during the rest of the year.
11. Whilst there may be some similarities between the operation of the licensed premises and the operation of a hotel licence, it should be recognised that the premises are not a hotel and they fill the void between hotels and nightclubs. The comparison between the operation of the licensed premises and premises operating under a hotel licence in the Delegate's reasons for decision was not a proper basis to conclude that the variation allowing a closing time of 3.00am should not be allowed.
12. In reaching the ultimate decision, the Commission has placed significant emphasis on:
 - a) the operating history of the licensed premises;
 - b) the fact that the application relates to New Year's Eve, which the Act recognises should allow later operating hours for licensed premises;
 - c) the fact that the applicant is only seeking to operate for one extra hour;
 - d) the licensed premises operates in a large entertainment precinct which draws patrons from all over the metropolitan area; and
 - e) the variation will allow the applicant to trade until the same time that it currently operates on Friday's and Saturday's.

13. Accordingly, the Commission varies the decision of the Delegate at first instance pursuant to section 25(4)(a) of the Act by allowing the variation of the operating times on New Year's Eve 2017 to between 6.00am on Sunday, 31 December 2017 and then continuing until 3.00am on the next day, that being Monday, 1 January 2018. The remaining conditions set out in the letter of the Delegate dated 13 December 2017 remain as outlined.



SEAMUS RAFFERTY
CHAIRPERSON