

DECISION OF DIRECTOR OF LIQUOR LICENSING

LICENSEE: COLONIAL LEISURE GROUP PTY LTD

PREMISES: PRINT HALL

PREMISES ADDRESS: CITY SQUARE 125 ST GEORGES TERRACE PERTH

LICENCE NUMBER: 6380137191

APPLICATION ID: A000065072

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

DATE OF DETERMINATION: 17 JULY 2015

Introduction

- 1 This is an application by Colonial Leisure Group Pty Ltd (the applicant), the licensee of premises known as the Print Hall and located at 125 St Georges Terrace, Perth for the grant of an extended trading permit (ETP), pursuant to s 60(4)(g) of the *Liquor Control Act 1988* (the Act), to authorise the following additional trading hours at the premises:
 - between 12 midnight and 2 a.m. the following morning from Wednesday to Saturday; and
 - between 10 p.m. and 12 midnight on Sundays
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing (the Director). An objection to the grant of the application was lodged by Mr Troy Ellis, however, pursuant to s 74(4) of the Act, I determined that this objection would not be heard because it was not based on any of the grounds of objection permitted under s 74(1). Pursuant to s 69 of the Act, the Executive Director Public Health (EDPH) and the Commissioner of Police (the Commissioner) both intervened in the application.
- 3 The application will be determined on the basis of the written materials lodged as permitted under s 13 and s 16 of the Act. The evidence and submissions of the parties are briefly summarised as follows.

Submissions on behalf of the applicant

- 4 According to the applicant, since the Print Hall commenced trading in 2012, it has become one of Perth's premier venues, providing a multi-level dining and bar precinct in the heritage listed Newspaper House on St Georges Terrace. The premise, which has retained many of the art deco features of the original building, comprises four levels:
 - lower ground – kitchen, baker and roastery;

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- ground level – main bar area, kitchen, cheese display, wine display, oyster shucking, casual dining and formal dining;
 - upper/mezzanine level – bar, various dining areas including the Apple Daily and function rooms; and
 - roof top – bar and casual dining.
- 5 The applicant submitted that it is a highly experienced operator of licensed premises, employing over 1200 people at its venues in Western Australia, Victoria, Queensland and the United Kingdom. Since it commenced trading, the Print Hall has won over 20 industry awards, reflecting the quality of the venue and services provided to the public. The premises are now regularly busy at closing times, increasing the demand on the licensee to keep the premises open for longer.
- 6 A Public Interest Assessment (PIA) was lodged by the applicant to demonstrate that the grant of the application is in the public interest. The PIA provided information on the manner and style of operation of the premises, at-risk groups and sub-communities in the locality, social health indicators for the area, the likely impact on the amenity of the area if the application is granted and the applicant's harm minimisation strategies.
- 7 In regard to the possible negative impact the grant of the application may have, the applicant submitted that while the potential for harm or ill-health to occur as a consequence of the application being approved is potentially possible, as with any ETP, harm in this case would most likely, if at all, be only very limited and minor in the context of the significant benefits to flow from the additional trading privileges. It was submitted that the grant of the application will not noticeably contribute to, or exacerbate existing problems in the locality because:
- Print Hall's main patronage comprises people who are mature and professional;
 - the premises is run and operated by a very experienced licensee, with experienced and well trained staff;
 - the venue is not situated in a sensitive location. The immediate surroundings are inactive and dormant during the hours when the ETP is sought to operate;
 - the style and standard of the Print Hall is highly sophisticated. It is refined and dignified. This feature commands like-minded attitudes and behaviour from patrons; and
 - there will be special trading conditions associated with the permit to reduce the risk of anything adverse occurring.

Submissions by the Executive Director Public Health

- 8 The EDPH intervened in the application to make representations regarding the potential for the application to cause harm or ill-health to people, or any group of people, and the minimisation of that harm.
- 9 The intervention was premised on the following:
- research demonstrates that late night trading can facilitate increased consumption of alcohol and related harm;
 - police data show there are existing levels of alcohol-related harm occurring in the locality of Print Hall, particularly during the proposed ETP hours;
 - the cumulative impact of premises trading late at night is associated with increased levels of harm; and
 - the grant of the application would potentially increase the number of people by 1,000 that will be at-risk of alcohol-related harm at an identified problem time and area for alcohol-related issues.
- 10 The EDPH provided an overview of national and international research which demonstrates a correlation between late night trading hours; increased consumption of alcohol and the subsequent alcohol-related harm, which is not limited to incidents occurring inside licensed premises, but also occurs on the streets in the form of assaults and drink-driving offences. An additional one hour of trade can result in a 16% increase in violent crime.
- 11 Police data indicates that during the period 1 January 2014 to 31 January 2015, there were 695 reported assaults in the suburb of Perth, of which 239 were recorded as alcohol-related. By comparison, during the same period in Northbridge, which is known as the State's primary entertainment precinct, there were 426 reported assaults, of which 247 were recorded as alcohol-related. The majority of alcohol-related assault offences in the suburb of Perth occur on weekends, peaking between midnight and 2 a.m.
- 12 According to the EDPH, there are a number of licensed premises in the CBD and near the Print Hall which can trade late. The cumulative impact of having a number of premises in the area trading late is a relevant consideration. The Print Hall is a reasonably large venue catering for around 1,000 patrons who will be on the streets after closing and interacting with other people possibly affected by alcohol. The impact of increasing late night trading in areas where there are multiple late night licences, has resulted in other jurisdictions taking action to curb the alcohol-related harm and problems that have occurred as a result.
- 13 It was submitted by the EDPH that an environment supportive of prolonged drinking sessions increases the risk of harm to individuals, the effects of which also impacts on

others. This, in combination with the data presented in the intervention which show alcohol-related harm occurring in the locality, is worthy of consideration in relation to the application. In view of the risks associated with the grant of the application, the EDPH suggested that any late night trading should perhaps be restricted to 1 a.m. on Friday and Saturday nights only.

Submissions by the Commissioner of Police

- 14 The Commissioner is concerned with the elevated levels of alcohol-related harm that is currently occurring in the vicinity of the venue and contends that because of the risks associated with the grant of the application, it is necessary to impose conditions on the permit to assist in protecting those patrons who not only resort to the venue, but those frequenting other areas of the locality.
- 15 The Commissioner consequently recommended conditions relating to a lockout, patron numbers, crowd controllers, the use of counting devices and drink standards.

Determination

- 16 There is an onus on the applicant for the grant of an ETP, under s 60(4)(g) of the Act for a period in excess of three weeks, to satisfy the licensing authority that the grant of the application is in the public interest (refer s 38(1)(b) of the Act and r 9F(1)(b) of the *Liquor Control Regulations 1989*).
- 17 To discharge this obligation, the applicant submitted a detailed PIA together with various consumer questionnaires and survey sheets from the public which reflect strong support for the grant of the application.
- 18 According to the applicant, Print Hall is a well managed, popular and sophisticated licensed facility. It has won multiple industry awards since it commenced trading, reflecting the quality of the venue and the services provided to the public. Under the tavern restricted licence, trading at the premises is restricted to 12 midnight Monday to Saturday and 10 p.m. on Sundays. However, the applicant claims the premises are regularly busy at closing time and the licensee now seeks to trade to 2 a.m. Wednesday to Saturday and to 12 midnight on a Sunday to cater to the requirements of its customers.
- 19 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).
- 20 In *Woolworths v Director of Liquor Licensing* [2013] WASCA 227, Buss J stated that 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 primary and secondary objects of the Act as set out in s 5.

21 The primary objects of the Act are:

- to regulate the sale, supply and consumption of liquor;
- to minimise 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.

22 The secondary objects of the Act 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 the 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.

23 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.

24 In considering the applicant's evidence as a whole, I am satisfied that the grant of the application would be consistent with object 5(1)(c) of the Act (catering to the requirements of consumers for liquor and related services) and object 5(2)(a) (facilitating the use and development of licensed facilities reflecting the diversity of consumer requirements). Of course, these are not the only objects of the Act and in particular, object 5(1)(b) requires me to consider the application from a harm minimisation perspective.

25 In this regard, the evidence of the EDPH establishes a correlation between late night trading and increased alcohol-related harm, and the locality in which the premises trades currently experiences high rates of alcohol-related assaults. The number of alcohol-related assaults in the suburb of Perth is similar to the number of alcohol-related assaults in Northbridge. According to the EDPH there are very real risks associated with the grant of the application. There is no onus on an intervener to establish their assertions of fact or opinion (refer *Re Gull Liquor* (1999) 20 SR (WA) 321).

26 Where there is a conflict in promoting the objects of the Act, I need to weigh and balance those competing interests (refer *Executive Director Public Health v Lily Creek*

International Pty Ltd & Ors [2000] WASCA 258) and decide upon the degree of importance to be attributed to each of the relevant factors, as proven by the evidence in each case. It should, however, be noted that the harm minimisation object under the Act is not about preventing harm absolutely. Nonetheless, the potential for harm to occur is a powerful public interest consideration (refer Ipp J in *Lily Creek*).

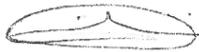
- 27 The question to be resolved therefore is whether the level of harm that might result from the grant of the application is such that it outweighs the other positive aspects of the application to the extent that the application should be refused, or whether in consideration of the evidence and the weighing and balancing exercise, the application can be granted, subject or not, to appropriate conditions or restrictions to minimise any perceived risks.
- 28 In response to the matters raised in the interventions, the applicant submitted that the concerns raised by the interventions are largely speculative, generalised, out dated and unsubstantiated in terms of the application. However, it should be observed that the factual finding required is whether alcohol-related harm and ill health is “likely”, and it is not necessary to find, as a fact, that particular harm will actually occur as a result of the grant of the application, or to find a causal link. This exercise is necessarily predictive in nature.
- 29 In addition to my finding that the grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act, other factors weighing in favour of the application include the nature and style of the business conducted under the licence, the existing compliant management of the premises and the experience of the applicant.
- 30 Factors weighing against the grant of the application include the high rate of alcohol-related assaults in the locality which peak between midnight and 2 a.m. and the cumulative impact of having multiple late night trading premises in the locality. Also, it is a large venue, which can accommodate just over 1,100 patrons, spread throughout various levels and rooms. Monitoring levels of intoxication and patron behaviour will be a challenge for the licensee and the impact of this many people exiting onto the streets in the early hours of the morning is unknown at this stage.
- 31 In weighing and balancing the competing interests in this case, I am of the view that the risks associated with the grant of the application can be mitigated through the imposition of appropriate conditions on the permit. In this regard, the applicant and the interveners have suggested various conditions, although I note the applicant does not agree to any conditions proposed by the interveners.
- 32 In consideration of the submissions, I am of the view that in addition to the relevant conditions set out in the policy of the Director on ETP’s, a condition restricting patron numbers in each area of the premises is appropriate in order to manage overcrowding and crowd controllers should be in place from 8 p.m. Wednesday to Saturday and from 6 p.m. on Sundays.

33 Accordingly, I am satisfied that the applicant has discharged its onus under s 38(2) of the Act and the application is granted subject to the following:

- No liquor is to be sold or supplied for consumption on the premises in any of the following ways;-
 - In any vessel with a measurement capacity exceeding 750ml, except vessels containing premixed drinks (e.g. RTD's) which shall not exceed 375ml;
 - In non-standard measures of spirits (i.e. no more than 50mls of spirits is permitted in any vessel).
- Persons (other than an "authorised person") are prohibited from entering or re-entering the licensed premises 30 minutes prior to close of trading.
- Seating must be provided at all times for at least 50% of the maximum accommodation permitted in each part of the premises that is operating during the ETP.
- 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 (general public) and one crowd controller for each additional 100 patrons or part thereof, from 8 p.m. Wednesday to Saturday and 6 p.m. Sunday until 30 minutes after trading ceases.
- Any queues of people waiting to enter the premises are to be regularly inspected and monitored by the licensee and those who appear to be unable to comply with the licensee's entrance requirements must be asked to leave the queue and the vicinity of the premises.
- The licensee is prohibited from selling and supplying beverages in such a way that would encourage rapid consumption of liquor (e.g. but not limited to, unadulterated spirit or liqueur in a shot glass); or drinks known as 'laybacks', 'shots', 'test tubes', 'jelly shots', 'blasters', 'bombs', or any other emotive title.
- The number of patrons permitted on the licensed premises must not exceed the following, or such lower number approved by the City of Perth:

Small Print Cafe (indoors)	82 patrons
Small Print Cafe (outdoors)	37 patrons
Ground Floor – Print Hall	400 patrons
Ground Floor – Print Hall (Balcony)	90 patrons
1 st Floor – The Apple Daily	320 patrons
Roof Terrace – Bob's Bar	175 patrons

- No trading is permitted in Good Friday, Christmas Day or before noon on ANZAC Day.
- 34 The permit will apply to the whole of the licensed premises, however in view of the factors which weigh against the application, the permit will be granted for a period of two years, which will afford sufficient time for the licensee and police to monitor whether the operation of the permit has any negative impact on the community.
- 35 The licensee is reminded that the permit can be modified or withdrawn at short notice if it is found that the licence is being operated in a manner contrary to the public interest.
- 36 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.
- 37 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