

DECISION OF THE DIRECTOR OF LIQUOR LICENSING

APPLICANT: AUSTRALIAN LEISURE & HOSPITALITY GROUP PTY LTD
(Represented by Squire Patton Boggs (AU))

OTHER PARTY: COMMISSIONER OF POLICE
(Intervenor)

NATURE OF MATTER: APPLICATION TO VARY A CONDITION OF AN EXTENDED
TRADING PERMIT

APPLICATION NO.: A726039266

PREMISES: THE BRASS MONKEY
209 WILLIAM STREET, NORTHBRIDGE

DECISION OF: BRETT SNELL, DEPUTY DIRECTOR LIQUOR CONTROL
AND ARBITRATION

DATE OF DETERMINATION: 28 MAY 2020

1. On 23 July 2019, an application was made to the Director of Liquor Licensing (Director) by Australian Leisure & Hospitality Group Pty Ltd (Applicant) pursuant to s64 of the *Liquor Control Act 1988* (Act) to vary specified conditions of extended trading permit (ETP) number 0213112319, issued in respect of premises known as *The Brass Monkey* and situated at 209 William Street, Northbridge.
2. Pursuant to s38(1)(c) of the Act, the Director determined that the provisions of s38(2) of the Act would apply to the application.
3. The ETP issued for the purposes specified in s60(4)(h) of the Act on 23 July 2019, authorising the sale, supply and consumption of liquor on the covered footpath running alongside the premises on William Street. A previous permit, which was valid for a period of five years and subject to the same terms and conditions, was granted to the Applicant on 24 July 2014.
4. The conditions of the ETP provided *inter alia* for specified trading hours in the permit area of:
 - (a) Monday to Saturday, from 7 a.m. to 9 p.m.
 - (b) Sunday, from 10 a.m. to 9 p.m.
5. By way of the application and submissions dated 5 December 2019, the Applicant sought to vary the specified trading hours under the ETP to authorise trading in the ETP area until 12 midnight.
6. On 10 February 2020, a Notice of Intervention was lodged by the Commissioner of Police (Intervenor), which made representations, pursuant to ss69(6)(ii) and (iv) of the Act, that if the application was granted, public disorder or disturbance would be likely to result on and in the vicinity of the permit area and other matters relevant to the public interest.

7. A submission in opposition to the application was also lodged by Alan Ford on 10 February 2020, who expressed concern that the extension of trading hours under the ETP might be detrimental to lodgers staying at the *Hotel Alex*.
8. On 14 April 2020, I published a notice of approval pursuant to s18AA of the Act in which I approved the application.
9. On 15 April 2020, the Intervenor sought written reasons for the notice, in accordance with s18AA(4) of the Act. Accordingly, my reasons for granting the application follow.
10. According to the Applicant, the ETP area is set up with a number of high table settings, providing patrons with a place to enjoy their food and drink in a casual outdoor setting. 'As one of the few street front alfresco dining spaces along William Street,' it was submitted the ETP 'is very popular amongst local residents, CBD workers and tourists. Currently, the venue is required to close the alfresco at 9pm which often results in disappointed customers being asked to move inside.'
11. To ascertain the views of its customers, the Applicant made a questionnaire available at the premises over a one-week period and received 100 responses, of which:
 - (a) every person indicated they supported the extension of trading under the permit;
 - (b) 53 per cent said they sit in the alfresco area every time they visit the premises; and
 - (c) 42 per cent said they sit in the alfresco area most of the time they visit.
12. According to the Applicant, the results of the survey provided 'compelling and objective evidence that the application caters to the requirements of consumers for liquor and related services.' As such, the Applicant submitted 'there is a consumer requirement for the alfresco area to operate for an additional three hours Monday – Sunday and therefore, it would be in the public interest to grant the Application.'
13. The Applicant also submitted that the additional three hours of trading per night in the permit area was not expected to impact or increase the level of crime, alcohol related harm and ill-health occurring for the following reasons:
 - (a) the Premises is operated by well-known and respectable operator and has an established proven record of managing the premises in accordance with the Act;
 - (b) the premises and permit area have CCTV cameras, which assist in deterring any criminal activity;
 - (c) there are no sensitive premises within visibility of the premises;
 - (d) the additional three hours of trade each night in the extended area will contribute to the activation and vibrancy of the area, which will discourage criminal activity;
 - (e) the well entrenched harm minimisation strategies and management policies of Brass Monkey mean the extended permit area will be well managed for the additional three hours;
 - (f) there are security personnel engaged from 8 p.m. until the premises closes on Thursday to Saturday nights, who are stationed immediately adjacent to the permit area, with the Applicant suggesting that the positioning of the security guards would ensure that the permit area will be sufficiently managed during the additional hours of operation proposed under the application;

- (g) food services will be available until 10 p.m. on Wednesdays and Thursdays and until 11 p.m. on Fridays and Saturdays;
 - (h) the premises' dress code will ensure a suitable atmosphere is maintained in the permit area for the additional trading hours; and
 - (i) the premises is operated by a well-respected operator who must ensure that their reputation and the reputation of the premises is not undermined by undesirable behaviour caused through excessive alcohol consumption.
14. The Applicant also submitted that both the premises and the permit area are located in the centre of the Northbridge entertainment district and therefore are not located within the immediate vicinity of any residential properties. As such, it was submitted that an extension of trading hours under the ETP was unlikely to disturb any noise sensitive properties. Further, the Applicant explained that it has a decibel reader onsite, which staff and security personnel regularly use to monitor the noise levels within the premises and the permit area.
15. Primarily, the representations of the Intervenor related to the fact that the attractions of the Northbridge entertainment precinct draw a large and diverse demographic of people to the locality, particularly on Friday and Saturday nights during the additional hours the Applicant is seeking to trade and this 'large influx of people, including those who are already in the alfresco area, or are seeking to attend the premises, congests the footpath in between the premises and the alfresco area' and 'any increase in hours for that area may cause public disorder, disturbance and harm in the vicinity of the premises.'
16. In a letter supporting the notice intervention, Senior Sergeant Brennan noted that the corner of William and James Streets 'is already busy on those nights with vehicular and pedestrian traffic and we would envision more congestion to the public thoroughfare and conflict between patrons of the venue, pedestrians and vehicles on William street.'
17. The Intervenor also:
- (a) submitted an analysis of the Applicant's incident reports; and
 - (b) provided CCTV footage from the premises and comparative crime-data for Northbridge, Perth, Fremantle, the Metropolitan area and the State of Western Australia,
- to establish that there are significantly high levels of crime occurring in the locality, which is 'directly linked to public disorder, disturbance, harm and ill-health', with the Intervenor submitting 'than any increase in these levels, if this application is approved, may not be in the public interest.'
18. Representations were also made in relation to:
- (a) a 2013 report of the International Journal of Alcohol and Drug Research, which stated that alcohol consumption increases the likelihood and extent of aggressive violent behaviours, while also reducing a person's ability to resolve conflict;
 - (b) the number of move-on orders issued by police in the locality; and
 - (c) Operation Night Safe, a police operation that has been in effect for over a decade to address high levels of antisocial and criminal behaviour that occur in Northbridge and Perth on Friday and Saturday nights.

19. The Intervenor also questioned the relevance of the Applicant's consumer survey, given that there was no place for respondents to record their personal details or contact information.
20. Pursuant to s 38(1)(c) and 38(2) of the Act, the Applicant was required to satisfy the licensing authority that the grant of the application is in the public interest.
21. Conversely, the Intervenor carried no onus to establish their assertions of fact or opinion, but rather provided representations to assist the licensing authority to make an informed decision.¹
22. Similarly, a person who makes a submission to the Director is not a party to proceedings and is not subject to the burden of proof required of objectors under s73(10).
23. Having carefully considered the evidence and submissions of the parties to these proceedings in the context of the statutory requirements of the Act and the decisions of Buss J in *Woolworths Ltd -v- Director of Liquor Licensing*² and Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing*³, I considered it was clearly open to me to infer from the evidence and submissions before me, that there was a consumer requirement for additional trading hours under the ETP.
24. I was also satisfied that while there are existing levels of harm and ill-health caused by the use of alcohol to people living in or resorting to the locality, there was nothing in the material to support a conclusion that an additional increase of three hours trade per day under the ETP would increase those levels so that they would be deemed unacceptable to the community or contrary to the Act's harm minimisation object.
25. In this regard, I noted that there was no evidence that the premises itself or the ETP area have not been well managed to date.
26. I also considered that the Applicant's proposal would further the Act's object of catering 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.
27. Therefore, after considering the submissions of all the parties, I formed the view that:
 - (a) the grant of the application would promote objects 5(1)(c) and 5(2)(a);
 - (b) the risk of increased harm was not significant when regard was had to the circumstances of the locality;
 - (c) given that the premises is located in the heart of Northbridge, noise from patrons in the ETP area will not unduly disturb patrons of the *Hotel Alex* or any other person; and
 - (d) the likely degree of harm to result from the grant of the application was no greater than that which appears to be commonly accepted in the community.

¹ Refer Greaves J, *Re Gull Liquor* (1999) 20 SR (WA) 321

² [2013] WASCA 227

³ [2015] WASC 208

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28. Having considered all of the evidence presented by the parties, I was satisfied that the Applicant had discharged its onus under s 38(2) and demonstrated that the grant of the application was in the public interest and granted the application.
29. While I approved the variation to the specified trading hours under the ETP, all other trading conditions remained.
30. The licensee is reminded that, pursuant to the provisions of s60(8a) of the Act, the ETP may be cancelled at any time if the licensing authority is satisfied that the permit is no longer appropriate.
31. The parties to this matter should note that, pursuant to s25(5)(a)(ii) of the Act, a decision relating to the imposition, variation or cancellation of a term or condition of an extended trading permit is not subject to review by the Liquor Commission.
32. This matter has been determined by me under delegation pursuant to s 15 of the Act.



DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING