

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

<b>LICENSEE:</b>	<b>MAD HATTER WA PTY LTD</b>
<b>PREMISES:</b>	<b>CONVENIENTS NORTHBRIDGE</b>
<b>PREMISES ADDRESS:</b>	<b>35 LAKE STREET NORTHBRIDGE</b>
<b>LICENCE NUMBER:</b>	<b>634216118721</b>
<b>APPLICATION ID:</b>	<b>A622389256</b>
<b>NATURE OF APPLICATION:</b>	<b>APPLICATION FOR GRANT OF AN EXTENDED TRADING PERMIT – ONGOING HOURS</b>
<b>DATE OF DETERMINATION:</b>	<b>1 DECEMBER 2021</b>

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### **Introduction**

1. On 11 May 2021, an application was lodged by Mad Hatter WA Pty Ltd (the applicant) for the grant of an extended trading permit in respect of premises situated at 35 Lake Street, Northbridge and known as Convenients Northbridge.
2. The application was made pursuant to ss 60(4)(g) and 68 the *Liquor Control Act 1988* (the Act) and the applicant seeks an extended trading permit to allow trading on Friday and Saturday evenings from 12 midnight to 2 a.m. the following day.
3. In accordance with s 67 of the Act, the application was required to be advertised in accordance with instructions issued by the Director of Liquor Licensing (the Director).
4. No objections were lodged. However, the Commissioner of Police (the Commissioner) pursuant to s 69 of the Act, lodged a notice of intervention.
5. To give effect to the provisions of s 16 of the Act, by letter dated 24 September 2021, a document exchange process was initiated between the parties. Each party was afforded the opportunity to lodge any additional evidence to be taken into consideration in the determination of the application. The applicant was also advised:

*"While the information lodged by the Applicant is acknowledged, there appears to be no evidence to support the application, i.e., that the additional trading hours are required to meet the requirements of consumers for liquor and related services for the hours sought.*

*Therefore, the applicant should consider lodging evidence in support of the application to demonstrate that the grant of the application is in the public interest."*

6. 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. The evidence of the parties is briefly summarised below.

### **Submissions on behalf of the applicant**

7. The applicant seeks the grant of an extended trading permit to allow a continuation of trading on Friday and Saturday evenings from 12 midnight to 2 a.m. the following day.

8. The applicant's Public Interest Assessment (PIA) lodged in support of the application, among other things, includes the applicant's intended manner of trade, target client base, the premises theme/décor, and submissions addressing some of the matters set out in the Act.
9. In respect of the premises' manner of trade the applicant submitted that it proposes:  
*"...operating the Venue as a "speakeasy Bar and restaurant", whilst trading in a similar fashion as similar speakeasy bars in the area. The concept encompasses the Venue's décor, entertainment, food and beverages."*
10. Regarding the theme/décor the applicant also submitted:  
*"Convenients is Novelty bar with late night food service running from Wednesday to Saturday with hospitality industry events on Mondays. The Venue will have a convenience store front which will act as front desk. Entrance to bar and restaurant area will be through a secret door disguised as a fridge."*
11. The applicant also considered the potential impact the additional trading might have on the locality and the 'at-risk' groups and submitted that the grant of the application will not adversely impact upon the amenity of the locality and be in line with the visions of the relevant planning authorities for the locality and will support the City of Perth's strategic plans for Northbridge
12. To demonstrate support for the application, the applicant together with its PIA lodged various publications including a report from the Department of Health "Health and Wellbeing of Adults in Western Australia 2018 – Overview and Trends"; Crime Statistics for Northbridge; City of Perth "SafeCity Strategy 2016 – 2020; Vision for Perth 2029 – An Urban Design Framework; Article "Perth drops below Sydney in The Economist's 2018 Global Liveability Index; City of Perth "Strategic Community Plan 2019 – 2029; Mental Health Commission report "the Western Australian Alcohol and Drug Interagency Strategy 2018 -2022"; market research report; and the Department of Health "State Public Health Plan for Western Australia "Objectives and Policy Priorities for 2019 – 2024.

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

13. The Commissioner, in his notice of intervention dated 18 August 2021, made representations that if the application was granted public disorder or disturbance would likely result (s 69(6)(c)(ii) of the Act); and any other matter relevant to the public interest (s 69(6)(c)(iv) of the Act).
14. The Commissioner's intervention included an analysis of the applicant's PIA, and in particular makes representations regarding:
  - Existing outlet density; and
  - Existing alcohol related harm in the locality.
15. The Commissioner submitted that the applicant has not provided any probative evidence to support its assertions to discharge its burden in accordance with s 38(2) of the Act, that the grant of the application is in the public interest; and that the applicant failed to provide a comparison of the nature of services by other licensed premises in the locality in order to evidence that the applicant is offering a service not already available in the locality.



16. The Commissioner's representations included that there are one hundred and twenty-four (124) licensed premises situated in Northbridge; submitted that many trade past midnight; and referred to news articles highlighting the level of alcohol-fuelled violence and anti-social behaviour being experienced in Perth and Northbridge.
17. The Commissioner's representations contained general crime data for the suburbs of Northbridge and Perth broken down into alcohol and non-alcohol related crimes. The information was compared against data for the Metropolitan area and the State. The data shows elevated levels of alcohol related harm in Northbridge and Perth in comparison to the Metropolitan and State rates. It was submitted that alcohol related assaults for Northbridge for 2020 were 197 times higher than the Metropolitan rate and 132 times higher than the State rate.
18. The Commissioner submitted that any additional trading hours particularly, after midnight, have the potential to further impact on the amenity of the locality and add further burden on law enforcement and other emergency service resources.
19. In conclusion the Commissioner, among other things, submitted:
  - Northbridge is part of Perth's premier entertainment precinct. Due to the high density of liquor outlets within the precinct, it is suffering elevated levels of alcohol-fuelled violence, disturbance and public disorder.
  - Crime data provided shows clear evidence of those high levels of harm. Without the ongoing police presence, including resource intensive operations such as Nigh Safe within this precinct to combat the alcohol-related issues, the level of alcohol-related crime and harm would undoubtedly be considerably higher.
  - The applicant has failed to provide probative evidence that this application is in the public interest. Without sufficient evidence to prove this application is in the public interest, particularly giving to this being a high-risk application in an area suffering elevated levels of alcohol related harm, it is open to the Director to refuse this application.

#### **Determination**

20. The applicant seeks the grant of an extended trading permit to allow a continuation of trading on Friday and Saturday evenings from 12 midnight to 2 a.m. the following day in accordance with s 60(4)(g) of the Act.
21. As the applicant is seeking the grant of an application, to which s 38(1)(b) of the Act and r 9F of the *Liquor Control Regulations 1989* (the regulations) apply, the applicant must 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.
22. In accordance with s 69 of the Act, the Commissioner intervened in the application. In this regard the Commissioner, as intervenor, carries no burden of proof and make representations to assist the licensing authority. (per Greaves J, *Gull Petroleum (WA) Pty Ltd* [1988] LLC No. 13/98)

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23. The representations made by the Commissioner raised matters which, in my opinion, required to be addressed by the applicant. However, I acknowledge that the applicant is not legally represented and may not be familiar with the Act; but more importantly the burden of proof placed on an applicant when required to satisfy the licensing authority that the grant of an application is in the public interest.
24. In this regard, the applicant while given the opportunity to lodge further evidence did not lodge any additional information or addressed the matters raised by the Commissioner in his intervention.
25. 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 and regard may be given to the matters prescribed in s 38(4) of the Act.
26. 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.*
27. 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).
28. The primary objects of the Act, as set out in s 5 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.
29. The secondary objects as set out in s 5(2) 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 persons directly or indirectly involved in, the sale, disposal and consumption of liquor; to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act; and to encourage responsible attitudes and practices towards the promotion, sale, supply service and consumption of liquor that are consistent with the interests of the community.
30. Regarding the law and the discretion of the licensing authority in determining whether an application is "in the public interest" 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."*
31. 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."*
32. Also, the licensing authority is entitled, although not bound, to take into consideration the matters set out in s 38(4) of the Act.
33. 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.
34. In this case, the applicant seeks an extended trading permit to allow a continuation of trading on Friday and Saturday evenings from 12 midnight to 2 a.m. the following morning. The primary focus being to provide a late-night dining and entertainment venue reflecting the manner of trade associated with a "speakeasy" venue.
35. The applicant is the holder of a small bar licence and the maximum number of patrons permitted to be on the licensed premises, any one time, must not exceed 120 patrons.
36. In this case taking into consideration the type of licence held by the applicant and the number of persons that may be accommodated on the licensed premises, at any one time, the venue may be considered to be a low-risk venue.
37. However, the applicant in this application seeks a permit to which the provisions of s 38 (2) of the Act apply; and must satisfy the licensing authority that the grant of the application is in the public interest; and the additional trading hours sought cannot be considered minor and are significant (i.e. to 2 a.m.).
38. The Commissioner in his intervention raised doubt as to the probative value of the applicant's evidence and submitted that the applicant's evidence is not sufficient to discharge its onus under the Act that the grant of the application is in the public interest.



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39. In considering this matter, I acknowledge decisions of the Liquor Commission which have found that Public Interest Assessments must be supported by objective evidence and that assumptions, opinions, speculation, and generalised statements will not be sufficient to demonstrate that applications are in the public interest.
40. In this case, considering the intervention lodged; and that the applicant has not addressed any of the matters raised by the intervenor, I find that the applicant's evidence does not of itself have the probative value which may be considered sufficient to demonstrate that the grant of the application is in the public interest.
41. Therefore, based on the information presented, I find that the applicant has failed to discharge its onus under s 38(2) of the Act, that the grant of the application is in the public interest.
42. Accordingly, the application is refused.
43. 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