

**DECISION OF DIRECTOR OF LIQUOR LICENSING**

APPLICANT: MUNSTER BAR GROUP PTY LTD

PREMISES: THE CURE TAVERN

PREMISES ADDRESS: 73 FRANCIS STREET, NORTHBRIDGE

LICENCE NO: 6020121856

**NATURE OF MATTER: EXTENDED TRADING PERMIT – ONGOING HOURS**

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**Introduction**

1. On 10 October 2014 an application was lodged by Munster Bar Group Pty Ltd ("the applicant"), the current licensee of The Cure Tavern, situated at 73 Francis Street, Northbridge for the grant of an extended trading permit, pursuant to s 60(4)(g) of the *Liquor Control Act 1988* ("the Act"), to allow a continuation of trading on Friday and Saturday evenings from 12 midnight to 1 a.m. the following day.
2. Pursuant to s 67 of the Act, the application was required to be advertised by way of a notice published in *The West Australian* newspaper; on the site of the licensed premises for a period of fourteen (14) days commencing on 28 October 2014; by way of a Notice to Residents and Businesses located within a 200 metre radius of the premises; and a General Notice to educational, health care and local and regional government institutions, as well as community and church groups, within the locality.
3. No objections were lodged. However, pursuant to s 69 of the Act, Notices of Interventions were lodged by the Commissioner of Police ("the Commissioner") and the Executive Director Public Health ("the EDPH").
4. Pursuant to ss 13 and 16 of the Act, the application will be determined on the papers and by me under delegation pursuant to s 15 of the Act.

**Submissions of the applicant**

5. The applicant's Public Interest Assessment (PIA) lodged in support of the application contains the background to the application, the intended manner of trade, and addresses the matters set out in s 38(4) of the Act.

6. The applicant, among many things, submitted:

*“In essence, the application is to renew the existing Extended Trading Permit for Ongoing Hours that has been in place at the Tavern since January 2010. In the past the Licensing Authority has found a requirement for extended trading hours at the Tavern. This requirement remains unchanged as trading during the extended hours remains a popular service and facility of the Tavern.”*

7. To demonstrate that the grant of the application is in the public interest, the applicant together with its PIA and attachments, lodged patron’s surveys which show support for the application.
8. According to the applicant, the grant of the application will not impact adversely upon the amenity of the area and will not result in an increase in harm or ill-health to persons due to the consumption of liquor in the locality.

#### **Submissions of the Commissioner**

9. The Commissioner lodged a Notice of Intervention for the purpose of making representations that if the application is granted and relevant conditions not imposed public disorder or disturbance would be likely to result because:

- the applicant’s non-compliance with the Act; and
- the existing alcohol related harm in the locality.

10. The Commissioner in the representations highlighted the following:

- officers from the Liquor Enforcement Unit attended the venue, on 30 January 2012, and met with management and staff members to ensure that the obligations of trading under tavern licence were understood;
- Police observations on 10 March 2012 at 12:20 a.m. from outside licensed premises. Observations included several patrons who appeared drunk walking out of the venue, patrons leaning against a wall, persons urinating on the side wall of the venue resulting in the issue of several prosecutions for disorderly conduct and a verbal caution to the approved manager Jamie Shine for permitting drunkenness contrary to s 115(1)(a) of the Act;
- inspection of the premises on Wednesday 14 March 2012 at 7:20 p.m. which revealed breaches relating to maintaining the premises’ training register and responsible service of alcohol certificates for employees;
- inspection of the premises on Friday, 30 March 2012 which revealed breaches relating to maintaining the premises training register and responsible service of alcohol certificates for employees. Liquor Infringement No 300834 issued to the licensee. Infringement paid on 3 April 2012;

- Police observations on Thursday, 11 October 2012 when patrons were observed exiting the venue with glasses of beverages and bottles of cider. Two patrons observed consuming from the containers. 2 patrons issued with cautions for street drinking. Approved manager “Jason” was issued with a verbal caution for permitting the consumption of liquor in non-authorised circumstances. Incident occurred during the operation of the extended trading permit;
  - inspection of the premises on Saturday, 4 May 2013 at about 1 a.m. where officers observed a group of patrons leaving the venue who appeared drunk. One person wearing work gear and thongs appeared drunk and was identified by the approved manager to be an owner and licensee of the premises. Another person in the group was also identified as being an owner and licensee of the premises. No formal action taken against the Directors of the licensee company. Incident occurred during the operation of the permit;
  - Police observations on Friday, 13 September 2013 within the licensed premises resulted in a liquor infringement being issued to an approved manager for permitting drunkenness, an infringement issued to a staff member for selling and supplying liquor to a drunken person and an infringement issued to the licensee for permitting a drunken person to consume liquor. All infringements were paid; and
  - a warning issued to the licensee regarding prescribed information required to be displayed on the premises’ website.
11. The Commissioner’s presentations also included information regarding alcohol related harm and offences in the locality; and it was submitted that alcohol related harm and offences are elevated in the locality of Northbridge.
12. The Commissioner further submitted that if the application is granted, additional trading conditions should be imposed on the licensee to assist in the minimising of harm due to the sale and the consumption of alcohol.

### **Submissions of the EDPH**

13. The Notice of Intervention dated 10 November 2014 lodged by the EDPH presented information to be considered by the licensing authority regarding the potential for the 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.
14. The grounds of intervention were premised on the following:
- a number of cautions and infringements have been issued relating to the premises, including during the late night trading hours sought;
  - the venue is located in Northbridge, where there is existing alcohol-related harm;

- alcohol-related assault offences are highest on the days of the week the applicant is currently trading until 1 a.m.;
  - alcohol-related assault offences peak in Northbridge during the late night trading times sought;
  - more than 1 in 2 assault offences in Northbridge were recorded as alcohol-related;
  - drinking at a licensed premises was identified as the place of last drink in the majority of drink-driving offences for the suburb of Northbridge;
  - research demonstrates that late night trading can facilitate increased consumption and alcohol related harm; and
  - given the risks associated with late night trading, it is critical that venues with Extended Trading Permit's (ETPs) have sound management practices in place to minimise harm.
15. The Notice of Intervention included WA Police details of the cautions and the infringements issued to the licensee, manager, an employee of the licensee during 2012 and 2013 and alcohol-related harm data for the locality.
16. In conclusion the EDPH submitted:
- Given extended trading is linked to increased harm, and there are already high levels of harm occurring during the ETP hours sought by The Cure Tavern, it is important for venues with ETPs to have management practices in place to minimise harm.
  - The cautions and infringements relating to The Cure Tavern warrant a cautious approach when considering this application.

### **Responsive submissions by the applicant**

17. Tang Legal on behalf of the applicant responded to the matters raised in the Notices of Interventions by referring primarily to the written statements made by the applicant's General Manager, M/s Marguerite O'Dwyer and to statements of Directors Mr Donncha Lowney and Mr Stephen O'Sullivan.
18. While acknowledging the concerns held by the Commissioner and the EDPH in regards to Northbridge and alcohol-related harm in the locality the submissions reiterated the reasons for the extended trading hours and highlighted the changes introduced by the General Manager Marguerite O'Dwyer in the management of the licensed premises.

## Determination

19. In considering this application, in my view, the law and the discretion of the licensing authority regarding extended trading permits under ss 5, 33, and 60 of the Act are fairly well established.
20. In respect of policy, in *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356 Templeman J said:

*“Although the Government has not formulated any policy specifically for places like Broome, it has formulated a general policy for the implementation of the Act. That policy is contained in s 5, in which the objects of the legislation are set out. These are the considerations which the Director must take into account when exercising the very broad discretions arising under s 60, on an application for an extended trading permit.”*
21. In respect of discretion, in the same case, Templeman J also said:

*“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.”*
22. Pursuant to s 60 of the Act, the licensing authority may grant an extended trading permit authorising the licensee to sell and supply liquor under the licence in circumstances to which that licence would not otherwise apply. Section 60(4)(g) of the Act, specifically identifies that one of the purposes for which a permit may be granted is extended hours.
23. In this case, as the applicant seeks the grant of an extended trading permit for a period exceeding 3 weeks, pursuant to s 38 of the Act, the onus is on the applicant to satisfy the licensing authority that the grant of the application is in the public interest. In this regard the licensing authority, however constituted makes its determination on the balance of probabilities (s 16 (1)(ii) of the Act).
24. In determining whether an application should be granted “in the public interest” the licensing authority, is required to exercise a discretionary value judgement within 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; and *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241. That is, consideration must be given to the objects of the Act as specified in s 5; the requirements of ss 38, 60(4), 76 and 98.

25. In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:

*The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.*

*The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.*

26. Pursuant to s 33 of the Act the licensing authority has an absolute discretion to grant or refuse an application under the Act on any ground, or for any reason, that the licensing authority considers in the public interest, provided that the application is dealt with on its merits within the scope of the Act (refer *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC; and *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).
27. In accordance with s 5 of the Act the primary objects are:
- to regulate the sale, supply and consumption of liquor;
  - to minimize harm 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.
28. The secondary objects as set out in s 5(2) are:
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
  - to provide adequate controls over, and over persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
  - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

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29. The applicant, in this case, submitted that a similar permit was granted in 2010 and the application should be granted to cater for the requirements of its patrons for liquor and related services.
30. No objections were lodged in accordance with s 74 of the Act. However, the Commissioner and the EDPH lodged Notices of Interventions in accordance with s 69 of the Act. In this regard, the Commissioner and the EDPH, as Interveners to the application, carry no burden of proof (per Greaves J, Gull Petroleum (WA) Pty Ltd (1998) LLC No. 13/98).
31. The EDPH concluded that in view of the cautions and infringements issued in relation to the applicant's licensed premises, a cautious approach is warranted in considering the application.
32. The Commissioner submitted that if the application were granted, additional trading conditions should be imposed to assist in minimising alcohol related harm due to the use of liquor at the licensed premises and in the locality.
33. In considering the information before me, I conclude:
- The current Extended Trading Permit No. 33800 was granted effective from 11 January 2010 to the former licensee Richman Pty Ltd for the licensed premises then known as "Harry's Bar & Grill".
  - This tavern licence was transferred from Richman Pty Ltd to the applicant, effective as from 20 January 2012 and the trading name approved as "The Cure Tavern".
  - Police officers from the Liquor Enforcement Unit first met with the management and other staff members, of the applicant, on 30 January 2012 to discuss the management of the licensed premises including the obligations and responsibilities of the licensee under the Act and the Director of Liquor Licensing's ("the Director") policies. In this regard, authorised officers after the initial meeting with management were required on occasions to engage with authorised persons of the licensed premises to discuss their concerns, breaches of Act and the Director's policies.
  - Cautions and infringement notices have been issued to relevant persons relating to breaches of the Act resulting from the manner of trading conducted under the licence, at the licensed premises, between 10 March 2012 and 16 November 2013.
  - Infringement notices issued, have been paid.
  - M/s Marguerite O'Dwyer, an approved manager, appointed to the role of General Manager of the licensed premises on 25 June 2013; changes implemented to effectively manage the licensed premises and to minimise harm.

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- Advice from the Commissioner that the applicant has not come to the attention of the police for negative action since September 2013.
34. In considering the information presented by the applicant, I am satisfied that the reasons that lead to the grant of the original extended trading permit still exist and that it would be reasonable, in normal circumstances, that the application be granted to meet the requirements of consumers for liquor and related services at the premises.
  35. However, the presentations of the Commissioner, albeit that it has been submitted that the applicant has not come to the attention of police for negative action since 2013, as they relate to breaches of the Act and the problematic management of the licensed premises, between 10 March 2012 and 16 November 2013, are of concern and must be given consideration.
  36. In my view, the applicant, as licensee, demonstrated a disregard for the provisions of the Act and the Director's polices between 10 March 2012 and 16 November 2013. In this regard, the management of the licensed premises by the licensee (including persons approved in positions of authority) is a primary responsibility and obligation under the Act.
  37. Also the matters of concern dealt with by the authorised officers, by way of cautions and infringements could have been dealt with by way of disciplinary proceedings against the licensee, before the licensing authority, as a separate matter and not raised in the consideration of this application. In this regard, the Act contains the appropriate mechanisms for the licensing authority to vary or cancel an extended trading permit, in the public interest, if circumstances arise in the conduct of the business under the licence, including matters relating to the management of the licensed premises. Sections 60(8a), 64, 95 and 117 refer.
  38. As I said above, the management of licensed premises is a primary responsibility of the licensee and the approved managers and the evidence before me shows that the licensee and the managers failed in this fundamental duty when commencing to conduct the business under the tavern licence.
  39. In this respect, while I note the changes implemented by the applicant with the appointment of M/s Marguerite O'Dwyer to the role of General Manager, nevertheless it is of concern to me that despite the mandatory training required to be completed by persons prior to being approved in a position of authority under the Act, that authorised officers, in respect of this tavern, were required to be actively engaged with authorised persons of the tavern, over an extended period of time, to ensure compliance with the Act and the Director's polices.

40. Nevertheless in considering all of the information before me and taking into consideration that this is an application for an similar extended trading permit to the permit granted in 2010; not disciplinary proceedings against the licensee and I am satisfied on the evidence that the reasons that lead to the grant of the original permit still exist, I am prepared to exercise my discretion and grant the application for a duration of two (2) years subject to some of the conditions as suggested by the Commissioner.
41. While many of the suggested trading conditions of the Commissioner have merits in particular those concerning CCTV and Crowd Controllers, I do not consider that it is necessary, at this time, to impose as trading conditions, initiatives which may be regarded as good management practices of the licensee, such as compliance with the 'ID Under 25' policy, Identification Scanner, Dress Standards and Join and participate in the City of Perth or Vincent Liquor Accord.
42. The permit will be granted for a period of two (2) years in view of the applicant's initial trading history and if the applicant seeks another extended trading permit, it will provide the licensing authority with the opportunity to revisit the licensee's management practices.
43. Accordingly, as I am prepared to exercise my discretion under s 33 of the Act to grant the application and the applicant has complied with all the necessary statutory criteria, requirements and conditions precedent to the application being granted, pursuant to s 60(4) of the Act, an extended trading permit is granted authorising the sale and supply of liquor for consumption on the licensed premises only during the following hours:

Saturday and Sunday: 12 midnight to 1 a.m.

The permit is subject to the following conditions:

1. No trading is permitted on Good Friday, Christmas Day or before noon on ANZAC Day.
2. There is to be no liquor discounting or advertising of cheap liquor during the operation of the permit.
3. The area to which the permit relates is that area outlined in yellow on the plan dated 6 January 2010 and known as the internal "dining lounge".
4. Persons (other than an "authorised person") are prohibited from entering or re-entering the licensed premises 30 minutes prior to the close of trading prescribed on the permit.
5. Meals to be available during the hours covered by this permit, except when a pre-arranged function is being held.
6. The consumption of liquor authorised by the permit is to cease at 1 a.m.

7. The sale of packaged liquor for consumption off the licensed premises prohibited.
  1. From 12 midnight the selling and supply of beverages supplied in such a way that would encourage rapid consumption of liquor (e.g. but not limited to; unadulterated spirits or liqueur in a shot glass); or drinks known as 'lay-backs', 'shots', 'shooters', 'test tubes', 'jelly shots', 'blasters' or 'bombs' or any other emotive title, is prohibited.
  2. From 12 midnight no liquor is to be supplied mixed with energy drink. For the purpose of this condition 'energy drinks' has the same meaning as formulated caffeinated beverage within the Australia New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater.
  3. A closed circuit television video ("CCTV") surveillance system, able to identify individuals and showing times and dates must be in place and operational. The CCTV system must comply with the requirements as identified in the Director's Policy 'Security at Licensed Premises'. It is expected that the system will provide and record continuous images of the entrances and exits to the premises during the normal trading hours and until one (1) hour after trading ceases. Images recorded via the CCTV system must be retained for, at least, twenty eight (28) days (or such other period as the Director of Liquor Licensing specifies) and must be made available for viewing or removal by the Police or other persons authorised by the Director. A video surveillance system that complies with the Director's requirements must be in place and operational with this condition within two (2) months of this decision (i.e. 6 April 2015).
  4. Crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed at a ratio of two (2) crowd controllers for the first 100 patrons and one crowd controller for each additional 100 patrons or part thereof, from 8 p.m. until 30 minutes after trading ceases.
  5. The permit will remain in force for a period of two (2) years commencing on **6 February 2015** and expiring on **5 February 2017**.
44. 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.

Eric Romato  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

6 February 2015