

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

**APPLICANT:** OURLAND CORPORATION PTY LTD

**PREMISES:** CELLARBRATIONS AT DONNYBROOK

**PREMISES ADDRESS:** 68 SOUTH WEST HWY DONNYBROOK

**APPLICATION NO.:** A000065071

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

**DATE OF DETERMINATION:** 26 MAY 2015

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### **Introduction**

- 1 On 16 January 2015 an application was lodged by Ourland Corporation Pty Ltd (the applicant) for the grant of an extended trading permit – ongoing hours (ETP or permit), pursuant to s 60(4)(g) of the *Liquor Control Act 1988* (the Act), in respect of premises located at 68 South West Highway, Donnybrook and known as Cellarbrations at Donnybrook.
- 2 The applicant seeks approval to trade on Sundays between 10 a.m. and 6 p.m.
- 3 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. There were no objections or interventions in respect of the application.
- 4 Pursuant to ss 13 and 16 of the Act the application will be determined on the papers.

### **The applicant's submissions and evidence**

- 5 The applicant submitted a Public Interest Assessment (PIA) in support of its application. According to the applicant, patrons needing to purchase packaged liquor on Sundays either have to purchase from the local pubs, which have inflated prices and a limited range, or travel approximately 35km to Bunbury. In addition, it was submitted that tourists opting to shop in Donnybrook on Sundays do not have access to a liquor store.
- 6 The applicant provided some data on the demographic profile of Donnybrook; crime in the locality; and census data for the town. The applicant also submitted three letters of support from local residents.
- 7 According to the applicant, its patrons have requested Sunday trading due to the following broad reasons:
  - shift workers;
  - friends visiting on Sunday;

- metropolitan liquor stores can trade on Sundays;
  - prefer to shop local; and
  - it is more convenient.
- 8 According to the applicant, the grant of the application will benefit the community greatly by offering Sunday trade, whilst encouraging tourists to stop and spend money in the local community.

### Determination

- 9 Donnybrook is a country town located 180kms south of Perth, with a population of approximately 2,500 people. There are number of licensed premises in and around the town, which includes two hotels, two clubs, three club restricted premises, six producers and the applicant's liquor store.
- 10 Pursuant to s 98D of the Act, liquor stores outside the metropolitan area cannot trade on a Sunday. However, nothing in the Act precludes a licensee of a liquor store in a country town from seeking a permit under s 60(4)(g) to authorise Sunday trading. However, pursuant to s 38(1)(b) of the Act, read in conjunction with r 9F(b) of the *Liquor Control Regulations 1989*, an applicant for such a permit (for a period in excess of three weeks) must satisfy the licensing authority that the grant of the application is in the public interest.
- 11 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).
- 12 The scope and purpose of the Act can be ascertained from its objects as set out in s 5. The three primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;
  - to minimise harm or ill-health 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.
- 13 There is no presumption in favour of the grant of an application, rather the opposite applies. An applicant for the grant of an ETP under s 60(4)(g) must adduce sufficient evidence to discharge its onus under s 38(2) of the Act (refer *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384). The level and degree of evidence to be submitted by an applicant will vary depending upon the facts and circumstances of each case. However, as the Liquor Commission observed in *Buswater Pty Ltd v*

*Director of Liquor Licensing* LC 17/2010, it is not sufficient for an applicant merely to express opinions and make assertions about the perceived benefits of their application. Such opinions and assertions must be supported by an appropriate level of evidence.

- 14 In considering the public interest, applicants should demonstrate the positive aspects of their application (including the social, economic and health impact). An applicant must do more than merely demonstrate that the grant of the application will not have any negative impact.
- 15 Whilst the applicant has provided some demographic data for the locality, to perhaps demonstrate that the grant of the application will not adversely impact on the community, the perceived benefits for the community would appear to be based on a number of assertions, which are not supported by any real evidence. For example:
  - the applicant claims that the hotels charge inflated prices, however, there is no comparison of prices for the hotels with the applicant's premises or other evidence to support this claim;
  - the applicant claims that the hotels have a limited range of packaged liquor, however, no evidence has been submitted detailing the packaged liquor available at the two hotels compared to the applicant's liquor store;
  - other than three letters of support, no evidence has been submitted to support the claim that the local community are being inconvenienced by the liquor store not trading on Sundays; and
  - no evidence has been submitted to support the claim that tourists visiting the town cannot purchase their liquor requirements from the hotels or local producers, or alternatively, that the liquor store not being open on a Sunday is a disincentive for tourists to visit the town.
- 16 Parliament, through the Act, has clearly distinguished Sunday trading by liquor stores in the metropolitan area to liquor stores in regional areas, although, as I have already observed, there is no prohibition on a licensee of a liquor store outside the metropolitan area seeking an extended trading permit to facilitate Sunday trading. However, such applications are subject to the requirements of s 38(2) of the Act, with the onus falling upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest. Section 38(2) is clear in its imposition of an affirmative or positive obligation on an applicant to demonstrate to the licensing authority that granting an application is in the public interest. It is insufficient to merely demonstrate that the grant of the application is not contrary to the public interest.
- 17 Also, the public interest should not be confused with the commercial interests of a licensee.

- 18 When determining such applications, there is a wide discretion afforded me in deciding what weight to give to the competing interests and other relevant considerations raised in the application. In this regard, Templeman J in *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356 said that the pertinent question is whether, having regard to all the circumstances and the legislative intent, an extended trading permit is justified.
- 19 The applicant's liquor store is located in close proximity to the two hotels in town, which can sell packaged liquor. There are other outlets in and around the town that can sell packaged liquor. There is little or no evidence to support the applicant's assertions about the perceived benefits to the community if the application is granted.
- 20 Due to the paucity of evidence to support the applicant's claims and the presence of a number of packaged liquor outlets in Donnybrook, in my view, based upon the evidence submitted, the grant of the application is not justified. Accordingly, I find that the applicant has failed to discharge its onus under s 38(2) of the Act and the application is refused.
- 21 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s25 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.



Peter Minchin  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING